

BRIAN E. FROSH
ATTORNEY GENERAL

ELIZABETH F. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI
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 14, 2020

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

RE: *House Bill 1363*

Dear Governor Hogan:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 1363, which establishes the Two Generation Family Economic Security Commission in the Maryland Department of Human Services. We write to address a concern regarding the constitutionality of the membership of the Commission, which includes members of the General Assembly.

The Commission established by House Bill 1363 has 17 members, including four members of the General Assembly. The Maryland Constitution does not prohibit the service of members of the General Assembly on boards, councils, and task forces undertaking fundamentally advisory roles, and, indeed, there are dozens of such advisory bodies and task forces established in State law. It is our concern, however, that having legislative members part of an entity that is empowered to implement agency policies and programs as well as partner with local jurisdictions and community action agencies in implementation of programs, as provided for in House Bill 1363, could implicate the separation of powers of Article 8 of the Maryland Declaration of Rights or cause a violation of the prohibition against plural office holding found in Article III, §11 of the State Constitution. Article 8 of the Declaration of Rights provides: “That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.” Article III, Section 11 of the Constitution states: “No person holding any civil office of profit, or trust, under this State shall be eligible as Senator or Delegate.”

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In 1976, Attorney General Burch opined that Article 8 of the Declaration of Rights and Article III, § 11 would be infringed by the service of members of the General Assembly on the Washington Suburban Transit Commission. 61 *Opinions of the Attorney General* 152, 159-62 (1976). Also, in 2009, we advised your predecessor, in a letter discussing legislation reestablishing the Commission on the Establishment of a Maryland Women in Military Service Monument, that because the legislation empowered the Commission, the membership of which included members of the General Assembly, to enter into contracts regarding “the funding, design, construction, or placement of an appropriate monument,” and not merely to give advice regarding a monument, the exercise by the Commission of those executive powers could infringe these two provisions. *See* Bill Review Letter on House Bill 944 and Senate Bill 367 (May 15, 2009).

Nevertheless, concerns under both Article 8 of the Declaration of Rights and Article III, § 11 of the Constitution are substantially ameliorated by the fact that the vast number of responsibilities of the Commission are otherwise advisory in nature. At the same time, a colorable separation-of-powers concern would be raised by the participation of members of the legislature in implementing agency programs. It is also our view, however, that the foregoing constitutional concerns would be addressed if the legislators who are members of the Commission abstained from participating in any program implementation. Thus, if the legislators on the Commission limited their role to the advisory roles of the Commission, we believe that there are no constitutional problems with having four members of the General Assembly serving on the Commission.¹ Accordingly, it is our view that House Bill 1363 is constitutional and legally sufficient.

Sincerely,



Brian E. Frosh
Attorney General

BEF/SBB/kd

cc: The Honorable John C. Wobensmith
Keiffer J. Mitchell, Jr.
Victoria L. Gruber

¹ Alternatively, no members of the General Assembly could be appointed to the Commission.