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April 9, 2010

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

RE: Senate Bill 652 and House Bill 850

Dear Governor O'Malley:

Senate Bill 652 and House Bill 850 are identical. Both bills authorize a local government to create a property tax credit for the real property owned by the Habitat for Humanity while it is being renovated for purposes of transfer to a private owner. Because these bills authorize a credit for one specific entity, the question of whether they are a special law must be addressed.

Initially, 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 is violated only if a law: (1) is a "special" law, and (2) there is provision for the matter in an existing general law. *State of Maryland v. Good Samaritan Hospital of Maryland, Inc.*, 299 Md. 310, 329 (1984).

The courts have defined a special law as "one that relates to particular persons or things of a class, as distinguished from the general law which applies to all persons, or things of a class." *Id.* at 329 (quoting *State v. B. & O. R. Co.*, 113 Md. 179, 183 (1910)). The courts have indicated that this rule cannot be applied mechanically and that various factors must be considered: whether there is only one individual or entity to which it applies, whether the statute is designed to confer special advantages on, or discriminate against, a particular individual or business, what public needs or interests are served, and the adequacy of general law to serve those interests. *Good Samaritan Hosp.*, 299 Md. at 330. One of the reasons for this constitutional provision is to prevent an individual of sufficient influence from being able to secure undue advantage over others. *Univ. of Maryland Med. Sys. Corp.*, 143 Md. App. at 354. Judge Offutt, in *Norris v. Mayor and*

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City Council of Baltimore, 172 Md. 667, 683 (1937), gave voice to this principle, stating that "a law intended to serve a particular need, to meet some special evil, or to promote some public interest, for which the general law is inadequate, is not a special law within the meaning of that term as used in that section of the Constitution." See also *City of Baltimore v. Minister and Trustees of the Starr Methodist Protestant Church*, 106 Md. 281, 287 (1907) and *Beauchamp v. Somerset County Sanitary Commission*, 256 Md. 541, 548 (1970).

While both of these bills do create tax relief for one entity, Habitat for Humanity, our conclusion based on these principals is that they do not create a special law. The well known purpose of the Habitat for Humanity is to acquire rundown property, renovate it back to a functioning dwelling, and then transfer the newly renovated home to a private party who normally could not otherwise afford to buy it. These bills authorize a credit for these properties only while owned by Habitat for Humanity and the credit is limited to the period when the properties are being converted into functioning real property. These properties will subsequently have a higher market value and tax potential. Consequently, these bills establish a law that helps meet the housing needs of low-income individuals and families while creating revenue-generating real property. Accordingly, the law created by these bills would not be unconstitutional and, therefore, are recommended for signature into law.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/DF/kk

cc: The Honorable John P. McDonough
Joseph Bryce
Karl Aro
David M. Lyon