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April 20, 2011

The Honorable Martin O'Malley
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401-1991

Re: Senate Bill 367

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 367, "Alcoholic Beverages - Anne Arundel County - Entertainment Facility." While we approve the bill, we write to discuss an interpretive issue with the bill.

Senate Bill 367 creates an entertainment facility license and an entertainment concessionaire license for a VLT facility in Anne Arundel County and for the concessionaires adjacent to but independent of that VLT facility. The bill adds a new paragraph (k) to Article 2B, § 8-202. New § 8-202(k)(7) states:

subsection (d) of this section, relating to special Sunday licenses, does not apply to a license issued under this subsection.

Subsection (d) of § 8-202, which is applicable only in Anne Arundel County, creates a special Sunday license, and prohibits the sale of alcoholic beverages after 2 a.m. on Sunday by an alcoholic beverages licensee that does not hold a special Sunday license. If this were the only provision covering Sunday sales in Anne Arundel County, it would be clear that the exclusion of entertainment facility and entertainment concessionaire licenses from this section would free them both from the restriction on Sunday sales and from the requirement of a special Sunday permit. The prohibition on Sunday sales is also found, however, in § 11-502(a), which provides that "no licensed premises shall be permitted to sell alcoholic beverages at any time on Sunday without a special Sunday license." With this language, the exemption from § 8-202(d) could be read to prohibit issuance of special Sunday licenses to these licensees while prohibiting Sunday sales without a special Sunday license.

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It seems unlikely that the legislature intended to prohibit the sale of alcohol on Sunday at VLT facilities. State Government Article § 9-1A-23(a) permits a VLT facility to operate daily from 8 a.m. to 2 a.m. If Senate Bill 512, "Gaming - Video Lottery Terminals," is signed, the operating hours of a VLT facility will be extended to 4 a.m. on Saturday and Sunday. The Fiscal and Policy Note on Senate Bill 367 makes no mention of any possibility that the hours for sale of alcoholic beverages might be shorter than the hours of operation of the VLT facility, but states simply that "[c]urrent law related to a special Sunday license in Anne Arundel County does not apply to the issuance of an EF or an EC license." The Note describes the effect of the special license provision, as meaning that "[w]ith certain exceptions, a special Sunday license is required to sell alcohol after 2 a.m. on a Sunday in Anne Arundel County." This description supports the view that the intent was to allow an EF or an EC licensee to exercise the privileges of the license without the requirement of a special Sunday license.

In light of the above, it is our view that the exclusion of entertainment facility and entertainment concessionaire licenses from § 8-202 was intended to exclude them from the special Sunday license requirement, and not to prohibit sales of alcoholic beverages under these licenses on Sundays and may be enforced in this manner. We recommend, however, that this matter be clarified in future legislation by adding a paragraph to § 8-202(k) along the lines of the one applicable to the Cecil County VLT facility, which states:

A Class EF license authorizes the sales and serving of beer, wine, and liquor throughout the entertainment facility during those days and hours that the entertainment facility is open for business.

Article 2B, § 6-201(i)(4)(vii).

Very truly yours,


Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable John P. McDonough
Joseph Bryce
Karl Aro