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October 17, 2017

The Honorable Cory V. McCray  
Maryland House of Delegates  
315 House Office Building  
Annapolis, Maryland 21401

Dear Delegate McCray:

You have inquired about whether proposed new language added to a possible reintroduction of legislation from the 2017 session (House Bill 381 of 2017 - "Railroad Company – Movement of Freight – Required Crew"), would violate State or federal law. House Bill 381 sought to establish a misdemeanor prohibition against the operation in the State of a train or light engine used in connection with the movement of freight, unless the train or engine has a crew of at least two individuals.

The new language proposed in your inquiry would add a provision to the language of HB 381 to require that a railroad company be held exclusively liable for a criminal violation of the bill by an agent or employee of the railroad company. A violation under the bill would be a misdemeanor subject to a fine of \$500 for a first offense, and \$1,000 for a second or subsequent offense committed within three years of the second offense.<sup>1</sup>

I am unaware of any legal impediment to the enactment of such a provision by the General Assembly to hold an employer criminally liable for the actions of an employee. *See, e.g.*, Alcoholic Beverages Article, Title 6, Subtitle 3 (criminal liability of alcoholic beverage licensee for unlawful alcohol sales). *See also Dawson v. State*, 329 Md. 275, 283 (1993) (recognizing that the General Assembly has broad authority, under the exercise of the State's police power, to criminalize certain conduct and to decide what penalties to impose for the commission of crimes).

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<sup>1</sup> There may be an ambiguity with respect to the language of the penalty provision of House Bill 381 of 2017, as it relates to a third or subsequent offense that occurs beyond three years of a second offense. The bill provides for a fine of \$1,000 for a second offense and "any subsequent offense committed within a period of 3 years of the second offense." It is unclear under the bill what criminal penalty would apply to a third or subsequent offense that occurs beyond three years of a second offense.

The Honorable Cory V. McCray  
October 17, 2017  
Page 2

To the extent the proposal would still require two-person crews on certain trains operating in the State, however, as this office has previously indicated, there remains a possibility that a court could find that the two-person crew requirement in HB 381 is preempted by the federal Regional Rail Reorganization Act of 1973 ("3RA"). *See* Letter of Advice to Hon. Brian J. Feldman from Asst. Atty Gen. Jeremy M. McCoy (February 10, 2016) (advising that there is a possibility that a court would find Senate Bill 275 of 2016, which similarly required a two-person crew, to be preempted by the federal 3RA if there is an economic purpose for the enactment, but if the sole purpose of the proposal is to enhance safety, the proposal may be authorized as a safety measure under the Federal Railroad Safety Act of 1970, and would not be preempted by 3RA).

I hope this is responsive to your request. If you have any questions or need any additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy M. McCoy". The signature is written in a cursive style with a large, stylized "M" and "C".

Jeremy M. McCoy  
Assistant Attorney General