BRIAN E. FROSH
ATTORNEY GENERAL

ELIZABETH F. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL

THIRUVENDRAN VIGNARAJAH
DEPUTY ATTORNEY GENERAL

SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL

JEREMY M. McCOY
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND

OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 27, 2015

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

> **RE: House Bill 617, "Prince George's County – Alcoholic Beverages – Licenses, Salaries, Inspectors, and Bottle Clubs"**

Dear Governor Hogan:

We have reviewed House Bill 617 for constitutionality and legal sufficiency. While the bills may be signed into law, we write to point out a few issues raised by the bills.

The bills amend Article 2B, § 9-217(f)(3). That paragraph is repealed by Senate Bill 223, "Annual Corrective Bill," which was signed on April 14, 2015. It is now Chapter 22. The changes made by House Bill 617 will be given effect, however, because Section 3 of Senate Bill 223 provides:

> AND BE IT FURTHER ENACTED, That the provisions of this Act are intended solely to correct technical errors in the law and there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this Act.

The bills also increase the salaries of the members of the Board of License Commissioners for Prince George's County, but do not have the ordinary uncodified language about the application of that increase. Maryland Constitution, Article III, § 35 provides that the salary or compensation of a public officer may not be increased or diminished during the public officer's term, except those whose full term of office is fixed by law in excess of four years. Members of the Board of License Commissioners are public officers, *Nesbitt v. Fallon.* 203 Md. 534, 545 (1954), and they serve a term of less than four

years, Article 2B, § 15-101(r)(3). Thus, the salary increase can take effect only at the beginning of the next terms of the members.

Finally, provisions of the bills added by amendment provide that the Board of License Commissioners or an inspector of the Board may order that a bottle club be closed immediately if the Board or the inspector determines that the public health, safety, or welfare requires an emergency action. When immediate closure is ordered written notice must be given, the Board must hold a hearing within three days, and any decision must be issued within three days after the hearing. This process would appear to more than satisfy the requirements for a pre-hearing deprivation as established in *Barry v. Barchi*, 443 U.S. 55, 64 (1979). A question arises, however, about the meaning of certain orders that can be entered by the Board. Specifically, the bills permit the Board to "order the permanent closure of the bottle club" or "impose conditions under which the bottle club may reopen." The definition of "bottle club" includes restaurants, hotels, clubs, rooms, dance studios, discos, places of public entertainment, and other places that are open to the public but do not have an alcoholic beverages license. Article 2B, § 20-108.1(a)(2)(ii) and (iii). It is unclear whether this language means that the power to close a bottle club permanently also means that the underlying business can never again operate, or that the building itself cannot be used. On the other hand, the definition of a "bottle club" is a place that is operating in violation of the law. *See* Article 2B, § 20-108.1(a)(2)(i)2 (defining bottle club) and § 20-108.1(c)(2)(ii) (prohibiting the actions that define a bottle club). Thus, there is a question about what conditions, other than not being a bottle club, the Board could impose on the operation of a bottle club.

Very truly yours,

Brian E. Frosh
Attorney General

BEF/SB/kk

cc: The Honorable John C. Wobensmith
        Joseph M. Getty
        Karl Aro