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CORRECTED

April 27, 2007

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

Re: Senate Bill 775 and House Bill 791

Dear Governor O'Malley:

We have reviewed and hereby approve the constitutionality and legal sufficiency of identical bills Senate Bill 775 and House Bill 791, which provide, among other things, that the annual salary of the State's Attorney in Queen Anne's County shall be equal to the salary of a judge of the District Court of Maryland.

We note, however, that the bills must administered so as to ensure their constitutionality. Under Article III, § 35 of the Maryland Constitution, the compensation for a public officer cannot be increased during that official's term, unless the term exceeds four years. This provision applies to a State's Attorney. *County Commissioners v. Goodman*, 172 Md. 559 (1937). Where a State's Attorney's salary is linked to the salaries of judges, the increases can be given effect only at the beginning of the State's Attorney's term. *Marshall v. Director of Finance*, 294 Md. 435, 440 (1982). Thus, while these bills expressly do not apply to the current incumbent, they must be read to fix the salary at the level of a judge of the District Court when the State's Attorney's next term begins and cannot be read to permit an increase during that term, even if the salary of the District Court judges is subsequently increased during the term beyond the fixed schedule in place when the term begins.

Sincerely,

Douglas F. Gansler
Attorney General

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