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

Re: Senate Bill 1036

Dear Governor O'Malley:

We have reviewed and hereby approve the constitutionality and legal sufficiency of Senate Bill 1036, which authorizes the Anne Arundel County Board of License Commissioners to immediately suspend a liquor license under certain conditions. In our view, Senate Bill 1036 is constitutional.

Senate Bill 1036 amends Article 2B and provides that the Board of License Commissioners of Anne Arundel County "may suspend immediately an alcoholic beverages license if a person unauthorized under § 16-405 of this article alleges that the licensee has sold or furnished alcoholic beverages to a person under the age of 21 years with such frequency and during such a limited time period so as to demonstrate a willful failure to comply" with the law regarding such sales. Once the Board takes such action, it must hold a hearing within 7 days and give the licensee notice at least 2 days before the hearing. The legislation also notes that the licensee is not prevented from seeking "an injunction or other appropriate relief."

Because Senate Bill 1036 allows the Board to take action before the hearing takes place, we considered whether the bill would violate the due process rights of the license holder under the Fourteenth Amendment of the United States Constitution or Article 24 of the Maryland Constitution. In our opinion, the bill does not. The Supreme Court has recognized that due process does not always require a hearing before deprivation of property where there are adequate post-deprivation procedures that require the

government to act quickly. “[A]n important government interest, accompanied by a substantial assurance that the deprivation is not baseless or unwarranted, may in limited cases demanding prompt action justify postponing the opportunity to be heard under after the initial deprivation.” *Gilbert v. Homar*, 520 U.S. 924, 930-931 (1988). *See also Matthews v. Eldridge*, 424 U.S. 319, 334-335 (1976)(setting forth the appropriate due process factors, namely the consideration of the private interest affected, the risk of erroneous deprivation, and any additional procedural safeguards available); *Dept. of Transportation v. Armacost*, 299 Md. 392 (1984).

While no doubt suspension of an alcoholic beverages license is substantial to its holder, the bill serves an important governmental interest. Its purpose is to target businesses who have a pattern of violating the law and selling alcohol to minors. The bill’s sponsors argued that the legislation is needed because there is an enforcement loophole where businesses already cited for selling alcohol to underage minors do so again before the Board of License Commissioners is able to hold a hearing. Moreover, the Board’s action is initiated by those authorized to investigate violations of the underage drinking laws. The immediate subsequent hearing, together with the ability of the license holder to seek injunctive or other relief, provide adequate safeguards to ensure that the Board does not act arbitrarily. *See Mackey v. Montrym*, 443 U.S. 1, 19 (1979)(holding that due process does not mandate “perfect, error-free determinations”; so long as there is “a reasonably reliable basis” to conclude that the facts are correct, the agency may suspend a license pending a prompt, post-deprivation hearing).

We also considered whether the bill was written with sufficient clarity to “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited” and to “provide explicit standards for those who apply them.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). *See also Sullivan v. Board of License Commissioners*, 293 Md. 113 (1982). Article 2B, § 12-108 explicitly prohibits the selling or furnishing of alcohol to a person under age 21. The only question for a holder is how many times the licensee must violate that section before the Board may determine that the holder has done so “with such frequency and during such a limited time period so as to demonstrate a willful failure to comply” under Senate Bill 1036. So long as the Board does not act arbitrarily, “even though not accompanied by a specific delineation of the elements and factors required to be weighed and considered by the Board,” we believe Senate Bill 1036 meets due process requirements. *Id.* at 124. *See also Bowers v. State*, 283 Md. 115, 122 (1978)(recognizing that merely because a statute allows officials some discretion does not make it void for vagueness and holding that “[i]t is only where a statute is so broad to be susceptible to irrational and selective patterns of enforcement that it will be held unconstitutional”).

The Court of Appeals in *Bowers* also announced that an “attack on void-for-vagueness grounds must be determined strictly on the basis of the statute’s application to the particular facts at hand,” unless the case intrudes upon First Amendment rights. *Id.* It is our opinion that Senate Bill 1036 is constitutional on its face.

Sincerely,

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cc: Joseph Bryce
Secretary of State
Karl Aro