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April 28, 2014

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

RE: House Bill 600, "Alcoholic Beverages – Farmers' Market Permit – Establishment"

Dear Governor O'Malley:

We have reviewed House Bill 600, "Alcoholic Beverages – Farmers' Market Permit – Establishment" for constitutionality and legal sufficiency. While we approve the bill, we write to point out an unconstitutional provision, which should not be enforced.

House Bill 600 reinstates a farmers' permit provision that was deleted from the law by Chapter 396 of 2013, which created the winery off-site permit and wine festival permit. The deleted provision, formerly codified as Article 2B, § 2-101(x) was apparently deleted because it was infrequently used. In the intervening year, however, it appears that at least one farmers' market that had wine sales under the previous provision has been unable to attract a winery to sell at their market under the new law. House Bill 600 reinstates the prior provisions, in their entirety, allowing the issuance of a farmers' market permit to a holder of any local license that allows the holder to sell alcoholic beverages to the public for consumption off the licensed premises.

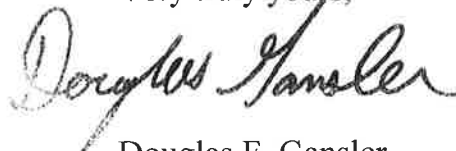
The last two lines of the bill, which were also contained in the law prior to 2013, provide that all wine offered for sale or sampling under the farmers' market permit shall be the product of a Class 4 limited winery. This provision effectively limits sales at farmers' markets by these retailers to selling only Maryland wines.

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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 749 and Senate Bill 767 of 2013; 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 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. We think the same applies to farmers' markets. As a result, we do not recommend veto of the bills. The requirement that sales be limited to wines that are made by Class 4 limited wineries, however, cannot be given effect.¹

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/KMR/eb

cc: The Honorable Eric Luedtke
The Honorable John P. McDonough
Jeanne D. Hitchcock
Karl Aro

¹ Of course, the fact that the State must allow such sales does not mean that farmers' markets must allow sales by persons who will not limit their sales consonant with the intention and atmosphere of the farmers' market.