



OFFICE OF THE COUNTY ATTORNEY

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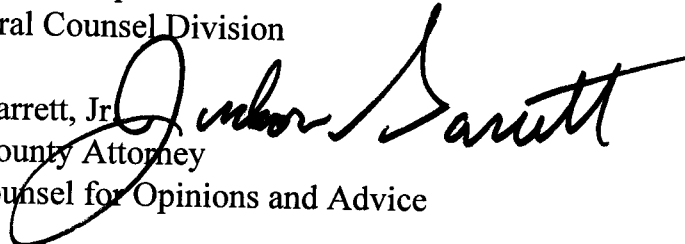
Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

January 27, 2003

TO: Marc P. Hansen, Esquire
Chief, General Counsel Division

FROM: Judson P. Garrett, Jr.
Associate County Attorney
Principal Counsel for Opinions and Advice



RE: Appointments to the Montgomery County Interagency Coordinating Board

This memorandum is in response to your request regarding the validity of Montgomery County Code § 44-3(b) (the "County ICB Membership law"), which provides for the Interagency Coordinating Board for Community Use of Public Facilities ("ICB") to consist of certain *ex officio* members as well as other members appointed or nominated by the County Executive and various officials and organizations.

You have asked if the County ICB Membership law conflicts with § 215 of the Charter of Montgomery County (the "Charter Appointment Provision"), which authorizes the County Executive to appoint members of virtually all county boards and commissions.

I advise that the County ICB Membership law does not conflict with the Charter Appointment Provision, and is within the scope of a State ICB enabling law.

My advice is founded on the following analysis.

**I. THE CHARTER APPOINTMENT PROVISION
AND
THE COUNTY ICB MEMBERSHIP LAW**

In pertinent part, the Charter Appointment Provision provides:

Except for commissions appointed to advise the Council, the County Executive shall appoint, subject to the confirmation of the Council, all members of boards and commissions unless otherwise prescribed by state law or this Charter.

The County ICB Membership law provides:

The [Interagency Coordinating] Board consists of voting members and nonvoting, *ex officio* members.

(1) The voting members are:

- (A) the Chief Administrative Officer;
- (B) the Superintendent of Schools;
- (C) the President of Montgomery College;
- (D) a member of the Maryland-National Capital Park and Planning Commission designated by the Montgomery County members of the Commission;
- (E) a Councilmember or the staff director or a senior staff member of the County Council who represents the Council;
- (F) one citizen appointed by the Superintendent and confirmed by the Board of Education; and
- (G) three citizens appointed by the Executive and confirmed by the Council.

* * *

(2) The nonvoting, *ex officio* members of the board are:

- (A) a member of the Board of Education designated by the Board of Education;
- (B) a person designated by the Montgomery County Association of Secondary School Principals and confirmed by the Council;
- (C) a person designated by the Elementary School Administrators Association and confirmed by the Council.¹

¹ MONT. CO. CODE, § 44-3(b).

II. THE CHARTER HOME RULE AUTHORITY AND ITS LIMITS

As the legislative body of a sovereign state, the Maryland General Assembly inherently possesses plenary legislative power that is restricted only by the state and federal constitutions.² The counties, on the other hand, as creatures of the State, have only such authority as the State has delegated to them through the Constitution of Maryland or the acts of the Maryland General Assembly.³ Consequently, “[e]xcept to the extent that the State Constitution restricts [state] legislation, the counties and Baltimore City are subject to control by the General Assembly.”⁴

“Charter home rule” is one of the means by which the Maryland Constitution restricts state legislation concerning counties. Its “underlying purpose ... is to share with the counties and Baltimore City, within well-defined limits, powers formerly reserved to the General Assembly so as to afford the subdivisions certain powers of self-government.”⁵ Article XI-A of the Constitution (the “Charter Home Rule Article”) accomplishes this by granting two distinct kinds of home rule power: a charter power, and a legislative or law-making power.⁶

The charter power is the authority to provide for the form and structure of county government. “[A] charter or form of government” (the terms being equivalent) ... is, in effect, a local constitution which forms the framework for the organization of the local government....⁷ Its “basic function ... is to distribute power among the various agencies of government, and between the government and the people who have delegated that power to their government.”⁸

² *Kenneweg v. Allegany County Commissioners*, 102 Md. 119, 122-23 (1905).

³ *Howard County Commissioners v. Matthews*, 146 Md. 553, 561-62 (1924).

⁴ *Kent Island Defense League v. Queen Anne’s Co. Bd. of Elections*, 145 Md. App. 684, 688 (2002).

⁵ *Cheeks v. Cedlair Corporation*, 287 Md. 595, 597-98 (1980).

⁶ *Ritchmount Partnership v. Bd. of Supervisors of Elections*, 283 Md. 48, 59 (1978).

⁷ *Cheeks*, 287 Md. at 607 (quoting *Ritchmount Partnership*, 283 Md. at 58).

⁸ *Board of Supervisors of Elections v. Smallwood*, 327 Md. 220, 237 (1992).

The charter power granted by Article XI-A is self-executing, *i.e.*, it does not require State enabling legislation.⁹ It is not, however, without limits. A charter provision that conflicts with a public general law cannot be given effect.¹⁰ Furthermore, because the Constitution requires that a county charter provide for an elective legislative body in which the county's law-making power is vested,¹¹ a charter "is limited in substance to determining the form or structure of government."¹² "Its content cannot transcend its limited office and be made to serve or function as a vehicle through which to adopt local legislation."¹³

The Charter Home Rule Article also provides for the distribution of some of the General Assembly's lawmaking powers to charter counties.¹⁴ It does this by: (1) requiring the General Assembly to provide, by public general law, a grant of express powers for all charter counties;¹⁵ (2) giving the county council "full power to enact local laws ... upon all matters covered by the express powers granted;"¹⁶ and (3) prohibiting the General Assembly from enacting any further public local law within the scope of those express powers until such time as the General Assembly withdraws the particular power by public general law.¹⁷ Moreover, under Art. XI-A, § 3, a charter county may repeal or amend public local laws

⁹ *Ritchmount Partnership*, 283 Md. at 58 ("There are ... certain powers implicit in Article XI-A which do not qualify as legislative powers and which do not require implementing legislation to render them operative. These powers necessarily proceed from § 1 of the Home Rule Amendment and have as their object the initial organization and formation of charter government in the counties").

¹⁰ MD. CONST. art. XI-A, §3; *Montgomery County v. Bd. of Supervisors of Elections*, 311 Md. 512, 514 (1988).

¹¹ MD. CONST. art. XI-A, §3.

¹² *Cheeks*, 287 Md. at 607.

¹³ *Id.* at 607-08 (A proposed rent-control amendment was "essentially legislative in character" because it "constitute(d) an exercise of the police power in all respects similar to the enactment of a local law").

¹⁴ *Ritchmount Partnership*, 283 Md. at 57.

¹⁵ MD. CONST. art. XI-A, § 2.

¹⁶ *Id.* at § 3. This local lawmaking power expressly includes the power to repeal or amend local laws previously enacted by the General Assembly on any of the matters covered by the Express Powers Act.

¹⁷ *Id.* at § 4. For these purposes, "[a]ny law so drawn as to apply to two or more of the geographical subdivisions of this State [*i.e.*, two or more counties, or the City or Baltimore and one or more counties] shall not be deemed to be a Local Law, within the meaning of [the Charter Home Rule Article]").

applicable solely to the county and enacted prior to the adoption of charter home rule, so long as the county legislation is covered by one or more of the express powers enumerated in Article 25A.”¹⁸

Responding to the express powers mandate, the General Assembly has enacted an Express Powers Act that delegates to charter counties a wide array of the General Assembly’s power to enact public local laws.¹⁹ These powers “are those usually associated with the objects of government—that is, powers to legislate for the benefit of the health, safety and general welfare of the local community.”²⁰

This legislative or lawmaking power is not, however, a grant of absolute autonomy.²¹ The General Assembly retains virtually unbridled discretion to repeal or amend any of the legislative powers its has expressly granted to charter counties;²² a public general law always controls a conflicting local law;²³ and the doctrine of preemption enables the State to supercede local laws (including charter provisions)—even those that do not conflict with public general law—by expressly or impliedly preempting that area of law.²⁴ In addition, the General Assembly may enact a public local law on any matter not covered by the Express

¹⁸*Ritchmount Partnership*, 283 Md. at 60.

¹⁹ See MD. ANN. CODE, art. 25A, § 5.

²⁰ *Ritchmount Partnership*, 283 Md. at 57.

²¹ *Id.* at 56.

²² *Id.* at 58 (citing Moser, *County Home Rule — Sharing the State's Legislative Power with Maryland Counties*, 28 Md. L. Rev. 327, 342-43 (1968)).

²³ *Baltimore v. Sitnick & Firey*, 254 Md. 303, 310-11 (1969) (citing MD. CONST. art. XI-A, § 3) (Such conflict includes situations where ordinances assume directly or indirectly to permit acts or occupations which the State statutes prohibit, or to prohibit acts permitted by statute or Constitution.) For charter home rule purposes, a “local law” means a law enacted by Baltimore City or a charter county, and a “public local law” means a law enacted by the General Assembly and applicable only in Baltimore City or one county. *Kent Island Defense League, LLC.*, 145 Md. App. at 692 n.2.

²⁴ *County Council v. Montgomery Association, Inc.*, 274 Md. 52, 59-60 (1975) (Express preemption exists when the General Assembly has expressly reserved to itself the right to legislate on a particular subject matter or area of the law. Implied preemption—sometimes called preemption by occupation—arises when the General Assembly has acted with such force that an intent by the State to occupy the entire field must be implied); *Montgomery County Board of Realtors, Inc. v. Montgomery County*, 287 Md. 101, 110 (1980) (“[A] county may not enter into a field which the State has occupied and preempted....”)

Powers, including an act granting further powers to a single charter county.²⁵

A. The Charter Appointment Provision Expressly Yields To State Law.

Section 215 of the Charter of Montgomery County gives the County Executive exclusive authority, subject to confirmation by the County Council, to make all appointments to boards and commissions (other than “commissions appointed to advise the County Council”) “*unless otherwise prescribed by state law or this Charter.*”²⁶ The State ICB enabling law expressly authorizes Montgomery County to provide, by local law, “for an interagency coordinating board and for the appointment of its members,” including the local Superintendent of Schools, the President of Montgomery College, the members of the Montgomery County Planning Board, and *such other members as may be provided by the local law* ²⁷ There is, therefore, no conflict between the Charter and the County ICB membership law because the County law is authorized by a State ICB Law that prescribes otherwise for ICB appointments.

B. The Charter Appointment Provision Could Not Apply To ICB Appointments.

Even if the State ICB enabling law does not constitute, for Charter purposes, “prescribing otherwise,” there are several reasons why the Charter Appointment Provision would not apply to the appointment of ICB members. First and foremost, the State has preempted the field of education, including the nonschool use of public school facilities. Second, the State enabling legislation probably constitutes a public general law for charter home rule purposes. Third, the County’s charter home rule authority would enable it to provide for a ICB, especially one that includes State officials such as the Superintendent of Schools, the President of Montgomery College, and a Maryland-National Capital Park and Planning Commissioner.

²⁵ *Waters Landing Limited Partnership v. Montgomery County*, 337 Md. 15, 19 (1994).

²⁶ MONT. CO. CHARTER , § 215 (emphasis added.) This appointment power undoubtedly is proper charter material. Nevertheless, the Express Powers Act also gives the County the authority to provide, by local law, “for the appointment and removal of all *county* officers *except those whose appointment or election is provided for by the Constitution or public general law...*”). See MD. CODE ANN., art. 25A, § 5(Q)(1)(emphasis added). The County Council, therefore, may legislate in this area, except to the extent inhibited by the Charter, the Constitution, or public general law.

²⁷ MD. CODE ANN., EDUC. § 7-108(f)(emphasis added).

1. *The State Has Preempted The Field.*

In Maryland, “[p]ublic education is a highly important interest of the State government.”²⁸ The Maryland Constitution contains an Education Article, the primary purpose of which is to require the General Assembly to establish, by law, and maintain, by taxation or otherwise, a thorough and efficient system of free public schools throughout the State.²⁹ In response to this mandate, the General Assembly has enacted comprehensive legislation, now codified in the Education Article of the Maryland Code. Under this “carefully conceived [state] legislative structure ... the respective powers and limitations of local school boards, the State Board of Education and county governments are delineated and balanced.”³⁰ For example, a local board of education,³¹ although funded in significant measure by county funds, is a creature of this legislation, and is “not part of the executive branch of the county government nor an agency under its control.”³² “County boards of education are [therefore,]... state agencies and not agencies of local government.”³³ And school property is State property, held in trust by the local board of education, not County property.³⁴ Indeed, the State has so fully occupied the field of education as to preempt it by occupation.³⁵ Consequently, a local board of education is not, for example, subject to charter requirements,³⁶ and a county “is

²⁸ *Williams v. Fitzhugh*, 147 Md.384, 386 (1925).

²⁹ See MD. CONST., art. VIII, § 1.

³⁰ *Board of Education v. Montgomery County*, 237 Md. 191, 197 (1964).

³¹ State law sometimes refers to the “county school system.” See, e.g., MD. CODE ANN., Educ. § 3-103 (“There is a county board of education for each county school system”). There is, however, no such legal entity. “County school system” is but a term of convenience that State law uses to distinguish between the body that heads the local school entity and the balance of that entity, e.g., its executive, administrative and operational units and personnel.

³² *Board of Education v. Montgomery County*, 237 Md. at 197.

³³ *Board of Education v. Prince George’s Educator’s Association*, 309 Md. 85, 95 n.2 (1987).

³⁴ MD. CODE ANN., EDUC. § 4-114.

³⁵ *McCarthy v. Board of Education*, 280 Md. 634, 651 (1975). The Court left open the question of whether the Express Powers Act permits a charter county to enact legislation in the field of education. *Id.*

³⁶ See, e.g., *Board of Education v. Montgomery County*, 237 Md. at 197 (“[L]ike bi-county commissions such as the Maryland-National Capitol Park and Planning Commission and the Washington Suburban Sanitary Commission, [the Montgomery County Board of Education] ... is not subject to the charter budgetary requirements....”)

without power to legislate in this field and to place additional burdens upon a State agency.”³⁷ So, too, a local Superintendent of Schools is a state official, not a county official, and, therefore, is not subject to a county’s charter or local laws, except as permitted by State law.³⁸

Prior to 1979, the General Assembly vested the authority to provide for the use of school property for non-school public and community purposes exclusively in the local boards of education.³⁹ That State education law was amended in 1979 to include the following:

In Montgomery County, nonschool use of school facilities for public and community purposes and the manner by which costs associated with such use are apportioned may be regulated by local law consistent with the use criteria set forth in § 7-110 and not inconsistent with any other provisions of this article. The local law authorized by this subsection *may provide* for an interagency coordinating board and for the appointment of its members by Montgomery County. Membership may include the Superintendent of Schools, the President of Montgomery College, the members of the Montgomery County Planning Board, and such other members as may be provided by the local law.⁴⁰

In all other counties, the non-school use of public school facilities for public and community purposes remains the province of the local school board. Indeed, even in Montgomery County, the authority to provide for the use of school facilities for day care programs is vested in the local board of education, in accordance with the group-day-care-center rules and regulations of the State Department of Human Resources.⁴¹ However, in Montgomery County, State law has permitted the County to regulate the use of school facilities for public and community purposes by a County created ICB.

³⁷ *Id.*

³⁸ *See* 81 *Op. Att’y Gen.* 26, 35 (1996) (A local law cannot require a member of a board whose duties derive solely from State law, *e.g.*, a member of a local school board, to serve on a county commission on school performance).

³⁹ *See* MD. CODE ANN., EDUC. §§ 7-108 and 109 (1978) (formerly MD. ANN. CODE, art. 77, § 97).

⁴⁰ LAWS OF MARYLAND (1979), ch. 191 (H.B. 1349) (MC 250-79).

⁴¹ *See* MD. CODE ANN., EDUC. §§ 7-108 and 109.

2. *For Charter Home Rule Purposes, The State ICB Enabling Law Is A Public General Law.*

Although an Act of the General Assembly that pertains to two or more jurisdictions is not a public local law for the purposes of the Charter Home Rule Article,⁴² a law is not a public local law merely if it applies in one county only. To constitute a public local law, an Act of the General Assembly must both: (1) operate in one jurisdiction only; and (2) pertain only to a subject of local import.⁴³ “[A] law is not necessarily a local law merely because its operation is confined ... to a single county, if it affects interests of the whole state.”⁴⁴ Some statutes, local in form, have been held to be general laws because they affect the interests of the whole state.⁴⁵ “The rationale of these cases lies in the concept that while the immediate objective sought to achieved was local in character, the statutes indirectly affected matters of significant interest to the entire state.⁴⁶ Moreover, the fact that a large public general law scheme “permits or directs differences in matters of mere administrative detail suited to the particular needs of the localities does not make it any less a public general law.”⁴⁷ “Thus, whether a law is general or local is ‘to be determined by the application of settled legal principles to the facts of particular cases in which the distinction may be involved.’”⁴⁸

The State ICB clearly meets the first prong of this two-prong test. It applies in only one county. It probably does not, however, pertain to a subject of local import. Although the matter is not entirely free from doubt, given the education mandate of the Maryland Constitution, and the State’s preemption of the field of education, in general, and the nonschool use of public schools, in particular, the courts probably would decide that the State ICB law addresses a subject of *State* interest or concern, and, therefore, is a public general

⁴² MD. CONST., art. XI-A § 4.

⁴³ *Steimel v. Board*, 278 Md. 1, 6 (1976).

⁴⁴ *Gaither v. Jackson*, 147 Md. 655, 664-65 (1925).

⁴⁵ *Cole v. Secretary of State*, 249 Md. 425, 434-35 (1968).

⁴⁶ *Id.* See also Moser, *County Home Rule — Sharing the State's Legislative Power with Maryland Counties*, XXVIII Md. L. Rev. at 342-43 (“The present local law restrictions have been rendered even less effective by judicial interpretation applying the state concern rule to validate laws of the General Assembly even though they regulate internal affairs of only one county. These are considered to be general, not local laws”).

⁴⁷ *Prince George’s Co. v. Md.-Nat. Cap. Park and Planning Commission*, 269 Md. 203, 225 (1973).

⁴⁸ *Cole v. Secretary of State*, 249 Md. at 434-35 (quoting *Dasch v. Jackson*, 170 Md. 251 (1936)).

law.⁴⁹ This conclusion is buttressed by the fact that, as noted below, charter counties have no home rule authority over the state officials who are key members of the ICB, or their state agencies.

3. The County's Charter Home Rule Authority Does Not Enable It To Provide For An ICB, Especially One That Includes State Officials.

The County's home rule authority does not apply to State officials. Only the General Assembly—either directly by a state law creating a board and providing for its membership, or indirectly by a state enabling law authorizing the creation of a board and providing for its membership—may require (or authorize the County to require) that state officials or their appointees serve as members of a board or commission.

Consequently, even if the County ICB law were not within the Charter Appointment Provision's exception for appointments prescribed by State law, it, nevertheless, would not be subject to the Charter Appointment Provision because it is not an exercise of the County's charter home rule authority, but, rather, the exercise of additional local lawmaking authority granted by the General Assembly outside the Express Powers Act. The County ICB law, therefore, is valid if it is within the scope of the State ICB Enabling Law.

III. THE APPOINTMENT PROVISIONS OF THE COUNTY ICB LAW ARE WITHIN THE SCOPE OF THE STATE ENABLING LAW

The validity of the County ICB law is limited by the scope of the State ICB Enabling Law. Although that State law neither creates nor requires the County to create an ICB, when the County chooses to exercise its ICB authority, it necessarily is confined to the limits of the authority granted by the State enabling law. Thus, we must look to the State Enabling law to determine whether the County ICB membership and appointment process is authorized by that State law.

⁴⁹ The doubt arises from the fact that rather than itself creating the Board and providing for its membership and their appointment, the State law gives the County Government the discretion to provide for these matters by local law. Thus, the State has preempted an area covered by the Express Powers Act, then delegated to a single charter county the authority to enact, within that area, a local law creating a public body that is not subject to the Charter Appointment Provision. This presents a question of first impression, and, in my view, the answer is not entirely free from doubt.

A. The Principles of Statutory Construction.

A statute is the written will of the Legislature. The cardinal rule for interpreting a statute is to ascertain and carry out the real legislative intent.⁵⁰ The search for legislative intent, therefore, begins with the words of the statute. In Maryland, however, the meaning of the plainest words in a statute may be controlled by the context in which it appears.⁵¹ Statutory language, consequently, is to be construed in the light of other manifestations of legislative intent.⁵² These include, among other things, “a bill’s ... relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context in which ... the particular language [is construed].”⁵³ Statutory language, therefore, is to be read in context, and legislative history, when available, is always to be considered.⁵⁴

B. The History and Context of the State ICB Law

The language and context of the State ICB law conclusively demonstrate that the General Assembly intended to permit Montgomery County to provide for ICB membership on the basis of some *ex officio* members, some members appointed by the County Executive, and some members appointed by officials or entities other than the County Executive.

The County ICB law and the State ICB law are jointly rooted in the recommendations of a County Community Education and Services Task Force. The first of these legislative siblings was Council Bill 43-78 (“the School Facilities Utilization Act”), which was introduced on August 22, 1978. That bill expressly recognized “the Interagency Coordinating Board whose membership is designated herein” as “the critical agent for the successful accomplishment of the objectives of this Act,”⁵⁵ and the County Executive, through a representative, acknowledged that the ICB provisions required state enabling legislation:

⁵⁰ *State v. Pagano*, 341 Md. 129, 133 (1996).

⁵¹ *Kaczorowski v. Baltimore*, 309 Md. 505, 514 (1987).

⁵² *In re Douglas P.*, 333 Md. 387, 393 (1994).

⁵³ *Kaczorowski*, 309 Md. at 515.

⁵⁴ *NCR Corporation v. Comptroller*, 313 Md. 118, 145-46 (1988).

⁵⁵ 1978 LMC., ch. 19, Sec. 1 (Bill No. 43-78).

Bill 43-78 represents the culmination of the work of the Community Education and Services Task Force and of the agency representatives who have been meeting to resolve various issues.

Throughout the duration of this long process, there has been a single goal--that of providing the citizens of Montgomery County with easier and more economic access to the use of public school facilities.

Before the community school program can be implemented, however, a number of prerequisite steps are required:

First, legislation such as Bill 43-78 must be enacted to provide local machinery for developing the necessary policies and administering the program.

Second, *State legislation must be enacted giving the County Government the authority to operate the community schools program.*⁵⁶

On September 29, 1978, the County Council met in worksession regarding Bill 43-78. The composition of the ICB was the very first issued to be addressed. The subject arose in the context of proposed Amendment No. 1, that would substitute certain elected officials (the County Executive, a member of the Board of Education designated by the Board, a member of the Board of Trustees of Montgomery College as designated by the Board, a member of the Montgomery Planning Board as designated by the Board, a member of the County Council as designated by the County Council, two citizens designated by the County Executive with the approval of the County Council) for certain administrators on the board. Some who favored the amendment viewed it as properly establishing the board as a policy maker. Some who opposed it, including the representative of the County Executive, thought the Board should be an administrative body, not a policy-making body. The matter was deferred for presentation to the full Council prior to final action on the bill, and the bill.⁵⁷

In September, 1978, while Bill 43-78 was pending before the County Council, the

⁵⁶ Testimony of Assistant Chief Administrative Officer Jay Price (speaking for the County Executive), Transcript of Proceedings Before The Montgomery County Council, Public Hearing: School Facilities Utilization Act, Bill, 43-70 (September 14, 1978), p. 6. (Emphasis added.)

⁵⁷ See September 28, 1978, memorandum from Pearl O. Schloo, Legislative Staff Specialist, to the County Council, Bill No. 43-78 File, Office of Legislative Information Services, Council Office Building, Rockville, MD.

Council President submitted copies of proposed state legislation to the Montgomery County Delegation to the General Assembly for introduction in the 1979 Regular Session. Included on that list was MC 250-79, which was described as follows:

A local bill providing Montgomery County with authorization to regulate the after-school use of school facilities for certain public and community purposes. This proposal is submitted as a result of the County's task force study recommendations which proposed to establish the local inter-agency board to coordinate the use of school facilities. A local bill is pending before the County Council on this subject which would implement the authorization sought from the General Assembly. This measure is proposed on an emergency basis so that the inter-agency board may be established as soon as possible.⁵⁸

In the meantime, after further deliberations concerning the membership of the ICB, Bill 43-78 was enacted by the County Council as an emergency bill on October 17, 1978, and was approved by the County Executive on October 26, 1978—well before the General Assembly convened its regular session in January, 1979. As enacted, the County law provided:

The [ICB] shall consist of the following nine members: The Chief Administrative Officer, the Superintendent of Schools, the President of Montgomery College, a member of the Montgomery County Planning Board, a Councilmember or the Staff Director or a senior staff member of the County Council who would consistently represent the County Council, two citizens appointed by the Superintendent and confirmed by the Board of Education and two citizens appointed by the County Executive and confirmed by the County Council. In addition, the Board of Education may designate one of its members who shall be an ex officio nonvoting member of the Board. The Advisory Committee may submit recommendations which shall be considered by the County Executive and the Superintendent regarding the appointment of citizen members of the board.⁵⁹

Although this emergency bill generally became law when signed by the Executive on October 26, 1978, the provision that created the ICB and provided for its membership

⁵⁸ Sept. 1978, Letter from Council President Scull to Delegation Chair Robertson, H.B. 1349 Bill File., State Dept. of Legislative Services, Annapolis, MD.

⁵⁹ 1978 LMC., Ch. 19, Section 1 (codified as MONT. CO. CODE 44-3 (b))

necessarily had a delayed effective because the County lacked the authority to create an ICB or provide for its membership absent State enabling legislation:

The provisions of this Act specified in Section 44-3, title "Interagency Coordinating Board" shall be effective immediately upon authorization by the Maryland General Assembly under the bill presently designated as MC 250-79. Until such bill becomes law, the Board responsibilities specified herein shall be conducted to the extent authorized under State law and enabling resolution by the Interim Interagency Committee on School Facilities Utilization. Section 44-3, title "Interagency Coordinating Board" and all other provisions of this Act shall become operative by incorporation in an agreement executed among the County government, Board of Education, and other public agencies.⁶⁰

In January, 1979, MC 250-79 was introduced in the Maryland House of Delegates as House Bill 1349. Among the working papers the Legislature had as it considered this bill was the usual legislative proposal questionnaire that Montgomery County agencies prepare when submitting a legislative proposal to the County delegation to the General Assembly. In pertinent part, that document contained, among others, the following questions and responses:

2. What is the problem addressed by your proposal? Please explain in detail?

A Montgomery County Task Force has proposed the establishment of a County Interagency Board to coordinate the use of school facilities for after-school and community activities. Without State authorization, Montgomery County possesses no authority to legislate in the field of Education.

3. How does your proposal correct the problem?

This proposal would authorize Montgomery County to establish an Interagency Board comprised of designated officials to implement the recommendation of the School Facilities Task Force.

4. State precisely the changes you propose to make in existing law, listing the article and section to be amended if possible.

⁶⁰ 1978 LMC., Ch. 19, Section 4.

Amend the Education Article by adding a new paragraph to subsection 7-108(f) to authorize Montgomery County to establish an Interagency Board and designate certain individuals as members of that Board.

* * *

14. Please add other information that you consider germane to the Delegation's consideration of your proposal.

The Montgomery County Council has introduced a local bill, 43-78, which proposes to implement the recommendations of the Community Education and Services Task Force and will become effective upon enactment of the State authorization proposal. This proposal is submitted on an emergency basis so that the Interagency Board may be established as soon as possible.⁶¹

H.B. 1349, which necessarily was introduced after Council Bill 43-78 had become law, was passed by both houses of the General Assembly without amendment, and was approved by the Governor as emergency legislation on May 1, 1979. It remains as enacted.

In light of this legislative history, it is clear that the General Assembly, by authorizing the County to enact a local law to "provide for an interagency coordinating board and for the appointment of its members," intended to give the County the broadest possible authority to provide for the appointment of ICB members. Although the State did not concern itself with decisions about how the members of the ICB would be appointed, given the appointment provisions of the County ICB law that the General Assembly knew had been enacted and was awaiting State authorization, the State ICB law must be construed to permit generally, the appointment of some *ex officio* members, the appointment of some members by the County Executive, and the appointment of others by officials or entities other than the Executive.⁶²

⁶¹ See two-paged September 5, 1978, legislative proposal questionnaire signed by Phillip J. Tierney, Esquire, Legislative Counsel, Montgomery County Council.

⁶² As a general rule, when the State, having preempted an area, subsequently enacts an enabling law authorizing a charter county government to act, by local law, within the preempted area, the State enabling law, in the absence of any indication to the contrary, should be read to reflect a legislative intention that the county law be consistent with all charter requirements. In this case, however, it was clear from the introduction of the State legislation that the appointment process for the Montgomery County ICB would not be subject to the limitations of the Charter Appointment Provision.

SUMMARY

The Charter gives the County Executive exclusive authority to make, subject to Council confirmation, all appointments to boards and commissions (other than commissions appointed to advise the County Council) unless otherwise prescribed by state law or the Charter. The State ICB enabling law expressly authorizes the County: (1) to provide, by local law, for an interagency coordinating board; (2) to provide for the appointment of the ICB members; and (3) to include among the members of the ICB the Superintendent of Schools, the President of Montgomery College, a member of the Montgomery County Planning Board, and such other members as may be provided by the local law. Because the Charter Appointment Provision expressly yields to State law, there is no inconsistency between that provision and the County ICB membership law authorized by State law.

Indeed, even if it did not expressly yield to State law, the Charter Appointment Provision still would not prevent the General Assembly from permitting the County to provide, by local law, for ICB appointments contrary to Charter Appointment Provision requirements. The State has preempted the field of education, including the authority to provide for the use of school facilities for nonschool purposes. Moreover, officials of the Board of Education, Montgomery College, and the Maryland-National Capital Park and Planning Commission are state officials, and, therefore, not subject to Charter inhibitions. A State law authorizing the County to provide for ICB memberships, including the *ex officio* designation of state officials, therefore addresses a subject of state concern and prevails over the Charter Appointment Provision to the extent of conflict. The County ICB appointment law, therefore, is valid to the extent it does not exceed the State enabling law.

The language, history, and context of the State ICB enabling law reflect a clear intention to authorize Montgomery County to provide for the appointment or designation of ICB members in any manner the County Government sees fit, including the mechanisms provided in § 44-3(b). The County ICB appointment law, therefore, is a valid exercise of the non-home rule local-law making authority granted by the State ICB law.

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