

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 29, 2009

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

RE: Senate Bill 711

Dear Governor O'Malley:

We have reviewed Senate Bill 711, "Trooper Tobin Triebel Memorial Act" for constitutionality. While it is our view that the bill may be signed into law, we write to discuss special law issues raised by material that was added to the bill by amendment. We have concluded that this material is not clearly unconstitutional, and is, in any event, severable. As a result, we approve the bill for constitutionality and legal sufficiency.

As introduced, Senate Bill 711 required the State to provide an option to purchase up to \$200,000 of additional life insurance coverage for employees engaged in the most high-risk activities, including flying helicopters and scuba diving. There is no legal or constitutional objection to these provisions, which now appear as Sections 1 and 3 of Senate Bill 711.

Senate Bill 711 was amended before passage to include the provisions of Senate Bill 712, "Trooper Tobin Triebel Benefits Memorial Act." That bill requires the State to pay a death benefit of \$125,000 and reasonable funeral expenses of \$10,000 to the surviving spouse, child, dependent parent or estate of an active police employee in good standing of the Department of State Police who died while participating in off-duty training exercises directly related to maintaining fitness for duty as a police employee between November 1, 2008 and December 31, 2009. These provisions appear as Sections 2 and 4 of Senate Bill 711.

The Fiscal and Policy Note for Senate Bill 712 reflects that Maryland State Police flight paramedic First Sgt. Tobin Triebel was struck while jogging by a tree-trimming

truck on November 7, 2008 and died of his injuries. Sections 2 and 4 of Senate Bill 711 would provide an additional death benefit for his surviving spouse. The Fiscal and Policy Note implies that there are currently no other employees that qualify, though the class is open until the end of this year, so it is possible that there will be others.

Article III, § 33 of the Maryland Constitution provides, in pertinent part, that "the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law." It has been said that "the purpose of § 33 is to prevent or restrict the legislature from passing private acts for the benefit of particular persons or individual cases." *State v. Good Samaritan Hospital*, 299 Md. 310, 329 (1984). To determine whether a statute was enacted "to benefit or burden a particular member or members of a class instead of an entire class," the Courts will look to a number of factors, including whether particular individuals or entities are identified by name, whether an individual or entity "sought and received special advantages from the Legislature, or if other similar individuals or businesses were discriminated against by the legislation," whether the public need and the public good are served by the bill, and whether the classifications in the bill are reasonable or arbitrary. *Cities Service Company v. Governor*, 290 Md. 553, 569-570 (1981).

The application of these factors to Sections 2 and 4 of Senate Bill 711 leads to mixed results. The bill does in fact bear Trooper Triebel's name and was sought by his surviving family, but it could apply to others as well, as the window for qualification does not close until the end of this year. Moreover, the bill could be said to serve the public good by providing a benefit for a police officer who, on his own time, made efforts to keep himself in shape. Moreover, while the time for qualification is limited, it is not so short as to make it impossible that any other person will qualify.

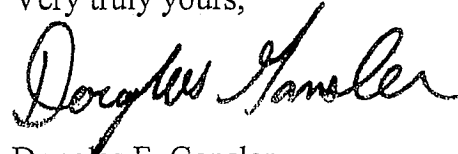
It is possible that a court, balancing the above factors, would conclude that Sections 2 and 4 constitute a special law. There are, however, other matters to be considered. Article III, § 33 does not bar all special laws, but only those for case as to which provision has been made by an existing general law. In the *Police Pension Cases*, 131 Md. 315, 320-323 (1917), the Court of Appeals held that where the general law governing the pensions of Baltimore City police officers and their survivors did not provide for the award of a pension for certain police employees, the General Assembly could enact a special law mandating the award of a pension to particular named employees, stating that "[i]f a worthy person does not come within [pension] provisions, it cannot properly be said that an Act cannot be passed to provide for his or her case." *Id* at 322. *See also*, Bill Review letter on Senate Bill 665/ House Bill 920 of 2005 (pension provision applicable to a single person); Letter to the Honorable Samuel C. Linton from

The Honorable Martin J. O'Malley
April 29, 2009
Page 3

Richard E. Israel, Assistant Attorney General dated February 26, 2002 (compensation for family of woman killed after police failed to enforce protective order); Letter to The Honorable Joseph E. Owens from Clarence W. Sharp, Assistant Attorney General, dated March 10, 1972 (compensation for man who sustained injuries during police search of his house).

In this case, there is no general law providing a higher death benefit for a police officer who is killed while participating in off-duty training exercises. As a result, it is at least arguable that Sections 2 and 4 would not be invalid as a special law. Even if they were determined to be invalid, however, it is our view that the intention of the Legislature that the provisions of Sections 1 and 3, which are in no way dependent on the provisions of Sections 2 and 4, be given effect. *See* Article 1, § 23, Annotated Code of Maryland.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable Honorable Alex X. Mooney
The Honorable John P. McDonough
Joseph Bryce
Karl Aro