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April 30, 2007

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

RE: Senate Bill 764

Dear Governor O'Malley:

We have reviewed for constitutionality and legal sufficiency Senate Bill 764, "Higher Education - St. Mary's College of Maryland - Procurement Authority." In amending the Education Article to reflect changes made to the State Finance and Procurement Article by Chapter 255 of 2006, the bill repeats and perpetuates a legislative veto provision that we have previously advised is of doubtful validity. As the provision is severable and does not make the law any more unconstitutional than it previously was, it is our view that it may be signed into law.

Chapter 255 of 2006 was a comprehensive act relating to the governance of Morgan State University and St. Mary's College of Maryland. Among its provisions were adding the St. Mary's College of Maryland to State Finance and Procurement Article § 11-203(e)(1), thus requiring that its procedures comply with policies and procedures developed by the College and approved by the Board of Public Works and the Administrative, Executive, and Legislative Review Committee ("AELR") as required by § 11-203(e). Chapter 255 did not, however make corresponding changes in Education Article § 4-405, which relates to procurement by the College. The purpose of Senate Bill 764 is to make these conforming changes. Thus, as reflected by the use of the term "clarifying" in the title, the bill does not change the law with respect to the review and approval of the required procedures.

It is our view that to the extent that the new provision and State Finance and

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Procurement Article § 11-203(e) makes the policies and procedures developed by the College contingent on approval by the AELR Committee, this would be a legislative veto and would be of doubtful validity. We reached the same conclusion when we reviewed Chapter 255, Bill Review letter on House Bill 1501 and Senate Bill 444 of 2006, and also on previous bills with similar requirements. Bill Review letter on Senate Bill 430 of 2004; Bill Review letter on Senate Bill 682 of 1999. In each case, we concluded that the legislative veto was severable. We reach the same conclusion here.

Very truly yours,

Douglas F. Gansler
Attorney General

DFG/KMR/as

cc: Joseph Bryce
Secretary of State
Karl Aro
The Honorable Roy P. Dyson