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May 7, 2015

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: *House Bill 932 and Senate Bill 369, "Prince George's County – City of College Park – Class D Beer and Wine License"*

Dear Governor Hogan:

We have reviewed House Bill 932 and Senate Bill 369, identical bills entitled "Prince George's County – City of College Park – Class D Beer and Wine License," for constitutionality and legal sufficiency. In doing so, we have considered whether the bills, which permit the transfer and conversion of a specific Class D license in College Park from one location to another, violate the prohibition of special laws found in Article III, § 33 of the Maryland Constitution. In accordance with our longstanding practice, we review bills by a deferential standard and recommend a veto only when the proposed legislation is clearly unconstitutional. While these bills have some indicia of being special laws, we have concluded that they could be upheld against a special law challenge and thus are not clearly unconstitutional.

House Bill 932 and Senate Bill 369 both authorize the conversion of a Class D (on-sale) beer and wine license issued for premises in the 7100 block of Baltimore Avenue in College Park to a Class D (on- and off-sale) beer and wine license for premises located in the 7100 to 7200 block of Baltimore Avenue in College Park. It is our understanding from written testimony in the committee file that the license is currently held by the owner of Plato's Diner, and that the owner of that license would like to establish a gourmet coffee shop that will also sell specialty foods, wine, and craft beer, all of which would be available for consumption on or off the premises.

Article III, § 33 of the Maryland Constitution provides, in relevant part, that “the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law.” Thus, “a law is constitutionally impermissible under § 33 if two conditions are met: (1) the law is a ‘special law’ and (2) a ‘general law’ relating to the same subject matter already exists.” *Department of the Environment v. Days Cove Reclamation Co.*, 200 Md. App. 256, 264-265 (2011), citing *Jones v. House of Reformation*, 176 Md. 43, 55-56 (1939).

As explained in the *Days Cove* case, in determining whether a particular piece of legislation, is a special law, the Court of Appeals has considered certain factors, though no one is conclusive in all cases. *Days Cove*, 200 Md. App. at 265. Those include:

“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.”

Cities Service Co. v. Governor, 290 Md. 553, 569-70 (1981). One last consideration is the public interest underlying the enactment, and the inadequacy of the general law to serve that interest. *Id.* at 570.

In this case, the legislative record, while sparse, indicates that the bills are intended for the benefit of a specific person, and would allow that person, the holder of a particular Class D (on-sale) beer and wine license to move that license to another location and convert it to a Class D (on- and off-sale) license. Moreover, while neither the name of the person nor the name of the business is specified in the bills, the area where the license is now located is drawn so narrowly that only one business qualifies. Moreover, the bills permit the transfer and conversion of only one license, so that they cannot be said to cover an open class.

The legislative record also shows, however, that this change was sought, not only by the owner of the license, but also by the College Park City-University Partnership and

the Mayor of the City of College Park. Testimony of the College Park City-University Partnership reflects that the license transfer and the new business are a part of an overall plan “to make College Park a top ‘college town’ by 2020,” with the goal of attracting more University faculty and staff to live in College Park and Prince George’s County, thereby “reducing commutes, improving the local economy, tax base, and increasing community involvement.” Written testimony of Eric Olson, Executive Director to the Education, Health and Environmental Affairs Committee on Senate Bill 369, March 2, 2015. One of the ways that the Partnership seeks to do this is by increasing the number of “unique, locally owned retail and restaurants,” such as the one envisioned for the converted Plato’s Diner license. *Id.* Similarly the Mayor testified that residents of the City have “continuously expressed their hopes for more upscale, convenient and diverse dining and entertainment venues,” and that the proposed business plan would help the City achieve these goals. This testimony would support the conclusion that the legislatively drawn distinction was not without any reasonable basis and that the change does serve a public, and not merely a private, purpose.

Finally, the public purpose in question is not one that the general law is adequate to serve. Article 2B, § 9-217(l) effectively prohibits the Board of License Commissioners from issuing or transferring an alcoholic beverages license with an off-sale privilege in the County. Thus, without this specific authorization from the General Assembly, the creation of this new business would not be as easily accomplished, but would be possible only if the holder of one of the grandfathered on- and off-sale licenses had an appropriate location and was interested in undertaking this type of business.

It is worthy of note that this type of closely focused legislation is not uncommon with respect to alcoholic beverages licenses. Alcoholic Beverages licensing is so tightly controlled in the interest of the public welfare that the law sometimes stands in the way of development that would be of benefit to the community. In such instances, the Legislature may well wish to provide that public benefit without effecting a broader change in the law. In this type of situation:

Courts should not be too ready to strike down such legislation on the theory that the same thing could have been worked out under existing general laws. It is said in 6 R.C.L. 417 (section 413): “In cases of state constitutional prohibition against the passage of special laws where a general law may be made applicable, it is a rule that the question of applicability * * * is one for the Legislature to determine, and that such a

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statute will not be declared unconstitutional, except where it clearly appears that the Legislature was mistaken in its belief that a general law could not be made applicable.” * * * “An important test in determining whether legislation is special or general is to consider not the form merely, but the substance.”

Jones v. House of Reformation, 176 Md. 43, 56-58 (1939).

Because there seems to be a public purpose behind the bills and the general law is not adequate for this purpose, it is our view that House Bill 932 and Senate Bill 369 are not clearly unconstitutional under Article III, § 33.

Sincerely,

A handwritten signature in black ink, reading "Brian E. Frosh". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

Brian E. Frosh
Attorney General

BEF/KR/kk

cc: The Honorable John C. Wobensmith
Joseph M. Getty
Karl Aro