

DOUGLAS F. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



DAN FRIEDMAN
Counsel to the General Assembly

SANDRA BENSON BRANTLEY
BONNIE A. KIRKLAND
KATHRYN M. ROWE
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 21, 2008

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

Re: House Bill 1151 and Senate Bill 816

Dear Governor O'Malley:

We have reviewed House Bill 1151 and Senate Bill 816, which are identical. Both bills grant the authority for Worcester County to create a property tax credit for property that is used for a historically operated amusement park which is defined as being operated by the same family at the same general location for more than 100 years and that is recognized as a tourist destination. Currently, there is only one property that meets this definition. Therefore, we must analyze whether the bills are "special" laws in violation of Art. III, §33 of the Maryland Constitution.

Any review must start with the premise that statutes are presumed constitutional unless the repugnancy is clear. *University of Maryland Medical System Corp. v. Malory*, 143 Md. App. 327, 352 (2001). Article III, § 33 of the Maryland Constitution provides, in relevant part, that "the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law." A special law is one that relates to particular persons or things of a class, as distinguished from a general law, which applies to all persons or all things of a class. *Cities Service Co. v. Governor*, 290 Md. 553 (1981). In the *Cities Service* case, the Maryland Court of Appeals conducted a two-part inquiry to determine if the law was an impermissible special law. First, the Court asked whether invalidating the legislation will effectuate the historical purpose of preventing influential persons from gaining an undue advantage through the enactment of private acts. Second, the Court undertook a close analysis of the bill and its legislative history, including the bill's actual purpose; whether the beneficiaries are identified by name; whether the beneficiaries sought and persuaded the legislature to pass the bill; whether the public need and the public good are served by the bill; and whether the classifications contained in the bill are reasonable or arbitrary. *Cities Service Co.*, 290 Md. at 568-70. The Court noted that of these factors, "no one is conclusive in all cases." *Id.* at 570; see also DAN FRIEDMAN, THE MARYLAND STATE CONSTITUTION 115. Attorney General Sachs has

observed that, of these factors, it is within the unique province of the General Assembly to determine whether the public need and the public good are served by the bill. 66 Op. Att'y Gen. 207, 209 (1981).

The legislation authorizes the granting of a credit for a historic amusement park in Worcester County, but the only one that would currently exist is located at the southern end of the Ocean City Boardwalk. Ocean City is an extremely important family oriented tourism/vacation destination in Maryland. Because land values have significantly appreciated in Ocean City in recent decades, there is intense pressure on sites not developed at their most valuable uses to be converted to condominiums or other temporary lodging facilities. At the same time, however, it is in the interest of not only Worcester County and Ocean City, but all Maryland citizens, many of whom vacation there, for Ocean City to maintain its current character as a tourism/vacation destination. Therefore, in furtherance of the public good, all of the property in Ocean City should not be converted to condominiums or other residential development, and sites for entertainment and amusement should be preserved.

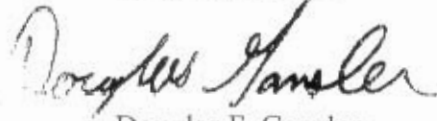
For tax assessment purposes, property is valued at its highest and best use regardless of the use to which it is applied. Therefore, if property in a general area is developed to a particular valuable use, that predominant use will impact the assessed value of other property not so developed and can produce assessment values and tax bills that are generated by the more valuable alternate use rather than the current use of an individual property. Therefore, government through its assessment system can also add to the pressure to maximize development. That pressure, however, can be relieved through tax credits or exemptions.

The purpose of SB 816 and HB 1151 is to relieve the pressure of tax assessments based on a use that is more intensive and valuable than an amusement park. Because the largest portion of a property tax bill is generated by the county and local rates, it is appropriate to authorize the local governments to grant a credit in an amount that they feel is proper. Although this legislation does not identify any particular taxpayer or property, the credit will be currently applicable only to the historic amusement park at the south end of the Ocean City Boardwalk in the oldest section of that town which has always been characterized by a carnival-like atmosphere created by games, rides, festival food, souvenirs shops, etc. This amusement park is over 100 years old and has always been a major contributor to the character and atmosphere at the end of the Boardwalk. If this property were develop to a high density, more valuable ocean front use, the whole atmosphere of that end of the Boardwalk would be significantly altered and, ultimately, that of Ocean City itself. It is the job of the General Assembly to determine whether the public interest served by this major tourism/vacation destination makes this property worthy of tax relief and how best to design that relief. Accordingly, these bills are designed to meet a very specific public purpose that would not be as well served through a public general law.

The Honorable Martin J. O'Malley
April 21, 2008
Page 3

In accordance with the foregoing, we hereby approve the constitutionality and legal sufficiency of both House Bill 1151 and Senate Bill 816.

Very truly yours,

A handwritten signature in black ink, reading "Douglas F. Gansler". The signature is written in a cursive style with a large initial "D".

Douglas F. Gansler
Attorney General

DFG/SB/kk

cc: The Honorable J. Lowell Stoltzfus
The Honorable James N. Mathias
The Honorable Dennis C. Schnepfe
Joseph Bryce
Karl Aro