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April 7, 2020

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

RE: *House Bill 889 and Senate Bill 802*

Dear Governor Hogan:

HB 889 and SB 802 are identical bills that authorize a property tax credit for property owned by a specific entity, the Maryland Farm Bureau, Inc., that is used exclusively for (1) the agricultural education of the public; (2) aiding and encouraging agriculture in the State; (3) assisting in the collection, analysis, and dissemination of information relating to agriculture; or (4) the maintenance of a natural or recreational area for public use. Although we have concerns that these bills could be held to violate the State constitutional prohibition against the enactment of “special Laws,” we cannot say definitively that they are “clearly unconstitutional,” the standard that we apply in bill review.

The prohibition on the enactment of special laws is set forth in Article III, § 33 of the Maryland Constitution, and provides: “And the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law.” Section 33 is violated only if a law: (1) is a “special” law; and (2) there is provision for the matter in an existing general law. *Cities Serv. Co. v. Governor*, 290 Md. 553, 567 (1981). A special law “is one that relates to particular persons or things of a class, as distinguished from a general law which applies to all persons or things of a class.” *Id.* (quoting *Prince George’s Co. v. B. & O. Rwy. Co.*, 113 Md. 179, 183 (1910)). In the *Cities Service* case, the Court of Appeals conducted a two-part inquiry to determine if the law was an impermissible special law. First, the Court asked whether invalidating the legislation will effectuate the historical purpose of preventing influential persons from gaining an undue

advantage through the enactment of private acts. Second, the Court undertook a close analysis of the bill and its legislative history, including the bill's actual purpose; whether the beneficiaries are identified by name; whether the beneficiaries sought and persuaded the legislature to pass the bill; whether the public need and public good are served by the bill; and whether the classification contained in the bill are reasonable or arbitrary. *Cities Serv. Co.*, 290 Md. at 568-70.

Applying these tests to the facts of these bills is inconclusive. First, although there is an existing general law imposing property tax, § 6-201 of the Tax – Property (“TP”) Article, there are also many existing general laws providing property tax credits. TP § 9-302 *et seq.*¹ Thus, it is hard to decide how to apply the threshold test of whether there is a provision for the matter in existing law. Second, even assuming that these bills create a special law, it is not entirely clear that the Maryland Farm Bureau is the type of group with which the framers of Article III, § 33 were concerned. The framers were concerned about the rich and powerful exerting their influence to obtain special treatment. The Maryland Farm Bureau is a 501(c)(5) organization under federal law, which is for tax exempt labor, agricultural or horticultural organizations. The group's focus is to promote and protect Maryland agriculture and ensure the future of the State's natural resources and food supply. Thus, the historical purpose of the prohibition in Article III, § 33 may not be served by invalidating these bills. These factors point in favor of the bills' constitutionality. Several other factors, however, point in the opposite direction, including that the Maryland Farm Bureau is named in the bills, that it lobbied on behalf of the bills, and that it alone can take advantage of the tax credit.

In attempting to reach a resolution, however, we are guided by Attorney General Sachs who distinguished between impermissible special laws and permissible laws by comparing two cases:

The Maryland Court of Appeals has said that “the term ‘special law’ has ... uniformly been interpreted to mean a special law for a special case.” *Norris v. Mayor and City Council of Baltimore*, 172 Md. 667, 682 (1937). On the other hand, “a law intended to serve a particular need, to meet some special evil, or to promote some public interest, for which the general law is inadequate, is not a special law within the meaning of that term as used in that section of the Constitution.” *Jones v. House of Reformation*, 176 Md. 43, 55-56 (1939).

¹ Moreover, many of these tax credits look at least as “special” as HB 889 and SB 802.

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66 *Opinions of the Attorney General* 207, 209 (1981). Moreover, Attorney General Sachs observed that it is the unique province of the General Assembly to determine whether the public need and the public good is served by the bill. *Id.* It is our view, that by adopting this legislation, it was the carefully considered view of the General Assembly that providing this tax credit will serve not just Maryland Farm Bureau's private interest, but the public need and the public good.

Thus, we cannot say that HB 889 and SB 802 are clearly unconstitutional.

Sincerely,

A handwritten signature in blue ink that reads "Brian E. Frosh". The signature is fluid and cursive, with the first name being the most prominent.

Brian E. Frosh
Attorney General

BEF/SBB/kd

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