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April 25, 2007

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

RE: Senate Bill 577 and House Bill 677

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 577 and House Bill 677, identical bills entitled "Harford County - Nuisance Abatement and Local Code Enforcement - Enforcement Authority." We write to address the issue of whether the imposition of civil duties on the State's Attorney for Harford County violates the Maryland Constitution. In addition, while this bill raises issues concerning the uniformity of District Court jurisdiction, we cannot say that it is clearly unconstitutional on that basis. Finally, it is our view that the bill does not violate the Charter Home Rule provisions of the Constitution.

Senate Bill 577 and House Bill 677 authorize the State's Attorney for Harford County to bring a nuisance action and to seek injunctive and other equitable relief in the District Court for abatement of nuisances in the County. Among the nuisances that can be the basis of an action under the section are local code violations that negatively impact the well-being of other residents and are injurious to public health, safety or welfare or obstruct the reasonable use of property; violations of Criminal Law Article §§ 10-201 and 10-202 that take place on the property; four or more complaints or calls to law enforcement within a thirty day period that negatively impact the well-being of other residents and are injurious to public health, safety or welfare or obstruct the reasonable use of property; violations of criminal law related to the activity of a criminal gang, or a building that contains defects due to inadequate maintenance, obsolescence, or abandonment that increase the hazard of fire, accident or other calamity, or that is unsafe,

unsanitary, dangerous, detrimental to the health, safety or general welfare of the community due to lack of maintenance, inadequate ventilation, light, sanitary facilities or other conditions.

It has been suggested that the constitution prohibits the General Assembly from imposing duties on the State's Attorney to represent the County and municipalities in civil, as opposed to criminal matters.

Maryland Constitution Article V, § 9 provides that the "State's Attorney shall perform such duties and receive such salary as prescribed by the General Assembly." While the primary duties of the State's Attorney involve criminal prosecution, Article 10, § 34,¹ the State's Attorney has historically been given duties with respect to civil matters as well.

Under the 1851 Constitution the State's Attorneys performed all of the common law and statutory duties of the Attorney General. *Murphy v. Yates*, 276 Md. 475, 491 (1975). Some of these statutory duties, transferred from the Attorney General to the State's Attorneys under the 1851 Constitution, remain statutory duties of the State's Attorney under current law. For example, Courts and Judicial Proceedings Article § 2-305, which provides that the State's Attorneys may seek a judgment against a Sheriff for failure to bring a criminal defendant into court, was enacted as Chapter 60 of the Laws of 1793, and gave that duty to the Attorney General. The duty had been transferred to the State's Attorneys by 1860. *See* Code of 1860, Article 87, § 13. Similarly, Article 10, § 38, which provides that the State's Attorneys shall aid the Comptroller and Treasurer in the adjustment of the accounts of the clerks, registers and sheriffs in their counties, was enacted as Chapter 90 of 1829 and gave that duty to the Attorney General. The duty had been transferred to the State's Attorneys by 1860. *See* Code of 1860, Article 11, § 21.

Other civil duties have been assigned to the State's Attorneys for long periods of time. *See* State Government Article § 17-104, enacted by Chapter 16 of 1856, which

¹ Under the 1867 Constitution, Article V, § 9 provided that the "State's Attorney shall perform such duties and receive such fees and commissions as are now, or may hereafter be, prescribed by law." In *Murphy v. Yates*, 276 Md. 475 (1975), the Court of Appeals held that this provision vested the State's Attorneys with the common law powers and duties of the Attorney General to prosecute criminal charges at the trial level. The 1976 amendment, which altered the source of power to that prescribed by the General Assembly, rather than that provided by common law, was adopted to allow the creation of the office of a State Prosecutor with the ability to conduct prosecution at the trial level. 61 *Opinions of the Attorney General* 166 (1976)

allows the State's Attorneys to bring a mandamus action against an officer who fails to pay money into the treasury, and Article 25, § 159, enacted by Chapter 41 of 1894, which authorizes the State's Attorneys to enforce the terms of trusts relating to funds granted to counties. More recently, the State's Attorneys have been given authority to bring civil enforcement actions with respect to alcoholic beverages violations, Criminal Law Article § 10-119, municipal infractions, Article 23A, § 3(b)(14), and civil infractions of county ordinances, Article 25, § 10K(j) and Article 25B, § 13C. Other provisions authorize the State's Attorneys to bring injunction actions to prevent violations of law. Business Regulations Article § 14-304 (Multilevel distribution company); Business Regulations Article § 18-202 (Blue law violations in Wicomico County); Criminal Law Article § 8-302 (Sale of blank identification cards); Criminal Law Article § 11-202 (Sale of obscene materials); Environment Article § 5-1105 (Pollution of Chesapeake Bay). *See also* Agriculture Article § 5-307, which provides that the State's Attorney shall recover the expenses of the Secretary of Agriculture in destroying or treating infested or infected plants following failure of commercial owner to do so.

Nothing in the Constitution restrains the General Assembly from providing these, or any other duties with respect to civil cases, to the State's Attorneys. Rather, Article V, § 9 expressly authorizes the General Assembly to impose new statutory duties on the State's Attorneys and those duties can be civil as well as criminal.

Senate Bill 577 and House Bill 677 are clearly modeled on Real Property Article, § 14-125.1, which provides similar authority in Anne Arundel County and provides that the cases are to be brought in the District Court. As noted in our bill review letter concerning that provision, application of this provision in a single county, and the corresponding expansion of the jurisdiction of the District Court for this type of case in a single county, raise the issue of whether there is a violation of the constitutional require that "[j]urisdiction of the District Court shall be uniform throughout the State." Md. Const., Article IV, Section 41A. *See* Bill Review letter on Senate Bill 587 and House Bill 1344 of 2001. In the earlier bill review letter, we suggested that this provision raised serious enough uniformity issues that the General Assembly should give consideration to moving these suits back to the Circuit Court. However, in light of the absence of case law interpreting Article IV, § 41A, we did not find that leaving jurisdiction in the District Court would be clearly unconstitutional. As there have been no cases in the last six years, we reach the same conclusion with respect to Senate Bill 577 and House Bill 677.

Finally, we conclude that this bill does not violate either Charter or municipal home rule as it relates to the duties of a State officer, the State's Attorney, and the jurisdiction of the District Court. *See* Bill Review letter on Senate Bill 587 and House

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Bill 1344 of 2001 and letters cited therein.

Very truly yours,

/s/

Douglas F. Gansler
Attorney General

DFG/KMR/kmr

cc: Joseph Bryce
Secretary of State
Karl Aro
The Honorable Nancy Jacobs
The Honorable Barry Glassman