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May 18, 2010

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

RE: House Bill 724 and Senate Bill 658

Dear Governor O'Malley:

HB 724 and SB 658 are identical bills that authorize a property tax credit for two adjacent properties (8101 Fort Smallwood Road and 8104 Parkway Drive) owned by a specific entity, the Arundel Habitat for Humanity, where it operates a retail outlet for surplus building material and a storage facility for its own operation. Although we have significant concerns that these bills could be held to violate the state constitutional prohibition against the enactment of "special Laws," we cannot say definitively that they are "clearly unconstitutional," the standard that we apply in bill review. We recommend, however, that in the future the legislature be vigilant to ensure that its enactments steer clear of this constitutional boundary.

The prohibition on the enactment of special laws is set forth in Article III, §33 of the Maryland Constitution, and provides: "And the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law." Section 33 is violated only if a law: (1) is a "special" law; and (2) there is provision for the matter in an existing general law. *Cities Serv. Co. v. Governor*, 290 Md. 553, 567 (1981). 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 things of a class." *Id.* (quoting *Prince George's Co. v. B. & O. Rwy. Co.*, 113 Md. 179, 183 (1910)). In the *Cities Service* case, the 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 public good are served by the bill; and whether the classification contained in the bill are reasonable or arbitrary. *Cities Serv. Co.*, 290 Md. at 568-70.

Applying these tests to the facts of these bills is inconclusive. First, although there is an existing general law imposing property tax, §6-201 of the Tax – Property (“TP”) Article, there are also many existing general laws providing property tax credits. TP §9-302 *et seq.*¹ Thus, it is hard to even decide how to apply the threshold test of whether there is a provision for the matter in existing law. Second, even assuming that these bills create a special Law, it is not entirely clear that Habitat for Humanity is the type of group with which the framers of Article III, §33 were concerned. While the framers were concerned about the rich and powerful exerting their influence to obtain special treatment, the Habitat for Humanity is neither rich nor powerful. Rather, Habitat for Humanity is a charitable organization whose purpose is to serve the poorest of our fellow citizens. The Habitat for Humanity acquires rundown properties, renovates them, and transfers the newly renovated homes to people who could not otherwise afford to buy their own homes. Thus, the historical purpose of the prohibition may not be served by invalidating these bills. These factors point in favor of the bill's constitutionality. Several other factors, however, point in the opposite direction, including the fact that Habitat for Humanity is named in the bill, that it lobbied on behalf of the bill, and that it alone can take advantage of the tax credit. We are also given pause by the fact that these properties are not renovation properties (for which this Office has approved tax credits, including in SB 652 and HB 850 of this Session), but are instead used as a retail outlet for surplus building supplies.

In attempting to reach a resolution, however, we are guided by Attorney General Sachs who distinguished between impermissible special laws and permissible laws by comparing two cases:

The Maryland Court of Appeals has said that “the term ‘special law’ has ... uniformly been interpreted to mean a special law for a special case”. *Norris v. Mayor and City Council of Baltimore*, 172 Md. 667, 682 (1937). On the other hand, “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

¹ Moreover, many of these tax credits look at least as “special” as HB 724 and SB 658.

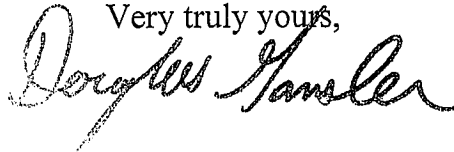
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that section of the Constitution.” *Jones v. House of Reformation*, 176 Md.
43, 55-56 (1939).

66 *Opinions of the Attorney General* 207, 209 (1981). Moreover, General Sachs observed that it is the unique province of the General Assembly to determine whether the public need and the public good is served by the bill. *Id.* It is our view, that by adopting this legislation, it was the carefully considered view of the General Assembly that providing this tax credit will serve not just Habitat for Humanity’s private interest, but the public need and the public good.

Thus, although it is an exceedingly close call and the factors that courts will consider point in both directions, we cannot say that HB 724 and SB 658 are clearly unconstitutional.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Douglas F. Gansler", written in a cursive style.

Douglas F. Gansler
Attorney General

DFG/DF/kk

cc: The Honorable James E. DeGrange, Sr.
The Honorable John C. Astle
The Honorable James C. Rosapepe
The Honorable John P. McDonough
Joseph Bryce
Karl Aro