

HB0878 HOWARD COUNTY - DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT - HOUSING OPPORTUNITIES TRUST FUND HO. CO. 05-22

Education, Health, and Environmental Affairs Committee

Unfavorable

Testimony of Joel Hurewitz
Columbia, MD
Howard County
March 31, 2022

HB0878 IS AN UNCONSTITUTIONAL INFRINGEMENT ON THE HOME RULE POWERS OF HOWARD COUNTY

Last year, the majority of the Howard County Council voted to put the County Executive’s proposed Housing Opportunities Trust Fund into contingency because it was little more than a line item in the budget. There were no rules or guidance about how the Fund would be managed or how the monies would be spent. Rather than submit a bill to the County Council, the County Executive had his part-time employee and member of the County Delegation sponsor HB0878. The bill is an improper end run around the powers of the County Council, and for the reasons discussed herein is unconstitutional. Howard County Councilmember Deb Jung and I both testified before the Howard County Delegation that the bill violates Howard County’s home rule powers as granted in the Express Powers Act.

The Maryland Constitution in **Article XI-A Local Legislation Section 4**. states “From and after the adoption of a charter under the provisions of this Article by the City of Baltimore or any County of this State, no public local law shall be enacted by the General Assembly for said City or County on any subject covered by the express powers . . .“ One such provision of the Express Powers Act is § 10-312. “County property; housing projects; franchise; required notice” which states in part:

(d) Housing projects. --A county may provide for the financing of any housing or housing project wholly or partly, including the placement of a deed of trust, mortgage, or other debt instrument on the property to ensure repayment of funds used to purchase, construct, rehabilitate, or otherwise develop the housing project.

In its opinion letter of February 1, 2022, the Office of the Maryland Attorney General inexplicably failed to discuss the relevant provision of the Express Powers Act but instead analyzed the bill as if it was only legislation about appropriations and budgeting. Thus, the letter cited an irrelevant case involving a dispute between the City of Annapolis and Anne Arundel County.

Instead, the Attorney General should have given the bill the proper review of a Home Rule violation which the Maryland Court of Appeals has explained is a two-step analysis:

A conclusion that a statute violates the Home Rule Amendment requires two findings: (1) that the law in question is a public *local* law, as opposed to a public *general* law; and (2) that the law addresses a subject covered by the express powers granted to the particular geographical subdivision. See *State’s Attorney v. Mayor & City Council*, 274 Md. 597, 337 A.2d 92 (1975).

Park v. Board of Liquor License Commrs. for Balto. City, 338 Md. 366, 377 (1995). It is undisputed that HB0878 is a Howard County Delegation public local law. Thus, the Attorney General should have considered how HB0878 addresses the subject of “Housing Projects” –a power granted to Howard County in § 10-312(d). When HB0878 is properly analyzed clause by clause alongside § 10-312(d) it is clear that the bill covers the subject of housing and housing projects and is thus unconstitutional.

HB0878 ADDRESSES A SUBJECT COVERED BY THE EXPRESS POWERS ACT GRANTED TO HOWARD COUNTY

As seen in the highlighted pairings of § 10-312(d) and HB0878, not only does HB0878 address the subject of housing but it does so in some places by using the same basic root words—“develop” and “rehabilitate”--as those used in § 10-312(d). Thus, HB0878 undeniably addresses a subject covered by the express powers granted to Howard County.

A county may provide for the financing of any housing or housing project

ESTABLISHING THE HOUSING OPPORTUNITIES TRUST FUND AS A NONREVERTING SPECIAL FUND TO BE USED TO PROMOTE EQUITABLE ACCESS TO AFFORDABLE HOUSING FOR HOUSEHOLDS OF LIMITED INCOME IN HOWARD COUNTY

A county may provide for the financing of any housing or housing project

(D)(1) THE FUND SHALL BE USED TO PROMOTE EQUITABLE ACCESS TO AFFORDABLE HOUSING FOR HOUSEHOLDS OF LIMITED INCOME IN HOWARD COUNTY.

A county may provide for the financing of any housing or housing project

(2) AUTHORIZED USES OF THE FUND INCLUDE: (I) PROVIDING ASSISTANCE TO RENTERS AND FIRST-TIME HOME BUYERS;

to purchase, construct, rehabilitate, or otherwise develop the housing project.

(II) DEVELOPING, PRESERVING, REHABILITATING, AND IMPROVING AFFORDABLE HOUSING, INCLUDING AFFORDABLE RENTAL HOUSING; AND
(III) INCREASING, BY ANY OTHER MEANS, THE AFFORDABILITY OR ACCESSIBILITY OF HOUSING FOR HOUSEHOLDS OF LIMITED INCOME IN HOWARD COUNTY.

A county may provide for the financing of any housing or housing project wholly or partly, including the placement of a deed of trust, mortgage, or **other debt instrument** on the property

(E)(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT IS AUTHORIZED TO ADMINISTER THE FUND FOR THE PURPOSE ESTABLISHED IN SUBSECTION (D) OF THIS SECTION BY ISSUING **LOANS, GRANTS, GUARANTEES, OR DIRECT FINANCIAL ASSISTANCE TO INDIVIDUALS, NONPROFIT ORGANIZATIONS, OR DEVELOPERS OF AFFORDABLE HOUSING**

This analysis shows that HB0878 fulfills the two findings as laid out by the Maryland Court of Appeals in its opinion in *Park*: it is a public local law, and it covers the subject of housing found in the Express Powers Act.

Furthermore, while Howard County intends to create a nonreverting fund, Section 611 “Lapsed Appropriations” of the Howard County Charter states the general exception for the lapsing of county appropriations: “Unless otherwise provided by **public general law.**” HB0878 is of course a public local law and not a public general law; Howard County has not explained how the requirement in Section 611 of the County Charter will be fulfilled by a public local law. If HB0878 is passed, the Section 611 provision of the Charter will for all intents and purposes just mean “law.” This end run around the plain language of Howard County’s Charter is another reason why HB0878 is an improper public local law.

Housing policy and affordable housing is a subject which should be addressed by the Howard County Council. Legislation to create a housing opportunities trust fund similar to HB0878 should be presented by the Howard County Executive to the Council for its consideration. However, unconstitutional local delegation bills should not be used to resolve a political dispute¹ between the County Executive and members of the County Council.

Therefore, the completely flawed Attorney General’s opinion letter should be disregarded and HB0878 should be given an **Unfavorable Report** for being an unconstitutional infringement on the Home Rule powers of Howard County.

1 See e.g. HB1478 2013 “Baltimore County - Division of Animal Control - Treatment of Unclaimed Dogs or Cats” which was intended to resolve a dispute between Baltimore County and animal advocates. The Baltimore County Assistant County Attorney testified at 1:39:50 that the bill violated the Express Powers Act. <https://mgahouse.maryland.gov/mga/play/cd9b819b850f40c7af4f766b03c8dc55/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=4867430>