

DOUGLAS F. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



DAN FRIEDMAN
Counsel to the General Assembly

SANDRA BENSON BRANTLEY
BONNIE A. KIRKLAND
KATHRYN M. ROWE
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

May 8, 2012

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

RE: Senate Bill 354

Dear Governor O'Malley:

We have reviewed Senate Bill 354, "Baltimore City - Alcoholic Beverages - Licenses," for constitutionality and legal sufficiency. In doing so, we have concluded that a severable portion of the bill would likely be found to be a special law in violation of Maryland Constitution, Article III, § 33 if challenged. Because the remainder of the bill is constitutional and can be given effect, however, we do not recommend that the bill be vetoed.

As introduced, Senate Bill 354 created a beer, wine, and liquor tasting license for certain parts of Baltimore City that can be used every day of the year. There is no question about the constitutionality of this provision.

An amendment to the bill, however, authorizes the transfer of:

One Class B-D-7 license issued for a property surrounded by West Preston Street on the north, Morton Street on the east, West Biddle Street on the south, and Maryland Avenue on the west ... to a property surrounded by West Eager Street and East Eager Street on the north, Lovegrove Street on the east, West Read Street and East Read Street on the south and Morton Street on the west.

Maryland Constitution Article III, § 33 provides that "the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law." In applying this provision, Maryland courts have looked to the purpose

The Honorable Martin O'Malley

May 8, 2012

Page 2

of the constitutional prohibition, which is “to prevent one who has sufficient influence to secure legislation from getting an undue advantage over others, as well as to prevent the dispensation of grants of special privileges to special interests, through the instrumentality of special legislation, in conflict with previously enacted general legislation covering the same subject matter.” *Maryland Department of the Environment v. Days Cove Reclamation*, 200 Md. App. 256, 265 (2011). This analysis involves the consideration of various factors, including:

whether the legislation was actually intended to benefit or burden a particular member or members of a class instead of an entire class; whether the legislation identifies particular individuals or entities; whether a particular individual or business sought and received special advantages from the Legislature, or if other similar individuals or businesses were discriminated against by the legislation; whether the legislation’s substantive and practical effect, and not merely its form, show that it singles out one individual or entity, from a general category, for special treatment; and whether the legislatively drawn distinctions are arbitrary and without any reasonable basis. One last pertinent consideration is the public interest underlying the enactment, and the inadequacy of the general law to serve that interest.

Days Cove, 200 Md. App. at 265-266 (internal quotations and ellipses omitted).

The amendment permits the transfer of a B-D-7 license from a single block, three blocks south to a two block area with several restaurants. While it does not expressly identify particular individuals or entities, the testimony of the sponsor makes clear that it was intended to permit a specific transfer that would otherwise be prohibited by existing general law. Specifically, the testimony reflects that the amendment:

will allow for the transfer of a Class B-D-7 license from 1 West Biddle Street located in Baltimore’s 40th legislative district to Spirits of Mt. Vernon, a retailer located at 900 North Charles Street in Baltimore’s 44th legislative district.

Testimony of the Honorable Verna L. Jones before the Education, Health, and Environmental Matters Committee February 21, 2012. This testimony also reflects that the owner of Spirits of Mt. Vernon testified on the bill, showing that she sought the advantage provided.

The Honorable Martin O'Malley
May 8, 2012
Page 3

This transfer authorized by the amendment would otherwise violate Article 2B, § 9-204.1(e), which provides:

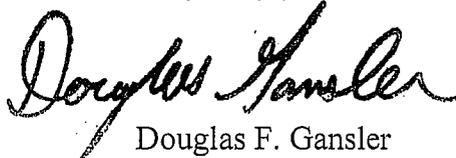
(1) Except as otherwise provided in paragraph (2) of this subsection, licenses for the sale of alcoholic beverages of any class may not be transferred into the areas covered by this section.

(2) A licensed drugstore may transfer the license into the 45th alcoholic beverages district.

There is no indication in the legislative history that this transfer is somehow a class of one, or that the businesses involved are different than other businesses of the same type that might have or be able to obtain "the support of the business and neighborhood community associations" and be able "to continue its rapid growth and expand its services, while enriching the cultural diversity of Mt. Vernon." Instead, it reflects that the amendment is necessary because the provision would otherwise violate the applicable general law.

It is true that the bill does not require the specific transfer to which the legislative history refers, and that the existing license on Biddle Street could be transferred to another business in the two block area defined in the bill for the transfer. For this reason, we cannot say with certainty that the provision in the bill is clearly unconstitutional. It is entirely possible, however, that a court would find it unconstitutional if challenged. Nevertheless, you may sign the bill and give effect to its other provisions.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable Verna Jones-Rodwell
The Honorable John P. McDonough
Joseph Bryce
Karl Aro