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April 22, 2009

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

**RE: *Senate Bill 629 and House Bill 639***

Dear Governor O'Malley:

We have reviewed and hereby approve Senate Bill 629 and House Bill 639, identical bills entitled "Harford County - Board of Education - Selection of Members," for constitutionality and legal sufficiency. We write to discuss the transition of the Board under the bills.

Senate Bill 629 and House Bill 639 alter the composition of the Board of Education in Harford County from the current Board of seven members appointed by the Governor, to a Board of nine members, six of whom are elected from the six councilmanic districts in the County, and three of whom are appointed by the Governor. The shift is accomplished by replacing six of the seven current appointed members with members elected at either the 2010 or the 2014 election.<sup>1</sup> This transition is set out in Section 3(a) and (c) of the bills, which provide:

(a) The term of the one appointed member whose term is scheduled to expire on June 30, 2010, the term of the one appointed member whose term is scheduled to expire on June 30, 2011, and one of the two appointed members whose term is scheduled to expire on June 30, 2012, shall terminate at the end of June 30, 2011, and the members elected from the

<sup>1</sup> Although these members are elected in 2010 and 2014, their terms do not start until 2011 and 2015, respectively. In addition, although the elected members are phased in over two elections, they are not set up for staggered terms but instead all have terms that will expire in Gubernatorial election years.

councilmanic districts A, B, and D at the general election in November 2010, shall succeed those appointed members and serve for a term of 4 years until a successor is elected and qualifies.

(c) The term of the one appointed member whose term is scheduled to expire on June 30, 2012, and the two appointed members whose terms are scheduled to expire on June 30, 2013, shall terminate at the end of June 30, 2015, and the members elected from the councilmanic districts C, E, and F at the general election in November 2014 shall succeed those appointed members and serve for a term of 4 years until a successor is elected and qualifies.

These provisions present no legal problems. The choice as to which current member whose term expires in 2012 will have a term that expires in 2011 and which will receive a term that expires in 2015 is to be made by the Governor, as the maker of the appointment.

The situation with the appointed members is more complicated. Under Section 3(b) of the bill, the two new members are to be appointed by the Governor in 2010, but their terms do not start until July 1, 2011. They will serve four year terms, with the result that their terms will end at the same time as those of the elected members, on July 1, 2015 and every four years thereafter. While this situation is somewhat unusual, there is no legal objection to it.

The interpretive issues are raised by Section 3(d), which provides:

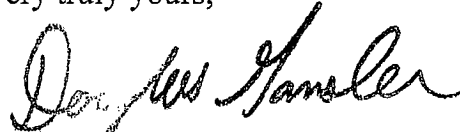
(d) The term of the one appointed member whose term is scheduled to expire on June 30, 2015, shall terminate at the end of June 30, 2015, and the member appointed by the Governor in 2014 shall succeed the appointed member whose term expires on June 30, 2015, and serve for a term of 4 years until a successor is appointed and qualifies.

As seen above, there are two appointed members of the Board whose terms expire in 2015. They serve four years and until a successor is appointed and qualified. The bills provide that the successors are to be appointed in 2014, to serve four year terms that start in 2015. In short, there is no one member whose term expires in 2015, and no one member who is to be appointed in 2014. However, the section appears to say no more than that these seats will be filled by appointment in 2014, for terms beginning in 2015, which is the case in any event.

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This leaves the consideration of the third appointed member of the Board, for whom no provision is made by the bill. This appointed position was apparently intended to be filled by the appointment under current law of a person to fill the term that starts July 1, 2009. As current law calls for five year terms, that person would have served a term ending in 2014. However, because the effective date of the bills is July 1, 2009, no appointment to fill an appointment starting on that date can be made under the current provisions. It is our view, however, that the position may be filled under the Governor's authority to fill vacancies under the bills. *See* Education Article § 3-6A-01(f)(2). The question then, is when this term would end. Because the bills provide for the other eight terms to end in 2011 and every four years thereafter, it is my view that this term also should be treated as ending in 2011. It may be advisable, however, to clarify this matter in legislation next session.

Very truly yours,



Douglas F. Gansler  
Attorney General

DFG/KMR/kk

cc: The Honorable Barry Glassman  
The Honorable J.B. Jennings  
The Honorable John P. McDonough  
Christine Wellons, Esquire  
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