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April 18, 2013

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

Re: House Bill 749 and Senate Bill 767

Dear Governor O'Malley:

We have reviewed House Bill 749 and Senate Bill 767, identical bills entitled "Garrett County - Alcoholic Beverages - Licenses, Permits, and Other Authorizations," for constitutionality and legal sufficiency. While we approve the bills, it is our view that a severable portion of the bills violates the Commerce Clause and cannot be given effect.

House Bill 749 and Senate Bill 767 each make a variety of changes in the alcoholic beverages laws in Garrett County. Among the changes is an authorization for the Board of License Commissioners to issue not more than two beer festival licenses. These licenses can be issued to a retail alcoholic beverages license, a Class 5 brewery license, a Class 6 pub-brewery license, or a Class 7 micro-brewery license. The holder of the festival license may obtain the beer to be displayed and sold at the beer festival from a licensed state wholesaler or the holder of a Class 5 brewery license, a Class 6 pub-brewery license, or a Class 7 micro-brewery license. While the participation of retail licensees and licensed wholesaler would make it possible to display and sell beer from around the country or the world, both bills were amended in the opposite house to limit the display and sale of beer to that "manufactured and sold in the State."

In past years, we have advised that provisions limiting festivals to wine or beer that is manufactured and processed in Maryland are unconstitutional as violative of the Commerce Clause of the United States Constitution. Opinion No. 93-012 (March 29, 1993); Bill Review Letter on House Bill 198 of 1995; Bill Review Letter on House Bill 95 of 1993; Bill Review Letter on House Bill 276 of 1991; Bill Review Letter on House Bills 1146 and 1353 of 1990. No changes in the law since that time would alter this view. In fact, in *Granholm v. Heald*, 544 U.S. 460 (2005), the Supreme Court found that a State law allowing in-state, but not out-of-state, wineries to sell wine directly to consumers violated the Commerce Clause.

In the past, we have concluded that Maryland wine only or Maryland beer only provisions in festival bills are severable from the remainder of the bill as the purposes of the bills – promotion of Maryland wine and beer and of tourism – can be accomplished even if other wines or beers may be sold as well. The same conclusion applies here. As a result, we do not recommend veto of the bills. The requirement that the festivals be limited to beers from this State, however, cannot be given effect.[1] Thus, the bills should be read as if the opposite house amendments had not been made and the bills still provided that the holder of the beer festival license can display and sell beer that is manufactured and processed in a state.[2]

Very truly yours,

Douglas F. Gansler
Attorney General

DFG/kmr/kk

cc: The Honorable John P. McDonough
Stacy Mayer
Karl Aro

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[1] Of course, the fact that the State must allow such sales does not mean that festival licensees are required to engage in them.

[2] Moreover, because the Commerce Clause also prohibits state interference with foreign commerce, it is our view that the word must be given a broad meaning in this context. It is well-recognized that the meaning of the word "State" varies depending on the context in which is appears and the purpose of the statute. *Boissevain v. Boissevain*, 220 N.Y.S. 579 (1927). In some cases it is limited to states within the United States, *Eidman v. Martinez*, 184 U.S. 578 (1902); *Rashid v. Drumm*, 824 S.W.2d 497 (Mo. App. 1992); *O'Reilly v. Fox Chapel Area School Dist.*, 527 A.2d 581 (Pa. Cmwlth. 1987); *Massey v. Massey*, 452 N.Y.S.2d 101 (1982), while in others it is interpreted more broadly to include foreign nations, *Ruppen v. Ruppen*, 614 N .E.2d 577 (Ind.1993); *In re Hudson's Estate*, 187 Cal. Rptr. 532 (1982); *Scott & Williams. Inc. v. Bd. of Taxation*, .372 A.2d 1305 (N.H. 1977); *Fessenden v. Radio Corp. of America*, 10 F.Supp. 394 (D.C. Del. 1935); *Foster v. Stevens*, 22 A. 78 (Vt. 1891). The broad meaning is required by this context.