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April 30, 2007

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

**Re: *Senate Bill 408***

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 408, "Anne Arundel County - Chesapeake Bay Critical Area - Violations of Local Law - Statute of Limitations - Disclosure in Real Estate Sales Contracts." We have addressed the issue of whether either of the bill's provisions would violate Charter Home Rule and have concluded that they would not.

SB 408 requires that a prosecution for an offense that occurs in the Chesapeake Bay Critical Area and is a violation of certain environmental protection or natural resource conservation laws in Anne Arundel County be instituted within 3 years after the commission of the offense. The bill further requires, subject to an exception, that in Anne Arundel County, a contract for sale of real property where such a violation has occurred must disclose the nature of the violation, the status of any ongoing proceedings, and any actions the buyer may be required to take in order to cure the violation.

Maryland Constitution Article XI-A, § 4 prevents the General Assembly from enacting a public local law for a single charter home rule county, such as Anne Arundel, on a subject covered by the Express Powers Act, Article 25A, § 5. Although there is no specific authorization in the Express Powers Act for Charter counties to regulate the

subject of real estate sales disclosure, such counties may regulate such activities under the police power conferred under § 5(S) of Article 25A. *Cf. County Council v. Investors Funding*, 270 Md. 403, 415 (1973). However, the State has regulated in the area of real estate disclosure both on a comprehensive basis, *see* Real Property Article, § 10-702, and in legislation for a single charter county, § 10-701. It is our view that this is an area of concurrent State/local authority. *See City of Baltimore v. Sitnick and Firey*, 254 Md. 303, 312 (1969). Further, there are State interests affected by the bill in that the bill applies to more than just County facilities. It imposes a duty on all State real estate licensees, and it could affect out-of-County and out-of-State purchasers. Thus, it is our view that SB 408 does not invade the home rule powers of Anne Arundel County. Likewise, the provision relating to the statute of limitations for a prosecution of an offense described in the bill, which occurs in the Chesapeake Bay Critical Area is an issue of State concern and would also not violate Charter Home Rule.

Very truly yours,

/S/

Douglas F. Gansler  
Attorney General

DFG:BAK:as  
cc: Joseph Bryce  
Secretary of State  
Karl Aro