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April 17, 2017

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

RE: House Bill 12 - Senatorial and Delegate Scholarships - Eligibility, Award Amounts, and Use of Funds

Dear Governor Hogan:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 12, "Senatorial and Delegate Scholarships - Eligibility, Award Amounts, and Use of Funds." We write to advise how a certain term should be interpreted.

House Bill 12 expands the eligibility for senatorial and delegate scholarships. Under current State law, in order to be eligible for a senatorial scholarship an individual must be "a resident of this State" and "a resident of the legislative district from which the applicant seeks an award." Education Article ("ED"), § 18-402(b). In addition, senators may award up to 10 percent of the scholarship funds for institutions out-of-state under limited conditions. ED § 18-405(d). Similarly, under current law delegate scholarships may be used at certain defined institutions outside of the State only under limited specified circumstances. ED § 18-501(b).

House Bill 12 expands the eligibility of senatorial scholarships to "an individual who is on active duty with the United States military" who is "domiciled in this State; and [a]t the time of the applicant's initial application, [is] domiciled in the legislative district from which the applicant seeks an award." (House Bill 12, page 3, lines 12-17.) The bill also allows the scholarship to be used at an institution outside of the State if the applicant "is on active duty with the United States military who is domiciled in" Maryland. (House Bill 12, page 4, lines 25-26.) In addition, House Bill 12 also states that "[a] recipient of a senatorial scholarship who is an individual who is on active duty with the United States military and otherwise meets [ED § 18-406(a) or (b)] may be domiciled in this State rather than a resident of this State." (House Bill 12, page 5, lines 10-13.) For a delegate scholarship, House Bill 12 expands eligibility to "an individual who is on active duty with the United States military who is domiciled in this State." (House Bill 12, page 5, lines 29-30.)

Generally, domicile is defined as “[t]he place at which a person has been physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.” *Black’s Law Dictionary* 558 (9th ed. 2009). On the other hand, residence ordinarily means the place where a person physically lives. *Black’s Law Dictionary* 1310 (9th ed. 2009). Under Maryland law, however, “residency” generally means “domicile.” *Blount v. Boston*, 351 Md. 360 (1998). Moreover, the Court of Appeals has “held consistently that ‘the words ‘reside’ or ‘resident’ in a constitutional provision or statute delineating rights, duties, obligations, privileges, etc. would be construed to mean ‘domicile’ unless a contrary intent is shown.’” *Wamsley v. Wamsley*, 333 Md. 454, 458 (1994) (quoting *Bainum v. Kalen*, 272 Md. 490, 497 (1974)). The two words also have the same meaning in the context of state income tax, *Comptroller v. Haskin*, 298 Md. 681, 690 (1984); estate and probate, *Shenton v. Abbott*, 178 Md. 526, 530 (1940); eligibility to file a claim against the former Unsatisfied Claim and Judgment Fund, *Hawks v. Gottschall*, 241 Md. 147, 149 (1966); and determination of venue for filing a divorce, *Harrison v. Harrison*, 117 Md. 607, 612 (1912).

In new provision ED § 18-402(b)(2), the legislative intent appears to be that domicile means residency, despite the use of both terms in the same provision. The Floor Report of the House Ways and Means Committee for House Bill 12 indicates that the provision “authorizes senatorial scholarships to be awarded to an individual who is on active duty with the United States military who is domiciled in the legislative district of the State from which the individual on active duty seeks an award.” Second, the sponsor of the bill testified before the relevant House and Senate committees that the purpose of the bill is to allow Marylanders who are active members of the military and stationed out-of-state to be eligible to receive a scholarship for an institution outside of Maryland.

Federal law specifically provides that for the purposes of taxation, servicemembers do not lose their domicile or acquire a new one if they are in a state solely because of compliance with military orders. 50 U.S.C.A. § 4001 (“A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.”). Thus, servicemembers and their spouses are entitled to pay only their domicile state’s taxes no matter where they are stationed.

Consistent with the foregoing, active military members who are Marylanders but stationed out-of-state would have been considered to have Maryland residency for purposes of the scholarship program under current law. Nevertheless, they would have been unable to use the scholarship at an out-of-state institution in most cases. Under House Bill 12, active military members who are Marylanders but stationed out-of-state and have not established a new residence or domicile are eligible to receive senatorial or delegate scholarships as well as use at an out-of-state institution. Therefore, in our view, the language on page 5, at lines 10-13 of House Bill 12

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appears to be unnecessary. Moreover, that language could suggest that other residency requirements in Title 18, Subtitle 4 can be met for an individual who is not domiciled in Maryland. We do not believe that is the legislative intent. As a result, the Maryland Higher Education Commission may wish to issue clarifying regulations or the General Assembly may consider clarifying language next session. Nevertheless, the bill is constitutional, thus there is no legal reason it cannot be signed.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian E. Frosh". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Brian E. Frosh
Attorney General

BEF/SBB/kd

cc: The Honorable John C. Wobensmith
Chris Shank
Warren Deschenaux