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May 2, 2011

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

Re: Senate Bill 613

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 613, "Board of Liquor License Commissioners for Baltimore City - Ethics, Staff Compensation, Open Meetings, and Performance Audit." We write to discuss the application of the provision of the bill relating to open meetings. We also point out a typographical error.

Among other changes, Senate Bill 613 amends Article 2B, § 15-112(d) to add a new paragraph (15) that provides:

An action of a commissioner or employee of the Board is subject to State requirements for open or public meetings, including requirements for open sessions under Title 10, Subtitle 5 of the State Government Article.

Title 10, Subtitle 5, known as the Open Meetings Act, generally requires that "a public body shall meet in open session." State Government Article ("SG"), § 10-505. The term "public body" does not include "single member entity." SG § 10-502(h)(3)(i). Moreover, the Open Meetings Act does not apply to a public body when it is carrying out an administrative function. SG § 10-503(a)(1)(i). Where the Open Meetings Act applies, it requires that notice be given before a public body meets in a closed or open session. SG § 10-506. Whenever a public body meets in open session, the general public is invited to attend. SG § 10-507(a). Senate Bill 613 does not amend any portion of the Open Meetings Act.

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It is not clear how the "actions" of single commissioners or employees of the Board can be brought within the terms of the Open Meetings Act, which is designed for public bodies which function in the context of meetings, and does not apply to single member entities. The term "action" is not defined in the bill, but is broad enough to include pretty much anything that is a part of the duties of the employee or commissioner in question. If read literally, the bill would require each commissioner and employee to publish an agenda of their tasks for each day in advance, and allow the general public to sit in their office while they work. On the other hand, if the term "action" is read in light of the Open Meetings Act as a whole, and thus not to include administrative functions, it would have little affect with respect to employees, whose duties are largely, if not entirely, administrative. Nor would it apply to a single commissioner, as action cannot be taken without a quorum of the Board.¹ In short, it is our view that further clarification of the intent of the legislature may be necessary before this provision can be implemented. It is our view, however, that the provision is severable, and that the remainder of the bill may be given effect.

Finally, on page 3, line 11 of the bill "distributions" should be "distribution."

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/KMR/kk

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

¹ The Board itself is already covered by the Open Meetings Act.