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April 20, 2011

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

Re: Senate Bill 542 and House Bill 228

Dear Governor O'Malley:

We have reviewed, and hereby approve for constitutionality and legal sufficiency, Senate Bill 542 and House Bill 228, identical bills entitled "Housing Authorities - Consolidation or Merger - Talbot County and St. Michael's." In reviewing the bills, we have concluded that they do not violate the Municipal Home Rule provisions of Article XI-E, § 1 of the Maryland Constitution.

Senate Bill 542 and House Bill 228 expressly authorize the consolidation or merger of the Housing Commission of Talbot County and the St. Michael's Housing Authority, and provide a procedure for accomplishing the consolidation or merger. The procedure calls for the passage of a "proposal of unification" in substantially the same form by the legislative body of the Town of Easton and the legislative body of the Town of St. Michael's. The proposal of unification must include a description of the boundaries of the area of operation for the proposed authority and be approved by each municipal corporation:

in the same manner provided for the adoption of a resolution or ordinance in the charter or bylaws of the municipal corporation that is considering the proposal of the proposed authority.

The remaining procedures reflect the procedures ordinarily followed for the creation of housing authorities, Housing and Community Development Article ("HS"), § 12-205, but make provisions for the fact that more than one municipal government is involved, and also require the articles of organization to provide for the disposition of any

debts, bonds, and other obligations of the two prior housing commissions, and also to transfer the property of the two prior housing commissions to the new commission.

Article XI-E, § 1 provides, in relevant part:

Except as provided elsewhere in this Article, the General Assembly shall not pass any law relating to the incorporation, organization, government, or affairs of those municipal corporations which are not authorized by Article 11-A of the Constitution to have a charter form of government which will be special or local in its terms or in its effect, but the General Assembly shall act in relation to the incorporation, organization, government, or affairs of any such municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes provided for in Section 2 of this Article.

At first glance, Senate Bill 542 and House Bill 228 appear to relate to the organization, government and affairs of two municipalities. Because housing authorities are created under a generally applicable State law, however, and are largely governed pursuant to State law, it is our view that these bills do not violate Article XI-E, § 1.

Housing authorities were originally authorized by Chapters 517 and 518, Laws of Maryland 1937, in anticipation of the enactment of the United States Housing Act of 1937, 50 Stat. 888. *Jackson v. Housing Opportunity Commission*, 289 Md. 118, 121 (1980); *Matthaei v. Housing Authority*, 177 Md. 506, 509 (1939). Under this law, now codified as Title 12 of the Housing and Community Development Article, a housing authority is "a public body corporate and politic," HS § 12-201, whose creation is triggered by the local governing body, HS § 12-202; *Housing Authority of College Park v. Macro Housing, Inc.*, 275 Md. 281, 282 n.1 (1975).

It is not completely clear whether housing authorities are State or local agencies. In *Jackson v. Housing Opportunities Commission*, 44 Md. App. 304, 307 (1979), the Court of Special Appeals concluded that the Housing Opportunities Commission of Montgomery County was a State agency. On appeal from that decision, however, the Court of Appeals found it unnecessary to make that determination to resolve the issue before it. *Jackson v. Housing Opportunity Commission*, 289 Md. 118, 120 (1980), *see also* 81 *Opinions of the Attorney General* 108 (1996)(describing *Jackson*). It is clear, however, that they are bodies corporate and politic created by State law. This office has previously concluded that municipalities have no authority to alter laws regarding "a body politic

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and corporate which has been created by the General Assembly," and that, as a result, the General Assembly did not violate Article XI-E, § 1 by amending such a law, even where it had since been incorporated into a municipal charter. *See Bill Review Letter on Senate Bill 299 of 1970* (April 24, 1970).

For the same reason, it is our view that Senate Bill 542 and House Bill 228 do not violate Article XI-E, § 1 of the Maryland Constitution.

Very truly yours,


Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable Richard F. Colburn
The Honorable John P. McDonough
Joseph Bryce
Karl Aro