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February 2, 2024

The Honorable Thomas S. Hutchinson
Maryland House of Delegates
308 Lowe House Office Building
Annapolis, Maryland 21401
Via email

Dear Delegate Hutchinson:

You asked whether the General Assembly can pass a law, applicable only to Dorchester County, authorizing the County to enact a local ordinance that dissolves the County's sanitary district and establishes a new County department to provide public water and sewer services. As a charter county, Dorchester County appears to have the authority to enact such legislation under the Express Powers Act, unless the specific proposal would conflict with State law in some way. As the General Assembly may not enact a public local law for a single charter county on a subject covered by the Express Powers Act (Md. Const., Art. XI-A, § 4), it appears the General Assembly lacks the authority to enact such legislation specific to Dorchester County. However, the General Assembly could, consistent with Article XI-A, § 4, enact such authorizing legislation for two or more counties. Moreover, if the County's proposed dissolution of its sanitary district and establishment of a new County department would, in some way, be inconsistent with a provision or provisions of State law, the General Assembly would then have to enact legislation to exempt the County from those inconsistent State laws, and it could do so with respect to Dorchester County only.

Article XI-A, § 4 of the Maryland Constitution prohibits the General Assembly from enacting a public local law for a charter county on any subject covered by the Express Powers Act. That constitutional provision further provides that, for purposes of that section, any law "drawn as

to apply to two or more of the geographical sub-divisions of th[e] State shall not be deemed a local law” A local law is one that “applies to only one subdivision ... and pertains only to a subject of local import.” *Tyma v. Montgomery Cty.*, 369 Md. 497, 507 (2002) (citations omitted).

The express powers of charter counties are set out in Local Government Article (“LG”), Title 10, Subtitles 2 and 3. Relevant to your question, LG § 10-206(a)(2) authorizes a county council of a charter county to “pass any ordinance, resolution, or bylaw not inconsistent with State law that ... may aid in maintaining the peace, good government, health, and welfare of the county.” Also, LG § 10-317(a)(2) authorizes charter counties, after reasonable notice and a public hearing, to “enact local laws to protect and promote public safety, health, morals, comfort, and welfare, relating to ... the disposal of wastes.” In my view, these provisions provide Dorchester County with the general authority to enact local legislation that dissolves the Dorchester County Sanitary District and establishes a new department in its place. I note that Howard County appears to have essentially done the same shortly after adopting a charter form of government in 1968. *See* Howard County Bill No. 17, 1969 (establishing the Howard County Metropolitan District under the supervision of the Howard County Department of Public Works).

The question, then, is whether the subject has been preempted by State law or the specific proposal would conflict with State law, in which case Dorchester County would not be able to enact local legislation, and the General Assembly could pass a law that applies only to Dorchester County. The State has adopted a statutory scheme that authorizes one or more counties to create a sanitary district as “a public body that exercises public and essential government functions,” and which delegates to the districts adopted thereunder certain powers. Environment Article (“EN”), Title 9, Subtitle 6. However, those statutory provisions do not, in my view, suggest an intent by the State to occupy the field, thus completely preempting the subject of “sanitary districts” or the creation of similar entities by local governments. In other words, it does not appear that State law preempts the field in this area such that a charter county, under its express powers, cannot establish a local Department of Public Works that is responsible for public water and sewer services in the county.

I note that LG § 11-401 expressly authorizes *code* counties to establish, by public local law, a “department of public facilities.” That section further provides that if the county commissioners assign water and sewerage functions to the department, the commissioners shall, by public local law, abolish any sanitary district or commission established under EN Title 9, Subtitle 6, and any water or sewer authority established under EN Title 9, Subtitle 9. Thus, as to code counties, there appears to be an express grant of authority to do what Dorchester County is proposing. But that does not mean that Dorchester County, in the absence of a similar express grant of power to charter counties, lacks the authority to do the same. While code counties have been delegated many of the same powers as charter counties, they have not been delegated the broad grant of police powers given to charter counties under LG § 10-206(a)(2). Though I have not been able to track down the history of LG § 11-401, that may explain why the State provided this express grant to code counties.

In light of the above, it is my view that Article XI-A, § 4 of the Maryland Constitution likely prohibits the General Assembly from passing legislation authorizing a single charter county to dissolve its sanitary district and establish a new County department in its place. However, the

General Assembly could pass such a law if made applicable to two or more counties, as a law “drawn ... to apply to two or more of the geographical subdivisions of th[e] State” is not a local law for purposes of the restriction in Article XI-A, § 4.

Finally, I note that I am not familiar with the specific proposal (either as to the dissolution of the existing sanitary district or the details of a new county department). To the extent the proposal would be contrary to State law in some way, the General Assembly would have to enact legislation authorizing the specific action, and, in that case, it could do so with respect to Dorchester County only.

I hope this letter is responsive to your question.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Stamper", with a horizontal line extending to the right.

David W. Stamper
Assistant Attorney General