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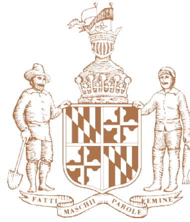

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September 27, 2023

The Honorable Julie Palakovich Carr
Maryland House of Delegates
202 Lowe House Office Building
Annapolis, Maryland 21401
*Via email*

Dear Delegate Palakovich Carr:

You have inquired whether Chapter 769 (House Bill 215) of the 2023 Laws of Maryland ("Real Property – Limitations on Summoning Law Enforcement or Emergency Services – Prohibition") may be applied retroactively to prevent enforcement of existing local ordinances that are prohibited under the bill. There is no evidence in the language of the Act or in the Act's legislative history that indicates legislative intent to give retroactive application to the provisions of Ch. 769 or to overcome the legal presumption that the enactment has prospective application.

In my view, however, there is sufficient evidence indicating that the General Assembly intended to expressly preempt enactment and *enforcement* of local laws and ordinances, including existing local laws, that establish a threshold of requests to summon law enforcement or emergency services to a residential property as grounds for designating a property as a nuisance, or which penalize or authorize a penalty for summoning law enforcement or emergency services to a residential property.

Chapter 769, which takes effect on October 1, 2023, amends § 8-208 and § 8-208.1 of the Real Property Article ("RP") to prohibit landlords from limiting or penalizing a tenant for summoning the assistance of law enforcement or emergency services. The Act also creates new RP § 14-126(c), which provides:

> The governing body of a county or a municipality may not *enact* a local law or ordinance that:
>
> (i) Establishes a threshold of requests to summon law enforcement or emergency services to a residential property as grounds for designating a property as a nuisance; or

(ii) Penalizes or authorizes a penalty against an operator, an owner, an owner-occupant, or a tenant for:

1. The act of summoning law enforcement or emergency services to a residential property; or

2. The actions of another individual to summon the assistance of law enforcement or emergency services to a residential property.

(Emphasis added). The Act also establishes a defense against an action to enforce such a local law or ordinance and an affirmative claim for damages resulting from the law's enforcement. RP § 14-126(d).

In my view, there is no question regarding the prospective effect of Ch. 769. There is no indication that the General Assembly intended to apply the provisions of the enactment to any earlier enforcement action prohibited under the Act that was taken pursuant to a local law or ordinance enacted prior to the October 1, 2023 effective date of the Act. There is no indication in either the language or the legislative history of the Act of an intent by the General Assembly that the Act have retroactive application. As the Maryland Supreme Court has made clear, "statutes are presumed to operate prospectively unless a contrary intent appears." *Allstate Ins. Co. v. Kim*, 376 Md. 276, 289 (2003).

In this instance, the question appears to involve the General Assembly's intent behind the prohibition in new RP § 14-126(c) against a local jurisdiction "enacting" such a law, and whether the legislature intended to prohibit a local jurisdiction from *enforcing* such an ordinance after the effective date of the Act (whether or not such a local ordinance was already in effect), or intended to exclusively prohibit the *future enactment* of such ordinances while otherwise allowing local enforcement of any such pre-existing local ordinances. In my view, the legislative history behind Ch. 769 reveals a clear intent by the General Assembly to preempt both local enactment and *enforcement* of local laws and ordinances that establish a threshold of requests or penalties for summoning law enforcement or emergency services to a residential property, rather than exclusively prohibiting future enactment of such local laws but otherwise allowing local jurisdictions to enforce any such ordinances enacted prior to the effective date of the Act.

Statutory construction analysis begins "with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology." *Johnson v. State*, 467 Md. 362, 372 (2020). The Maryland Supreme Court "assume[s] that the legislature's intent is expressed in the statutory language and thus [the Court's] statutory interpretation focuses primarily on the language of the statute to determine the purpose and intent of the General Assembly." *Id*. at 371 (citing *Blackstone v. Sharma*, 461 Md. 87, 113 (2018)). "Absent ambiguity in the text of the statute, 'it is our duty to interpret the law as written and apply its plain meaning to the facts before us.'" *Id*. at 373 (quoting *In re S.K.*, 466 Md. 31, 54 (2019)).

However, the Court does not "read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone." *Id*. at 372. The plain language "must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim or policy of the Legislature in enacting the statute." *Id*. (citing *State v. Johnson*, 415 Md. 413, 421 (2010)). "Even where the language of a statute is plain and unambiguous, we may look elsewhere to divine legislative intent; the plain meaning rule is not rigid and does not require us to read legislative provisions in rote fashion and in isolation." *Blaine v. Blaine*, 336 Md. 49, 64 (1994). Similarly, "rules of statutory construction require [courts] to avoid construing a statute in a way which would lead to absurd results[,]" and "should reject a proposed statutory interpretation if its consequences are inconsistent with common sense." *Blandon v. State*, 304 Md. 316, 319 (1985).

In this case, the legislative history of Ch. 769 demonstrates a clear intent by the Act's sponsor and testifying witnesses that, in pertinent part, the purpose of the Act was to prevent enforcement of local nuisance ordinances to penalize individuals for summoning law enforcement or emergency services. As the Act's primary sponsor, you testified at the bill hearing for HB 215 that the bill would "ensure that *every* Marylander can summon the police, fire department, or emergency medical services when they need it without fearing retaliation from their landlord or local government." Testimony of the Honorable Julie Palakovich Carr at the Judiciary Committee Bill Hearing for HB 215 (2/1/23) (emphasis added). You also described the bill as "barring local nuisance laws for summoning" law enforcement or emergency services. *Id*. You testified that while the bill does not require local governments to repeal existing nuisance ordinances that provide sanctions for repeated criminal activity, arrests, or convictions of individuals associated with certain properties, you stated that there are "five jurisdictions that would have to make changes or repeal" their existing nuisance laws under the bill because they establish a nuisance for the act of summoning law enforcement or emergency services. *Id*.

Similarly, written testimony in support of HB 215 provided by the Maryland Multi-Housing Association, Inc. also reflects an understanding that this bill was intended to uniformly prohibit enforcement of such local nuisance laws, rather than exclusively ban future enactments of such laws:

> House Bill 215 establishes minimum standards for local nuisance ordinances. Some jurisdictions have enacted laws to penalize property owners for repeated calls for police or emergency services to their property. While no one wants criminal activity, these local laws could serve as a deterrent to residents responsibly calling for police and emergency services. We should not place residents in that predicament.

Bill file for HB 215 of 2023.

Both testimonies reflect an understanding that HB 215 was intended to restrict the ability of local governments to enforce local laws or ordinances that penalized the summoning of law enforcement or emergency services and that the restriction in the bill applied to existing local

ordinances. I found no reference in the legislative history of HB 215 that reflects legislative intent to exclusively prohibit local governments from enacting such an ordinance after the effective date of the bill, while allowing such enforcement of existing local laws and ordinances that are otherwise prohibited under the bill. Similarly, there does not appear to be any logical reason why the General Assembly would treat local jurisdictions differently with respect to enforcement of such local laws based solely on the date on which the local jurisdiction enacted its law.

In my view, in light of the context of the law's enactment and the apparent intent of the General Assembly reflected in the bill's legislative history, the General Assembly intended to expressly preempt[1] enactment and *enforcement* of local laws and ordinances, including existing local laws, that establish a threshold of requests to summon law enforcement or emergency services to a residential property as grounds for designating a property as a nuisance, or which penalize or authorize a penalty for summoning law enforcement or emergency services to a residential property. However, if the General Assembly wishes to remove all doubt with respect to the application of the restriction on local law contained in Ch. 769, it remains free to clarify its intent through future legislation.

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,

Jeremy M. McCoy
Assistant Attorney General

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[1] The doctrine of preemption "is grounded in the authority of the General Assembly to reserve for itself exclusive dominion over an entire field of legislative concern. When properly invoked, the doctrine precluded local legislative bodies from enacting any legislation whatsoever in the pre-empted field. Pre-emption may be accomplished either expressly by *statutory language prohibiting local legislation*, [. . .] or impliedly, by other unequivocal conduct of the General Assembly." *Ad+Soil, Inc. v. County Com'rs of Queen Anne's County*, 307 Md. 307, 324 (1986) (internal citations omitted) (emphasis added).