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April 21, 2008

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

Re: House Bill 1572 and Senate Bill 999

Dear Governor O'Malley:

We have reviewed House Bill 1572 and Senate Bill 999, which are identical. These bills grant the authority for Worcester County to create a property tax credit for any property of at least 30 acres in size located on the west side of State Route 528 when the property's exclusive use is for an amusement park. 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).

These bills on their face authorize the granting of a credit for any property in Ocean City that is 30 acres or larger on the west side of State Route 528, also known as Ocean Highway, and that is used exclusively for an amusement park. Ocean City is an extremely important tourism/vacation destination in Worcester County. 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. 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, all of the property cannot be converted to condominiums or other residential development and sites for entertainment and amusement must be preserved.

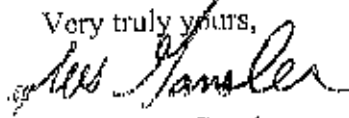
For tax assessment purposes, property is valued at its highest and best use regardless of the use to which it is applied. Therefore, if property in a general area is developed to a particular valuable use, that predominant use will impact the assessed value of other property not so developed and can produce assessment values and tax bills that are generated by the more valuable alternate use rather than the current use of 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 999 and HB 1572 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 an appropriate solution to this problem to authorize the local governments to grant a credit in an amount that they feel is proper. Additionally, this legislation does not identify any particular taxpayer or property but rather allows a credit for any property of a size sufficient for an amusement park to function as an entertainment destination. Finally, it is generally recognized that Ocean City is divided between the ocean side and the bay side with Ocean Highway being the dividing line. Although the value of bay front property has increased considerably in recent years, the ocean side of the highway has always been considered to be more valuable generally. Therefore, these bills also would have the effect of directing any future amusement park to the west or bay side of Ocean Highway. Consequently, these bills are designed to meet a very specific public purpose that would not be as well served through a public general law.

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In accordance with the foregoing, we hereby approve the constitutionality and legal sufficiency of both House Bill 1572 and Senate Bill 999.

Very truly yours,



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Attorney General

DFG/SB/kk

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