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May 4, 2007

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

Re: House Bill 509

Dear Governor O'Malley:

We have reviewed for constitutionality and sufficiency and hereby approve House Bill 509, "Prince George's County - Railroad Grade Crossings - Automated Enforcement Systems." We write to discuss issues raised by the bill with respect to the requirement that jurisdiction of the District Court be uniform.

House Bill 509 adds Transportation Article § 21-704.1, which authorizes the placement of automated enforcement systems at railroad grade crossings in Prince George's County, and provides that the owner of a vehicle that is recorded by a speed monitoring system while being operated in violation of the laws with respect to speeding is subject to a civil penalty. It also amends the jurisdiction of the District Court to include a "proceeding for a civil infraction under ... § 21-704.1 of the Transportation Article."

Maryland Constitution Article IV, § 41A provides that the "District Court shall have the original jurisdiction prescribed by law. Jurisdiction of the District Court shall be uniform throughout the State." There are no published judicial decisions regarding this provision, which has been part of the law since 1970. The Court of Appeals did not reach the issue in *State's Attorney v. City of Baltimore*, 274 Md. 597 (1975), which was decided on Charter Home Rule grounds. However, the issue in that case was the subject of an Opinion of the Attorney General in which Attorney General Burch opined that a statute making violations of the Building and Electrical Code civil actions at law in the District Court when the City Code made them criminal and the District Court had criminal

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jurisdiction over similar violations in all other jurisdictions “appears to fly in the face of the mandate for uniformity embodied in Section 41A of Article IV ... and hence raises a very serious constitutional question.” 58 *Opinions of the Attorney General* 110 (1973). See also 61 *Opinions of the Attorney General* 291 (1976) (Creation of housing court for Baltimore City in District Court would present uniformity problems).

The legislative office has also issued advice on this provision on a number of occasions. However, the advice has not always been completely consistent. An advice letter to the Honorable D. Bruce Poole dated February 25, 1997, raised questions about three bills that would have authorized traffic control monitoring systems in various jurisdictions. Each bill would have authorized a civil penalty for violations in an amount to be set by local ordinance, and two of them would have expanded jurisdiction of the District Court to cover cases arising under the County specific provision. After noting that running a red light is an offense everywhere, the letter concluded that the bill would violate the uniformity provision. Among the suggestions for avoiding uniformity problems were to allow the local jurisdictions to create the civil offense and use the jurisdictional provision found in Courts and Judicial Proceedings § 4-401(10)(iv), or to amend § 4-401 to include proceedings for adjudication for a civil penalty in charter home rule jurisdictions where the amount of the penalty is set by ordinance.

Earlier letters, however, have suggested that similar uniformity problems could be resolved by broader authorizations of District Court jurisdiction or by looking to the practical effect of the legislation. For example, the bill review letter on House Bill 528 of 1985, which authorized the St. Mary's County Metropolitan Commission to prosecute civil infractions in the District Court, states that the bill raises serious uniformity issues, but notes that no other sanitary commission in the State had the power to prosecute civil infractions, so the practical effect was as if the District Court's jurisdiction were amended to apply to all civil infractions, and concludes that “[v]iewed in such a light, the bill would not violate Article IV, § 41A.” The letter recommended, however, that the district court jurisdictional provision be amended to “couch such power over sanitary commission civil infractions in general terms.”¹ We took a similar position in the bill review letter on Senate Bill 791 of 2005, which gave the District Court jurisdiction over civil infractions related to the storage of tobacco products in Carroll County and Garrett County.

¹ Section 4-401 was subsequently amended to include proceedings involving a civil infraction that is authorized by law to be prosecuted by a sanitary commission. Chapter 36 of 1986.

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Similarly, in a letter to the Honorable Ida Ruben dated October 27, 1981, we advised that a bill authorizing Montgomery County to make violations of county ordinances civil infractions, and expanding jurisdiction of the District County to cover violations of Montgomery County ordinances which are punishable by a civil penalty, should be amended to give these District Court jurisdiction of these offenses throughout the State, and took the position that this would satisfy the uniformity requirement, "even though only one county might be authorized to enact such penalties for its ordinances."

Other states have uniformity provisions,² but for the most part, they have not been the subject of litigation in recent years. Out-of-state cases have generally found that a general state law that authorizes, but does not require, local governments to adopt a provision that falls within the jurisdiction of a court does not violate uniformity even if not all jurisdictions adopt the provision. *People ex rel. Rusch v. Ladwig*, 7 N.E.2d 313 (Ill. 1937) (City Election Act); *Van Horn v. State*, 64 N.W. 365 (Neb. 1895) (Number of justices of the peace in counties with township organization); *McTigue v. Commonwealth*, 35 S.W. 121 (Ky.App. 1896) (Suggesting that local option is permissible). *Cf.*, *Gleason v. Weber*, 159 S.W. 976 (Ky.App. 1913). However, states have differed on whether laws affecting the law and penalties in a single jurisdiction violate uniformity. For example, in *McTigue v. Commonwealth*, 35 S.W. 121 (Ky.App. 1896) it was held that a statute imposing a higher fine for violation of alcoholic beverage restrictions in a single dry county violated uniformity, while in *Rogers v. People*, 12 P. 843 (Colo. 1887), a statute suspending the statewide laws against dance and disorderly houses in a single city and giving exclusive regulatory authority in these areas to the city was held not to violate the uniformity requirement.

House Bill 509 does not affect the existing statewide jurisdiction of the District Court over offenses committed at railroad crossings where a citation is issued by a police officer at the time of the violation. It instead permits a new method of enforcement of this offense which the General Assembly has determined should lead to a civil, rather than a criminal, penalty. And it permits the use of this new method in a single county. Because this method of enforcement, and the resulting civil citations, are only authorized in a single county, the effect of the expansion of the jurisdiction of the District Court is as if it applied to all similar cases statewide. We believe that it is preferable that this expansion be stated in more general terms, and recommend that it be amended in the

² See, e.g., Colorado Constitution Article VI, § 19; Georgia Constitution Article VI, § 1.

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future to accomplish this aim. However, the practical effect is the same so long as this authority exists in a single county. In the absence of controlling judicial authority, we cannot conclude that Article IV, § 41A should be interpreted in a way that would prevent the General Assembly from trying out new programs of this sort in a single county. *See also* Bill Review letter on House Bill 443 of 2005 (Speed cameras in Montgomery County).

Very truly yours,

/s/

Douglas F. Gansler
Attorney General

DFG/KMR/kmr

cc: Joseph Bryce
Secretary of State
Karl Aro
The Honorable Barbara A. Frush