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May 12, 2016

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

**RE: *Senate Bill 998 and House Bill 917, "St. Mary's County – Property Tax Credit – New or Expanding Businesses"***

Dear Governor Hogan:

We have reviewed Senate Bill 998 and House Bill 917, identical bills entitled "St. Mary's County – Property Tax Credits -- New or Expanding Businesses" for constitutionality and legal sufficiency. While the bills may be signed into law, we write to point out that a severable part of the bills may violate Maryland Constitution, Article XI-E, §§ 1 and 5 if it is not interpreted correctly.

Senate Bill 998 and House Bill 917 provide that the governing body of St. Mary's County, or of a municipal corporation in St. Mary's County, may grant a property tax credit against the county or municipal property tax imposed on any property owned or leased by a new or expanding business that meets certain standards. To the extent that the bills grant this authority to St. Mary's County, they raise no constitutional problems. The grant of this authority to municipalities in St. Mary's County, and not to other municipalities in the State, on the other hand, implicates the limitations found in Maryland Constitution, Article XI-E, §§ 1 and 5.

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.

The purposes of this provision are to permit municipalities to govern themselves in local matters, *Inlet Associates v. Assateague House Condominiums*, 313 Md. 413 (1988), and to relieve the General Assembly of the burden of consideration and passage of local bills, *Local Legislation in Maryland*, (June 1952). There are very few cases involving this limitation, and those that exist focus on legislation that altered annexation or zoning authority with respect to municipalities in one or more counties. *Mayor of Annapolis v. Wimbleton, Inc*, 52 Md. App. 256, 265 (1982); *Gordon v. Commissioners of St. Michaels*, 278 Md. 128, 133 (1976); *City of Gaithersburg v. Montgomery County*, 271 Md 505 (1974).

Article XI-E, § 5, authorizes the General Assembly, “[n]otwithstanding any other provision in this Article,” to “enact, amend, or repeal local laws placing a maximum limit on the rate of which property taxes may be imposed” by any municipal corporation and “regulating the maximum amount of debt which may be incurred” by any such corporation. These provisions may be made applicable to individual municipalities. The section further provides, however, that:

No such municipal corporation shall levy any type of tax, license fee, franchise tax or fee which was not in effect in such municipal corporation on January 1, 1954, unless it shall receive the express authorization of the General Assembly for such purpose, by a general law which in its terms and its effect applies alike to all municipal corporations in one or more of the classes provided for in Section 2 of this Article.

In a letter to the Honorable Tyras Athey from Assistant Attorney General Richard E. Israel dated December 17, 1990, a similar issue was raised with respect to House Bill 701 of 1990, “Prince George’s County - Property Tax Credit - Residential Real Property in Proximity to Refuse Disposal Systems,” which permitted the governing body of Prince George’s County or of a municipal corporation in Prince George’s County to grant a property tax credit “within an area that the governing body determines is adversely impacted by its proximity to a refuse disposal system.” The letter explained that Article XI-E, § 5 expressly provides that an authorization to levy any type of tax, license fee, franchise tax or fee must be by general legislation applying alike to all municipal

corporations in the same class.<sup>1</sup> The advice letter also observed that the express authorization to the General Assembly to enact local legislation with respect to certain aspects of taxation suggests that “in enacting other tax legislation for municipal corporations, the general legislation requirement, which has been broadly construed, applies,” and would apply the same rule for most municipal tax matters as § 1 does for other municipal matters.

The advice letter recognized that existing statutes already granted municipal corporations in particular counties the authority to grant property tax credits, and noted that these might be supported by the fact that the subject of assessing and taxing real property has been deemed to be preempted by the State, citing *Montgomery County Board of Realtors v. Montgomery County*, 287 Md. 101, 107-110 (1980). The letter concluded, however, that “the express general legislation requirement for municipal taxes and fees . . . suggests that these matters are not to be dealt with by local legislation.” As a result, the letter recommended that “any authorization for municipal tax credits or deferrals be enacted by general legislation for all municipalities rather than by legislation for municipal corporations of a particular county.”

The 1990 letter of advice did not, however, conclude definitively that the bill would violate Article XI-E. There are good reasons for this hesitation. As noted above, there are very few cases interpreting the provisions of this Article, and they have not focused on taxation. It is possible that a court analyzing § 5 would conclude that it applies only to the authorization for the imposition of the property tax and not to the authorization of tax credits against that tax. It is also possible, as we have suggested in a number of letters, that § 1 does not prevent the General Assembly from enacting local laws in preempted areas,<sup>2</sup> which include property tax credits. The power of municipal corporations to impose a property tax is granted by public general law in Tax - Property Article, § 6-203. The grant of exemptions and credits, which is not included in the power to impose the tax, *Jones v. Broening*, 135 Md. 237, 240 (1919), is granted by a variety of provisions in the Tax - Property Article, often by public local law, and thus is clearly a preempted area and arguably not subject to the limitations of § 1.<sup>3</sup> For these reasons, we cannot say that the

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<sup>1</sup> Local Government Article, § 4-102 provides that “[t]here is one class of municipalities in the State and every municipality is a member of that class.”

<sup>2</sup> See e.g., Letter to the Honorable John C. Astle from Assistant Attorney General Bonnie A. Kirkland dated December 7, 2005.

<sup>3</sup> The Sobeloff Commission Report, which proposed Article XI-E, provides some basis to believe that the limitation applies only to matters within the powers of the municipalities. The

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municipal portion of the bills is clearly unconstitutional. Even if this portion of the bills is found to be unconstitutional, it is our view that it is severable and that the authorization to the County could continue in effect.

Sincerely,



Brian E. Frosh  
Attorney General

BEF/KMR/kk

cc: The Honorable John C. Wobensmith  
Joseph M. Getty  
Warren Deschenaux

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Report states that the restriction is “necessary to prevent future legislatures from defeating the purpose of the amendments by passing local laws repealing locally-enacted charter provisions.” Report at 31. Moreover, the Report suggests that matters of “State concern” are not included in the ban on local legislation.

While regulation of traffic speeds was undeniably a local matter in 1800, today it is clearly of state concern to an ever-increasing extent. A [reasonable] listing of local powers today may seem very illogical [twenty] years from now. To ensure flexibility it seems preferable no to include a list of local powers in the Constitution. Matters of State concern, not affecting the government of \*33 municipalities as, for example, fish and game laws, the General Assembly would continue to enact local laws.

*Local Legislation in Maryland, Second Report of the Commission on Administrative Organization of the State* (June 1952) at pages 32-33.