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April 23, 2007

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

RE: Senate Bill 96 and House Bill 195

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 96 and House Bill 195, identical bills entitled "Frederick County - Alcoholic Beverages - Special License. This bill raises serious issues under Maryland Constitution Article III, § 33, which prohibits the passage of special laws. While we do not conclude that the bill is clearly unconstitutional, it is our view that the better practice is to draft this type of authorization as a general law, and we would recommend that this be done in the future. We have also considered whether the bill violates the Establishment Clause of the United States Constitution and have concluded that it does not.

Senate Bill 96 and House Bill 195 provide that notwithstanding the provisions of §§ 7-101(g) of Article 2B, the Board of License Commissioners of Frederick County may issue a one-day special Class C beer and light wine license and a one-day special Class C beer, wine and liquor license to Holy Family Catholic Community. The bill also requires that the net proceeds from the sale of alcoholic beverages be used to fund building construction or for charitable purposes. Section 7-101(g) provides that a Board of License Commissioners cannot issue a special license if the issuance of a regular license of the same class is not authorized. Section 8-211(d-1) limits the issuance of licenses in the Middletown election district to Class A, B or C beer licenses, but allows the issuance of a Class B beer, wine and liquor license to an entity within the municipal boundaries of Middletown if the entity derives at least 70% of its monthly gross revenue from the sale of food. The Fiscal and Policy Note on the bills reflect that the Holy Family Catholic Community is located in the district of Middletown and therefore can currently be issued only a Class C beer license.

Maryland Constitution Article III, § 33 provides that “the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law.” It has often been said that the purpose of this provision is to prevent or restrict the passage of special, or what are more commonly called private acts, for the relief of particular named parties, or providing for individual cases. *Beauchamp v. Somerset County Sanitary Commission*, 256 Md. 541 (1970). However, a law that affects only a single entity may be upheld where there is no general law that could apply. For example, in *Hodges v. Baltimore Union P. Ry. Co.*, 58 Md. 603 (1882), the Court of Appeals upheld a law permitting the Baltimore Union Passenger Railway Company to construct and operate passenger railways on certain streets in the City of Baltimore, as there was no general law permitting construction of a passenger railway of the type in question. Similarly, in *M & C.C. of Baltimore City v. U. Rwy. & E. Co.*, 126 Md. 39 (1915), the Court upheld a law that specified the amount of the park tax to be imposed, and other matters, with respect to the United Railways and Electric Company of Baltimore, also finding that the result achieved by the law could not have been reached under any general law. And in *Police Pension Cases*, 131 Md. 315 (1917), a variety of laws that provided for varying amounts to be paid to persons who had left the police department, but for a variety of reasons, did not qualify for the pension plan that had been established. Each of the bills involved named a specific person, and provided specifically for a pension for that person, but the bills were held not to be invalid special laws on the ground that no general law provided a pension for the persons involved.

Last session we approved a bill to allow issuance to St. Katharine Drexel Roman Catholic Congregation, Inc., concluding that the bill was not a special law because St. Katherine’s was in a dry district, so there was no general law that would permit it to obtain a special one-day license. See Bill Review letter on House Bill 725 of 2006. In this case, there is no general law permitting the issuance of a special Class C beer and light wine or special Class C beer, wine and liquor license in Middletown. However, there is a general law providing that in the Middletown election district, “the Board of License Commissioners may only issue Class A, B, or C beer licenses.” Article 2B, § 8-211(d-1)(2). It is our view that this circumstance brings the bill closer to a violation of Article III, § 33 than was the case with House Bill 725 (Chapter 189) of 2006. However, in light of the *Police Pension Cases*, we cannot say that it is clearly unconstitutional. Nevertheless, it continues to be our view that situations like this should, where possible, be addressed by general laws. See Bill Review Letter on House Bill 427 of 2000.

Our research has revealed no case that has addressed legislation expressly authorizing an alcoholic beverages license to a specific religious entity. Nor have we found any case that generally addresses the constitutionality of such licenses for religious entities. It is our view that a licensing scheme that authorizes grants of licenses for religious entities along with other types of organizations would not violate the Establishment Clause. While this particular authorization is for a specific religious entity, the licensing scheme in Frederick County, taken as a whole, authorizes licenses for a wide variety of entities, and licenses have been authorized for non-religious organizations in dry areas. As a result it is our view that this provision does not violate

The Honorable Martin O'Malley
April 23, 2007
Page 3

the Establishment Clause.

Very truly yours,

Douglas F. Gansler
Attorney General

DFG/KMR/kmr

cc: Joseph Bryce
Secretary of State
Karl Aro
The Honorable Richard B. Welson, Jr.
The Honorable Alex X. Mooney