

**Office of the County Attorney
Division of General Counsel
Montgomery County, Maryland**

MEMORANDUM

May 8, 1998

To: Robert K. Kendal, Director
Office of Management & Budget

Via: Marc P. Hansen, Chief *Marc Hansen*
Division of General Counsel

From: Judson P. Garrett, Jr.,
Chief, Opinions and Advice *Judson P. Garrett*

Re: Budget of the Department of Liquor Control

The purpose of this memorandum is to confirm the advice this Office has given on the question of whether the budget of the Department of Liquor Control (the "DLC") is subject to the budget and appropriation authority vested in the County Council by the Charter of Montgomery County, and therefore must be included in the Annual Operating Budget proposed by the County Executive.¹

We have advised that the DLC is a creature of a state law that permits County Council oversight, but not budget and appropriation authority over the operation of the DLC's dispensary system to the extent that the system is funded by the Liquor Control Fund. Our advice is founded upon the following analysis of applicable law.

**I.
APPLICABLE LAW**

The law applicable to the question of whether the County Council has budget and appropriation authority over the DLC includes: the Liquor Control Boards and Dispensaries provisions of state law

¹ We understand that prior practice has been for the Executive to submit the Department's budget, including the operation of the dispensary system and related debt service, to the Council as part of the proposed Annual Capital and Operating Budgets and for the Council to exercise its usual charter budget and appropriation authority over those matters. We also are mindful of the rule that where a statute is susceptible of two interpretations, a long and unvarying construction by administrative officers has a persuasive influence. However, that principle of statutory construction is only applicable when there is an ambiguity. *Board of Education v. Montgomery County*, 237 Md. 191, 199 (1964). Where a statute is plain, no custom, however venerable, can nullify the act's clear meaning and purpose, and recent opinions of this Office and the Attorney General of Maryland have suggested that state law regarding the dispensary system clearly provides otherwise.

(the “DLC law”); ² (2) the Charter Home Rule Amendment of the Maryland Constitution ; the Charter County Express Powers Act;⁴ and the budget, appropriation and finance provisions of the Charter and Code of Montgomery County.⁵ Especially significant are the Adequate Working Capital provision of the DLC law and the Alcoholic Beverages Exception of the Express Powers Act. They provide, in pertinent part, as follows:

1. The Adequate Working Capital Provision.

All moneys derived from the sale of alcoholic beverages shall be deposited in a bank or banks located within Montgomery County in the name of Montgomery County, Maryland, and such money shall be disbursed by the Director of Finance in the same manner as other County funds. There shall be an adequate balance of working capital within the County's Liquor Control Fund as determined by the Director of the Department of Liquor Control and the Director of Finance and shall be subject to the approval of the County Executive. The amount of the working capital shall be adequate to provide for the continued operation of the dispensary system. The net profits derived from the sale of alcoholic beverages shall be applied in the first instance toward the payment of current interest and retirement charges on such notes, certificates of indebtedness and/or bonds as may be issued by the County Council for the purpose of raising funds for the establishment and operation of the dispensary system. Secondly, the net proceeds shall be applied to the maintenance of adequate working capital. Thirdly, the balance of the net proceeds shall be deposited as general funds of Montgomery County.

Md. Ann. Code, Art. 2B, §15-207 (e).

2. The Alcoholic Beverage Exception of the Express Powers Act.

The foregoing or other enumeration of powers in this article shall not be held to limit the power of the county council, in addition thereto, to pass all ordinances, resolutions or bylaws, not inconsistent with the provisions of this article or the laws of the State, as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the county.

² Md. Code, Art. 2B, §§ 15-201 (a), 15-203 (d) (2), 15-205 (a)(1) (i) and (k) (1), and 15-207 (e).

³ Md. Const., Art. XI-A.

⁴ Md. Code, Art. 25, §5.

⁵ Montgomery County Charter, §§214, 302, 303, 305 and 311; Montgomery County Code, §§20-3, 20-38, 20-39, 20-41, and 20-42.,

Provided, that the powers herein granted shall only be exercised to the extent that the same are not provided for by public general law; provided, however, that no power to legislate shall be given with reference to licensing, regulating, prohibiting or submitting to local option, the manufacture or sale of malt or spirituous liquors.

Md. Code, Art. 25A, §5 (S). (Emphasis supplied.)

II. ANALYSIS

A. Previous Advice of the County Attorney and the Attorney General.

In a December 16, 1996 opinion to the Council President concerning the privatization of County dispensaries, the County Attorney, in passing, noted the Adequate Working Capital Provision, and said:

An analysis of this provision in conjunction with §15-201 (a) which makes the DLC a “department” of county government raises the question of whether the DLC is subject to county budgetary control. As §15-207(e) gives the director and Executive sole power to determine the necessary working capital and requires the “net proceeds” to be distributed after debt service to maintain “adequate working capital,” the provision is incompatible with the county’s budget procedure.

See December 16, 1996 letter from County Attorney Thompson to Council President Praisner, p. 6, n. 6.

On March 19, 1997, the County Executive sent the Attorney General of Maryland a copy of the County Attorney’s Opinion and asked for the Attorney General’s opinion on both the privatization of County dispensaries question and the budget and appropriation authority issue. In pertinent part, the County Executive stated:

[The County Attorney] addressed the authority of the County Executive under Article 2B. In doing so, [he] determined that the roles of Executive and Council with respect to operations of the Department of Liquor Control are unique and different from their roles with respect to other County agencies, particularly with respect to authority and control of the actions of the department *vis a vis* budgetary control and fiscal authority.

March 19, 1997 letter from County Executive Duncan to Attorney General Curran.

On June 4, 1997, the Attorney General issued his opinion on the questions addressed by the County Attorney. On the budget and appropriation question he opined, “Under State law, the Montgomery County Executive has exclusive policy making authority over the operation of the DLC.” Opinion No. 97-013 (June 4, 1997) (unpublished), pp. 1 and 2. Moreover, after tracing the

history of liquor control in Montgomery County and addressing a question regarding the privatization of County dispensaries, the Attorney General said:

As discussed in Part I above, the powers of the director of the DLC “are subject to the approval of the County Executive.” §15-205(k)(l). This provision, like the rest of Article 2B, reflects State regulation in an area that is preempted by the State and that is not subject to control by county charter or ordinance. *See Montgomery County v. Board of Supervisors of Elections*, 53 Md. App. 23. Therefore, whatever might be the ordinary allocation of decision making authority between the County Council and the County Executive under the Montgomery County Charter, in this instance *the exclusive authority to approve the exercise of the DLC’s powers rests with the County Executive*.

Id., at p. 5. (Emphasis supplied.)

On September 18, 1997, the Council President asked the Attorney General to elaborate on certain points in his opinion, including whether the County Council has budget and appropriation authority or oversight authority over the DLC. In reply, the Attorney General stated:

Before addressing your specific questions, I emphasize again a preliminary point noted in the opinion: Montgomery County may not exercise its home rule authority to regulate alcoholic beverages. That prerogative is exclusively reserved for the General Assembly. *See Montgomery County v. Board of Supervisors of Election*, 53 Md. App. 23, 451 A.2d 1279 (1982). Therefore, one must look to State law to ascertain the status of the DLC, the scope of its authority, and its relationship to the policy-making arms of County government.

The General Assembly’s basic decision was to make the DLC a “department of the County government.” Article 2B, §15-20(a). *The implication is that the DLC is to be subject to the same requirements and procedures as are applicable under County law to any other County department, except to the extent that ordinary County requirements or procedures would be inconsistent with the General Assembly’s own decisions about the DLC.* In other words, if a provision in Article 2B addresses an aspect of the DLC’s operation, that provision must be given effect even if it places the DLC in a different position than other County departments. If, conversely, Article 2B does not itself address an aspect of the DLC’s operation, County law would apply to the DLC as it would to any other “department of the County government.”

Turning to the specific questions in your letter, you ask if the County Council has budget authority or fiscal oversight over the DLC. As County Attorney Charles W. Thompson, Jr., observed in a recent letter, §15-207 (e) “lays out the fiscal framework regarding the operation of the DLC.” Letter to Jack Schwartz, Chief Counsel for Opinions and Advice (October 15, 1997) (copy attached). Under that section, the Director of the DLC and the Director of Finance (with the approval of the County Executive) are authorized to determine the portion of the DLC’s “net profits” that are needed for working capital, after payment of debt service.

This statutory scheme is compatible with County Council oversight, but not with County Council control over the allocation of the DLC's "net profit" to working capital.

November 18, 1997, letter from Attorney Curran to Council President Praisner, pp. 1 and 2. (Emphasis supplied.)

Although the Attorney General did not expressly state whether the County Council has budget and appropriation authority over the DLC, the inescapable conclusion to be drawn from his follow-up advice is that, unlike the Council's oversight authority, the Counsel's budget and appropriation authority is inconsistent with the Directors' "Adequate Working Capital" authority, *i.e.*, the authority state law gives the Directors to determine, with the approval of the County Executive, the portion of the DLC's "net profits" that are needed to yield a balance of adequate to provide for the continued operation of the dispensary system. Therefore, the Directors' "Adequate Working Capital" authority preempts the Council's budget authority, the latter being limited to those instances, if any, in which the DLC seeks to expend funds from a source other than the Liquor Control Fund or for a purpose other than the payment of appropriate debt or the "operation of the dispensary system." This conclusion is supported not only by the language of the Adequate Working Capital Provision, but also by the rules of statutory construction and the history and context of that provision.

B. Prevalence of State Law Over County Budget and Appropriation Authority.

As the legislative body of a sovereign state, the Maryland General Assembly inherently possesses plenary legislative power, which is restricted only by the state and federal constitutions. *Kenneweg v. Allegany County Commissioners*, 102 Md. 119, 123 (1905). The counties, on the other hand, as political subdivisions of the State have only such authority as the State has delegated through the Constitution of Maryland or the Acts of the General Assembly. *Howard County Commissioners v. Matthews*, 146 Md. 553 (1924).

1. The Charter Home Rule Amendment.

"Charter home rule" is one of the means by which the State grants legislative authority to the counties.⁶ Article XI-A of the Maryland Constitution (the "Charter Home Rule Amendment") provides two distinct categories of home rule powers: the power to form and establish government (the "*charter* power") and the power to enact local law (the "legislative" or "law-making power"). *Richmount Partnership v. Board of Supervisors of Elections*, 283 Md. 48, 58-59 (1978).

Section 1 of Article XI-A provides for the adoption of a County Charter, the function of which is to establish the agencies of local government and provide for the allocation of power among them. *Richmount*, 283 Md. at 58. This charter power is self-executing. It springs directly from the

⁶ "Code Home Rule" is another means. See Md. Const., Art. XI-F.

Constitution, does not require any implementing state legislation, and lies beyond the competence of the General Assembly or any other branch of state government to alter or erase. *Id.* at 59. However, if there is a conflict between a charter provision and a public general law the charter provision is inoperative. *Wilson v. Bd. of Supervisors of Elections*, 272 Md. 296, 302 (1974).

The County's budget and appropriation power, *i.e.*, "the power of fixing County expenditures and raising money to defray them . . . [was] not a new power conferred upon the counties by Article XI-A, but on the contrary was a power previously exercised by some local agency in every county." *Schnieder v. Lansdale*, 191 Md. 317, 326 (1948). It is, in effect, an implied power. This implied budget and appropriation power certainly extends to agencies created by the Charter or by county law, and the Charter undoubtedly is the vehicle for allocating the budget power among the several branches and agencies of a charter county government. Furthermore, except as restrained by state law, this budget power applies to the funds that other entities receive from the County. Nevertheless, the Charter may not provide for the exercise of the budget and appropriation power contrary to applicable state law. For example, the Board of Education is not subject to Charter budgetary requirements because the County's authority over the Board's budget is fixed by state law. *Board of Education of Montgomery County v. Montgomery County*, 237 Md. 191, 197 (1964). Thus, where the Charter contemplated that all annual budgets, including the budget of the Board of Education, be submitted "to the county manager" and a public general law directed that the school budget be submitted to the County Council, the public general law prevailed. *Montgomery County v. Yost*, 223 Md. 150, 155-56 (1960).

Section 2 of Article XI-A addresses the *legislative* power of charter counties. It is not in and of itself a grant of authority to legislate on any particular subject. Rather, it directs the General Assembly to provide, by public general law, a grant of express powers for counties that have adopted a charter form of government. Thus, unlike its charter power, the County's law-making power requires implementing state legislation (the Express Powers Act) and gives the General Assembly virtually unbridled discretion to determine, initially and from time to time by amendment, the scope of that legislative power.⁷ Section 2 also prohibits a charter county from "enlarging or extending" those express legislative powers by charter provision. Thus, a charter may not validly grant a County law-making power over a subject not among the powers granted by the Express Powers Act.

Section 3 of Article XI-A gives charter counties the full power to enact local laws upon all matters covered by the Express Powers Act. This grant of local legislative power is complimented by Section 4, which prohibits the General Assembly from enacting a "public *local* law" on any subject covered by the powers granted by the Express Powers Act. However, Section 3 also provides that

⁷ "[T]he Legislature has 'full power' to designate the subjects in respect to which the power of legislation is delegated to local authorities under Article 11A and it has reserved unto itself the power and authority to enlarge, repeal or change the grant of powers, theretofore made, provided it does so in a proper manner." *Baltimore Transit Co. v. Metropolitan Transit Authority*, 232 Md. 509, 591 (1963).

a public general law controls to the extent of conflict with a local law enacted by a charter county.⁸ For these purposes, conflict occurs when a local law or, for that matter, a charter provision assumes directly or indirectly either to prohibit that which a general law permits or to permit that which a general law prohibits. *Talbot County v. Skipper*, 329 Md. 481, 487 n.4; *Rossberg v. State*, 111 Md. 394, 416(1909).

Thus, notwithstanding the powers granted by the Express Powers Act, “a county may not enter a field which the State has occupied and preempted” *Montgomery County Board of Realtors, Inc. v. Montgomery County*, 287 Md. 101, 110 (1980).⁹ *A fortiori*, a charter county may not exercise home rule powers on a subject which the Express Powers Act has withheld from the grant of powers to charter counties. See *Steimel v. Board of Election Supervisors of Prince George’s County*, 278 Md. 1, 8-11 (1976) (The General Assembly did not include the regulation of Sunday closings within the powers granted to charter counties in the Express Powers Act, as evidenced by the consistent and unchallenged enactment, repeal and reenactment of Sunday closing legislation by the General Assembly on a local-law basis. Therefore, Chapter 861, *Laws of Maryland (1975)*, although a local law and subject to Referendum, did not violate the Charter Home Rule Amendment’s prohibition of state enacted local laws within the powers granted to charter counties by the Express Powers Act.)

Consequently, although Montgomery County enjoys the charter and law-making powers of a charter home-rule county, its authority is not unbridled. The Charter and the laws of the County will not prevail to the extent that they: (i) conflict with a public general law; (ii) deal with a matter which is a part of an entire subject matter on which the Legislature has expressly reserved to itself the right

⁸ Section 4 defines a public general law as a law that applies to two or more geographical subdivisions. “Apart from this, Article XI-A attempts no definition of the distinction between a local law and a general law, but leaves that question to be determined by the application of settled legal principles to the facts of particular cases in which the distinction may be involved.” *Dash v. Jackson*, 170 Md. 251, 260 (1936). In determining whether an enactment is a public general law or a local law, a law that deals with the general public welfare, a subject which is of significant interest not just to any one county, but rather to more than one geographical subdivision, or even to the entire state, is a public general law, whereas a law that, in subject matter and substance, is confined in its operation to prescribed territorial limits and is equally applicable to all persons within such limits is a local law. *Cole v. Secretary of State*, 249 Md. 425, 435 (1968).

⁹ There are three well-settled grounds upon which a charter county’s otherwise valid local legislation may not be given effect because of state legislation concerning the same subject matter. These are: preemption by conflict, express preemption, and implied preemption. *Talbot County v. Skipper*, 329 Md. 481, 487-488, 620 A.2d 880 (1993). The first, preemption by conflict, occurs when a charter county’s enactments conflict with a state general law, *i.e.*, when they assume directly or indirectly either to permit that which a general law prohibits or to prohibit that which a general law permits. *Id.*, 329 Md. at 487 n.4, 620 A.2d 880; *Rossberg v. State*, 111 Md. 394, 416, 74 A. 581 (1909). The second, express preemption, exists when the Legislature has expressly reserved to itself the right to legislate on a particular subject matter. *Mayor and City Council of Baltimore v. Sitnick & Firey*, 254 Md. 303, 311, 255 A.2d 376 (1969). Implied preemption arises when the Legislature has acted with such force that an intent by the State to occupy the entire field must be implied. *County Council for Montgomery County v. Montgomery Ass’n*, 274 Md. 52, 59, 333 A.2d 596 (1975).

to legislate; (iii) deal with an area in which the Legislature has acted with such force that an intent by the State to occupy the entire field must be implied; or (iv) unless otherwise authorized by state law, deal with a matter not within the charter power and not among the powers granted by the Express Powers Act. Indeed, as to powers not granted by the Express Powers Act, the authority of a charter county is no different from that of a non-home rule county. The County is completely dependent upon and subject to the acts of the General Assembly, whether they constitute general or local laws. *Id.* Accordingly, to the extent that the County's DLC budget and appropriation authority is not, for the purposes of Article XI-A, an exercise of either the charter power or the legislative power, it is subject to and will yield to an act of the General Assembly, whether that act is a public general law or a local law. *Id.*

If the DLC were in fact a creature of either the Charter or a County law, there would be little doubt about the County's ability to subject the funds of the DLC, including its working capital, to the implied budget authority of the County Council, absent a conflicting public general law. Indeed, although the DLC is a creature of state law, the fact that state law makes it "a department of the county government" might, in and of itself, subject the DLC to the budget and appropriation authority of the County Council if state law were otherwise silent concerning DLC's budget process. But state law is not otherwise silent. Article 2B of the Maryland Code establishes a comprehensive scheme for the regulation, control and distribution of alcoholic beverages within the State, including, among other things, the use and distribution of the revenues of county dispensaries such as the DLC dispensaries. *Coalition For Open Doors v. Annapolis Lodge No. 622*, 333 Md. 359, 371 (1994).¹⁰ In doing so, the State, at the very least, has preempted the field of the regulation and control of alcoholic beverages. *Montgomery County v. Board of Supervisors of Elections for Montgomery County*, 53 Md. App. 123, 127 (1982), *cert. denied sub. nom. Ficker v. Montgomery County*, 294 Md. 352 (1982),

Thus, in *Board of Supervisors of Elections*, the Court of Special Appeals held that it would be a waste of time to place before the voters of Montgomery County a proposed charter amendment that would have enjoined the County from selling or dispensing alcoholic beverages. In reaching that conclusion, the Chief Judge Gilbert, for the Court, said:

We think it clear that the act makes manifest that the State, and the State alone, shall regulate and control, within Maryland, the sale, manufacture, distribution, storage, or transportation of alcoholic beverages. In the exercise of its powers, the Legislature, by Md. Ann. Code art. 2B, §§ 161 (a) and 165 (e) has conferred upon the County the right to "establish and maintain stores to be known as 'county liquor dispensaries,' for the sale of any sparkling or fortified

¹⁰ "As a general matter the State policy evidenced by Art. 2B is to be administered and enforced by two types of agencies: 'local boards of license commissioners and liquor control boards' Art. 2B, §1(a)(2). For present purposes, the former are primarily concerned with the issuance of liquor licenses. * * * The latter are designed chiefly to purchase and sell alcoholic beverages . . . and to operate county dispensaries Separate subtitles of Art. 2B establish the principal powers and duties of each type of agency." *Jamison v. Browning*, 61 Md. App. 405, 408-09 (1985).

wine and any other alcoholic beverages The moneys derived from the sale of alcoholic beverages “must be deposited in a bank or banks located within Montgomery County and may be disbursed only in accordance with the statute.”

53 Md. App. at 126. (Footnote omitted.) Therefore, the County lacked the authority to enter this field, and “if county government may not enter into a field preempted or occupied by the State, the voters of a county could not confer upon themselves, by charter amendment, the right to do what the county government may not do.” *Id.* at 127.

2. The Express Powers Act and Alcoholic Beverages.

In addition to preempting the field, the General Assembly has specifically denied charter counties the power to legislate with reference to “licensing, regulating, prohibiting or submitting to local option, the manufacture or sale of malt or spirituous liquors.” Md. Code, Art. 25A, §5(S). This Alcoholic Beverages exception to the Express Powers Act withholds home rule authority with regard to the operation of liquor dispensaries and the distribution of their revenues. *Cf. Berlin v. Shockely*, 174 Md. 442 (1938) (The phrase “licensing, regulating, prohibiting or submitting to local option, the manufacture or sale of malt or spirituous liquors,” as used in the Referendum Article of the Maryland Constitution, withholds from the Referendum a law relating to a county liquor dispensary and the distribution of its revenues). Consequently, as with the Board of Education, so, too, with the DLC, it is “for the Legislature to determine in what respects to give final decision as to financial needs and when [if ever] the general appropriating function of the Council [is] to govern.” *Board of Education*, 237 Md. at 201.

Thus, Montgomery County has no charter home rule authority with respect to the regulation of alcoholic beverages in general or the Directors’ Adequate Working Capital authority in particular. Like its authority with respect to Sunday sales and the Board of Education, Montgomery County’s authority over the DLC arises solely out of other state law, in this instance, the DLC law. Thus, we must look to the DLC law to determine what, if any, budget and appropriation authority the General Assembly has given Montgomery County.

C. Construction of the DLC Law.

1. The Language of the Statute.

The cardinal rule of statutory construction is to ascertain and carry out the intent of the Legislature, *Tucker v. Fireman’s Fund Ins. Co.*, 308 Md. 69, 73 (1986). A statute must be construed “with reference to the purpose, aim or policy of the legislature reflected in that statute.” *Revis v. Automobile Ins. Fund*, 322 Md. 683, 686 (1991). The beginning point for divining legislative intent is the language of the law itself. *Morris v. Prince George’s County*, 319 Md. 597, 603 (1990). “[W]hat the Legislature has written in an effort to achieve a goal is a natural ingredient of analysis to determine that goal.” *Kaczorowski v. Baltimore*, 309 Md. 505, 513 (1987). Indeed, “[t]he language of the statute itself is the primary source of this intent; and the words used are to be given

‘their ordinary and popularly understood meaning, absent a manifest contrary legislative intention.’ *Williams v. State*, 329 Md. 1, 15 (1992).

The ordinary and popularly understood meaning of the term “working capital” is “[t]he assets of a business enterprise that can be applied to its operation.” The AMERICAN HERITAGE DICTIONARY (Second College Edition) 1391. *See also* BLACK’S LAW DICTIONARY (6th Edition) 1605 (Working capital means “[t]he amount of cash, materials, and supplies ordinarily required by a business in its day-to-day operation to meet current expenses and such contingencies as may typically develop”); *Alaska S.S. Co. v. Federal Maritime Commission*, 344 F.2d 810, 823 (9th Cir. 1965) (Working capital is “generally understood to mean the ‘sum which an entity needs to supply from its own funds to be able to meet its current obligations and to operate efficiently’ ”); *Application of Diamond State Tel. Co.*, 149 A.2d 324, 327 (Del. Super. 1959) (“ ‘Working capital’ is an allowance or sum which company needs to supply from its own funds for purpose of enabling it to meet its current obligations as they arise and to operate economically and efficiently”).¹¹

Thus, given its ordinary and popularly understood meaning, the term “working capital,” as used in 15-207 (e), means that there shall be within the Liquor Control Fund, as determined by the Director of the Department of Liquor Control and the Director of Finance, *subject to the approval of the County Executive*, a balance of DLC net revenues adequate to enable the DLC to meet its current obligations, operate efficiently, and provide for the continued operation of the dispensary system.

2. *The Context of the Statute.*

In the search for legislative intent, “ascertainment of the meaning apparent on the face of a single statute need not end the inquiry.” *Kaczorowski*, 309 Md. at 514. The Court of Appeals has told us to “look to the context surrounding the enactment of a statute to determine the intention of the legislature.” *Comptroller v. Jameson*, 332 Md. 723, 733 (1993). A court must review a statute’s language in relation to all its provisions and harmonize individual sections as parts of the whole. *Barghout v. Mayor & City Council*, 325 Md. 311, 317 (1992).

When we pursue the context of statutory language, we are not limited to the words of the statute as they are printed in the Annotated Code. We may and often must consider other “external manifestations” or “persuasive evidence,” including a bill’s title and function paragraphs, amendments that occurred as it passed through the legislature, its 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 within which we read the particular language before us in a given case.

Kaczorowski, 309 Md. at 514-515. Thus, we look to not only to the language of the Adequate

¹¹ Citing Barnes, *ECONOMICS OF PUBLIC UTILITY REGULATION* (1947), p. 495.

Working Capital Provision, but also to its history and its relationship to other provisions, *e.g.*, the DLC statute in general, similar provisions for the dispensaries now or previously operated by other County Liquor Control Boards, and other uses of the term in the Maryland Code.

a. History of the Adequate Working Capital Provision and the DLC Statute.

As noted in the Attorney General's Opinion, the Adequate Working Capital Provision originated in the 1933 Extraordinary Session of the Maryland General Assembly. Following the repeal of Prohibition at the national level,¹² the General Assembly established and authorized the operation of County dispensaries for alcoholic beverages in several counties of the state, including Montgomery County, and provided for the administration of the dispensaries by liquor control boards upon whom the Legislature conferred extensive powers and duties. *Fowler v. Harris*, 174 Md. 398, 399 (1938). That original legislation created Article 2B of the Code of Public General Laws of Maryland (1933 Sp. Sess.), ch. 2. In pertinent part, §48A of new Article 2B provided:

The Board of County Commissioners of Montgomery County is hereby authorized and empowered to borrow upon the credit and faith of said County such sum or sums as it may deem necessary to provide the Liquor Control Board with an *adequate working capital for the establishment and operation of and to build or buy adequate quarters for such dispensary*, and for that purpose the Board of County Commissioners may, from time to time, issue such notes, certificates of indebtedness and/or bonds and in such denomination as it may, in its sole discretion, deem necessary.

* * *

The net profit derived from the sale of alcoholic beverages by the Liquor Control Board shall be applied, in the first place, towards the payment of current interest and retirement charges on such notes, certificates of indebtedness and/or bonds as may be issued by the Board of County Commissioners for the purpose of raising funds for the establishment and operation of the Dispensary System authorized in said County, and after the payment of such charges, *not more than fifty per centum (50%) of the profits shall be used by the Board of County Commissioners in the creation of a reserve fund in such amounts as the Board of County Commissioners may deem necessary to provide adequate working capital for the continued operation of said Dispensary System*, and all of the remainder of said profits shall be used by the Board of County Commissioners in the payment of interest and retirement charges on the Montgomery County Public Schools and Road or General Construction Bonds.

(Emphasis supplied.)

¹² The 21st Amendment repealed the 18th Amendment and its prohibition of "the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes"

Thus, the original legislation created a Liquor Control Board, provided for it to be funded out of the proceeds of the sale of alcoholic beverages, and directed that the net proceeds derived from the sale of alcoholic beverages by the LCB be used for three prioritized purposes: First, to service and retire Dispensary System related debt; next, to establish a reserve fund to provide adequate working capital for the continued operation of the Dispensary System; and thereafter, to service certain kinds of County bonds.

In 1941, as the Attorney General also pointed out, the General Assembly rewrote the provisions of the Montgomery County dispensary system law. “[T]he Liquor Control Board was granted ‘full power and authority . . . to establish one or more dispensaries, stores or warehouses for the sale, distribution or storage of alcoholic beverages’” *Opinion 97-013*, p.2, citing *Laws of Maryland* (1941), ch. 927. The 1941 legislation also renumbered the Adequate Working Capital Provision from §48A to §65A without any change in substance.

In 1943, the General assembly repealed §§ 54, 65 and 65A of Article 2B and enacted in their place new provisions relating, *inter alia*, to the duties and privileges of the LCB and “the disposition of certain proceeds.” *Laws of Maryland* (1943), ch. 689. Significantly, new §65A transferred from the County Commissioners of Montgomery County to the Montgomery County LCB the authority, within certain caps and after servicing DLC related debt, the authority to retain from the LCB’s net profits a reserve and operating fund in such amounts as the DLC, in its discretion, determined were necessary for a reserve and operating fund to provide adequate working capital for the continued operation of the Dispensary System.¹³ Thus, the County Commissioners’ authority over the “working capital” of the Board of Liquor Control was significantly limited. Within the caps, the LCB’s discretion was not subject to the authority of the Commissioners. The LCB had the express authority “to retain such amounts *as in their discretion* [were] necessary for the . . . continued operation of the Dispensary System.” (Emphasis supplied.) Only if the LCB desired to retain funds above the limits of the caps was the approval of the County Commissioners required.¹⁴

In 1947, one year before Montgomery County adopted charter home rule, “the General Assembly enacted a comprehensive revision of Article 2B.” *Opinion 97-013*, p. 2. Among other things, the 1947 legislation renumbered the Adequate Working Capital Provision new §148 and expanded the Commissioners’ authority to use the ultimate net balance of the profits. Instead of being limited to servicing certain kinds of debt, that balance now could be used “for any purpose which [the County

¹³“The net profits derived from the sale of alcoholic beverages by the Liquor Control Board shall be applied, in the first instance towards [applicable debt service] . . . and . . . , secondly, *the Liquor Control Board shall retain such amounts as in their discretion are necessary for the creation of a reserve and operating fund to provide adequate working capital for the continued operation of said Dispensary System*, which sum to be retained by the Liquor Control Board in any one (1) year however, shall not exceed ten (10) per cent of the average of the gross sales of beer for such year and the immediate preceding year, and forty (40) per cent of the average of the gross sales of wines and liquors for such year and the immediate preceding year” (Emphasis supplied.)

¹⁴ “[T]he Liquor Control Board may, however, retain such additional sums for working capital in any one (1) year as may be allowed by the Board of County Commissioners of Montgomery County. *Id.*

Commissioners] may deem necessary.” In effect, the ultimate net profits became general funds of the County. *Laws of Maryland* (1947), ch. 501.¹⁵

In 1951, the General Assembly passed two relevant measures. First, Chapter 566 made it abundantly clear that the regulation and control of alcoholic beverages was exclusively the domain of the state government. It declared the policy of Maryland to be:

“It is necessary to regulate and control the manufacture, sale, distribution, transportation and storage of alcoholic beverages within this State and transportation and distribution of alcoholic beverages into and out of the State to obtain respect and obedience to law and to foster and promote temperance. *It is hereby declared to be the legislative intent that such policy will be carried out in the best public interest by empowering the Comptroller of the Treasury, the State Appeal Board, the various local boards of license commissioners and liquor control boards, all enforcement officers and the judges and clerks of the various courts of this State with sufficient authority to administer and enforce the provisions of this article.*

Laws of Maryland (1951), ch. 566. According to the Court of Special Appeals, this enactment manifested “that the State, and the State alone, shall regulate and control, within Maryland, the sale, manufacture, distribution, storage, or transportation of alcoholic beverages.” *Montgomery County v. Board of Supervisors of Elections*, 53 Md. App. 123, 125-26 (1982). The State “has preempted the field . . . and it is the State, not the county government or voters of the county, that may remove that authority.” *Id.*

The 1951 Regular Session also passed legislation that abolished the Montgomery County Liquor Control Board and created, in its place, the Montgomery County Department of Liquor Control headed by a Director who is the chief administrative officer of the Department. *Laws of Maryland* (1951), ch. 633, codified at Md. Code, Art. 2B, §139 (a) and (b). The Department was created as “a department of the County government under the general supervision of the County Manager,” and given “the powers of a Liquor Control Board,” §139 (a). *Inter alia*, Chapter 633: repealed a provision that had given the County the authority to levy against the taxable property to pay the interest on or retire bonds issued for Liquor Control Board purposes, §140; gave the DLC Director, “with the approval of the County Council the authority to determine the locations of the county liquor dispensaries,” § 141 (d); placed employees of the Department under the regulations of the regulations of the County Personnel Board, §143 (a); gave the Director the authority to acquire, with the approval of the County Council, real or personal property “as may be deemed necessary by the

¹⁵ This legislation also gave the liquor control boards in Harford, Kent, Queen Anne’s, Somerset, Wicomico and Worcester counties authority to create and maintain a reserve fund to provide adequate working capital and to meet losses, and authorized each, after servicing its applicable debt, to retain net profits for such purposes, up to varying caps, and, thereafter, to pay the excess to the County Commissioners and, in some cases, to certain municipalities. *See*, subsections (b) Harford County, (c) Kent County, (e) Queen Anne’s County, (f) Somerset County, (g) Wicomico County, and (h) Worcester County. Garrett County subsequently was added to the list, and Garrett, Somerset, Wicomico and Worcester counties continue to have such authority today.

Director to operate dispensaries, stores or warehouses,” §143 (k) (1); and rewrote §145 (d) as follows:

All monies derived from the sale of alcoholic beverages shall be deposited in a bank or banks located within Montgomery County in the name of Montgomery County, Maryland, and *such money shall be disbursed by the Director of Finance in the same manner as other County funds. There is hereby established a revolving fund which shall be used only for purchases of merchandise for re-sale in the County Dispensaries. The amount of said revolving fund shall be in such sum as in the discretion of the Director of the Department of Liquor Control, approved by the County Manager and the Director of Finance, is necessary to provide adequate working capital for the continued operation of the Dispensary System.* The said revolving fund shall be replenished from general funds by the Director of Finance as vouchers are submitted by the Director of the Department of Liquor Control certifying as to the amount of purchases contracted for. The net profits derived from the sale of alcoholic beverages shall be applied in the first instance toward the payment of current interest and retirement charges on such notes, certificates of indebtedness and/or bonds as may be issued by the County Council for the purpose of raising funds for the establishment and operations of the Dispensary System. Secondly, the net proceeds shall be applied to the creation of the revolving fund provided for herein. Thirdly, the balance of said net proceeds shall be deposited as general funds of Montgomery County.

Id. (Emphasis supplied.)

Thus, the 1951 legislation limited the use of the revolving fund to “purchases of merchandise for re-sale” in the County Dispensaries. This limitation seems to imply that other Board expenditures, *e.g.*, personnel and supplies, were not to be funded by the revolving Fund and therefore had to be appropriated. Moreover, when this limitation on the use of the revolving fund is followed immediately by the requirement that the amount of the revolving fund be such sum as, in the discretion of the DLC Director with the approval of the County Manager and the Director of Finance, is necessary to provide adequate working capital for the continued operation of the Dispensary System, it appears that the working capital to which the statute applied was limited to the capital needed for purchases of merchandise for re-sale and did not include other funding needs of the Department.¹⁶

In 1978, following the charter amendment dividing the legislative and executive powers of Montgomery between the County Council and a County Executive respectively, the General Assembly passed and the Governor approved legislation which: (1) provided, *inter alia*, for the Director to serve at the pleasure of the County Executive; (2) subjected the Director’s authority to the approval of the County Executive; (3) repealed the provision restricting the use of the revolving

¹⁶ The 1951 legislation also was the source of the continuing requirement that County alcoholic beverage sales revenues be disbursed “in the same manner as other County funds.”

fund to purchases of merchandise for re-sale; and (4) adopted the language of the current Directors' Adequate Working Capital authority. *Laws of Maryland* (1978), ch. 956. In pertinent part, this legislation, which had been introduced as House Bill 1877 (M. C. 270-78) at the request of the Montgomery County Administration, provided:

§165.

(e) All moneys derived from the sale of alcoholic beverages shall be deposited in a bank or banks located within Montgomery County in the name of Montgomery County, Maryland, and such money shall be disbursed by the director of finance in the same manner as other county funds. There [is hereby established a revolving fund which shall be used only for purchases of merchandise for resale in the county dispensaries. The amount of said revolving fund shall be in such sum as in the discretion of the director of the department of liquor control, approved by the director of finance, is necessary for the creation of a reserve and operating fund to provide adequate working capital for the continued operation of the dispensary system. The said revolving fund shall be replenished from general funds by the director of finance as vouchers are submitted by the director of the department of liquor control certifying as to the amount of purchase contracted for.] SHALL BE AN ADEQUATE BALANCE OF WORKING CAPITAL WITHIN THE COUNTY'S LIQUOR CONTROL FUND AS DETERMINED BY THE DIRECTOR OF THE DEPARTMENT OF LIQUOR CONTROL AND THE DIRECTOR OF FINANCE AND SHALL BE SUBJECT TO THE APPROVAL OF THE COUNTY EXECUTIVE. THE AMOUNT OF THE WORKING CAPITAL SHALL BE ADEQUATE TO PROVIDE FOR THE CONTINUED OPERATION OF THE DISPENSARY SYSTEM. The net proceeds derived from the sale of alcoholic beverages shall be applied in the first instance toward the payment of current interest and retirement charges on such notes, certificates of indebtedness and/or bonds as may be issued by the County Council for the purpose of raising funds for the establishment and operation of the dispensary system. Secondly, the net proceeds shall be applied to the [creation of the revolving fund provided for herein] MAINTENANCE OF ADEQUATE WORKING CAPITAL. Thirdly, the balance of [said] THE net proceeds shall be deposited as general funds of Montgomery County.^[17]

Thus, in 1978 the General Assembly abolished the requirement for a revolving fund that arguably could be used only for purchases of merchandise for resale in the County dispensaries, and in its place mandated that there be an adequate balance of working capital within the County's liquor control fund as determined by the Director of the Department of Liquor Control and the Director of Finance, subject to the approval of the County Executive. The amount of the working capital must be adequate to provide for the continued operation of the dispensary system. As the Attorney

¹⁷ Brackets indicate language stricken from the then existing law; CAPITALS indicate language added to the then existing law.

General pointed out, this legislation, although recodified,¹⁸ has remained unchanged to this day. *Op. Att'y Gen.*, Op. No. 97-013, p.3.

Consequently, on its face, in the light of its history and in the context of the DLC law in general, the Adequate Working Capital Provision vests in the Directors, after servicing DLC debt and subject only to the approval of the County Executive, the authority to retain from net DLC revenues such amount as, in the Directors' judgment, is necessary to fund the entire operation of the DLC. The exercise of that judgment constitutes all that is necessary for budgeting for the DLC and leaves nothing for the County Council to budget. The Director of Finance is authorized by state law to disburse those monies from the Fund, in accordance with County disbursement procedures, upon the state law authority of the Directors and the County Executive, and therefore state law precludes the need for any appropriation.

b. Other County Liquor Dispensary Laws.

Article 2B currently provides for County liquor dispensaries in Montgomery and four other counties. "The number and location of the County liquor dispensaries vary according to the particular county, as does the disposition of the profits arising from the sale of alcoholic beverages." 1 M.L.E. §8. However, there is a common approach to funding the operations of the dispensaries. Each is financed from the net profits of its revenues and, after servicing related debt, each controls its working capital and remits the balance to the County. *See* Article 2B, §§ 15-207 (b-1),¹⁹ 15-

¹⁸Section 15, ch. 5, Acts 1989, approved Mar. 9, 1989, and effective from date of passage, provides that "the publishers of the Annotated Code of Maryland, subject to the approval of the Director of the Department of Legislative Reference [now Executive Director of the Department of Legislative Services], shall propose and implement a plan for the renumbering of the sections and internal section designations of Article 2B-Alcoholic Beverages of the Annotated Code prior to the republication of the replacement volume containing that article. The proposal shall correct numerical and nonnumerical cross-references and other changes occasioned by the renumbering." Pursuant to directions from the Department of Legislative Reference [now Department of Legislative Services], the sections and internal section designations of Article 2B have been renumbered. Additionally, internal references have been updated to reflect the current location of the provisions of Article 2B." Editor's note to Article 2B.

¹⁹ (b-1) (Garrett County) After applying net profits from the operation of the dispensaries to the payment of debt, "the Board shall be authorized to create and maintain a reserve fund to provide adequate working capital and to meet any losses that may be sustained by the Board in the operation of the dispensaries, all net profits in excess of the above shall belong to and be paid over to the County Commissioners"

207(f),²⁰ 15-207(g),²¹ and 15-20.²²

Thus, other county liquor dispensary laws are entirely consistent with the view that the operating expenses of county dispensaries are the domain of the state created, local County Liquor Control Board and that the LCBs and Montgomery County's DLC are to be funded out of the net revenues of the dispensary system in the discretion of the respective LCBs, except as otherwise limited or provided by state law.

c. Other Maryland "Working Capital" Laws.

The Maryland General Assembly has used the term "working capital" on numerous occasions. *See, e.g.*, Natural Resources Article, §5-301 (the Potomac River Basin Compact and Susquehanna River Basin Compact "may draw upon its working capital to finance its current expense budget pending remittance by the signatory parties"); Education Art., §18-1306 (g) (the Md. Higher Ed. Supplemental Loan Authority may issue bonds for any of its corporate purposes and borrow funds as working capital for its operations); Financial Institutions Art., §13-708 (the Md. Stadium Authority, subject to the approval of the Board of Public Works, may borrow money from any source for any corporate purpose, including working capital for its operations); Financial Institutions Art., §13-1008 (16) (i) (the Canal Place Preservation and Development Authority may borrow money from any source for any corporate purpose, including working capital for its operations, reserve funds, or interest); Transportation Art., §10-204 28 ("The purposes of the Washington Metropolitan Area Transit Authority Compact title shall include, without limitation, all . . . expenses connected with administration, the planning, design, acquisition, construction, completion, improvement or reconstruction of any facility or any part thereof; and reimbursement of advances by the board or by others for such purposes and for working capital"); Natural Resources Art., §3-904 (Northeast Maryland Waste Disposal Authority - cost includes administrative expenses, and other expenses as necessary or incident to the financing herein authorized, and to the acquisition, operation, maintenance, improvement, construction of a project and the placing of the same in

²⁰(f) (Somerset County) After applying net profits to the payment of debt, "the Board may maintain a reserve fund not to exceed \$48,000 for the following purposes: (1) To provide adequate working capital; and (ii) To meet any losses sustained by the Board in the operation of the dispensaries."

²¹ (g) (Wicomico County) After applying net profits to the payment of debt, "the Board is authorized to create and maintain a reserve fund not to exceed \$300,000, including the total inventory of stock, to provide adequate working capital and to meet any losses that may be sustained by the Board in the operation of the dispensaries. The fair market value of office furniture, fixtures, and real property owned by the Board may not be included in the reserve funds as computed for the purposes of this subsection."

²² (h) (Worcester County) After applying net profits to the payment of debt, "the Board is authorized to create and maintain a reserve fund not to exceed \$300,000 on June 1, 1995. The reserve fund is maintained to provide adequate working capital and to meet any losses that may be sustained by the Board in the operation of those dispensaries."

operation by the Authority, including reasonable provision for working capital). These provisions demonstrate that when the undefined term “working capital” is used in the Maryland Code it means the amount which an entity needs to supply from its own funds to meet its current obligations and to operate efficiently.

Furthermore, even when the General Assembly has defined the term “working capital,” it typically has made it clear that the term has its ordinary meaning. *See* 6-501(e) (the Defense Adjustment Loan Fund Act) (“ ‘Working capital’ means funds to be used for current operations of a business” and “includes funds for supplies, materials, labor, equipment, rent, software, marketing, insurance, and fees for professional services”). Indeed, in language strikingly similar to that of the Liquor Control Fund Law, the Defense Adjustment Loan Fund Act provides that the Fund is to “be used as a nonlapsing revolving fund to make loans to new or existing companies in communities suffering dislocation due to defense adjustments to enable the companies to modernize their manufacturing operations, develop commercial applications for technology, or enter into and compete in new economic markets” and that “[t]he proceeds of defense adjustment loans may be used for working capital for the defense adjustment activities approved by the Committee.” §6-509 (a) and (g). Because Fund monies are not deposited in the State Treasury, the Fund is “off-budget” and may be expended without an appropriation. Thus, the Department of Business and Economic Development, which administers the Fund, reports on the Fund in its Annual State Budget for information purposes only, and the General Assembly exercises oversight, but not appropriation authority, over the Fund. (Of course, the General Assembly has the authority to change that law and require the appropriation of such monies.)

Thus, the Adequate Working Capital Provision’s history and its relationship to other provisions, *e.g.*, the DLC statute in general, similar provisions for dispensaries operated by other County Liquor Control Boards, and other uses of the term in the Maryland Code, all support the conclusion that the Adequate Working Capital Provision authorizes the Directors, in their discretion and subject only to the approval of the County Executive, to expend net DLC revenues in order to operate the dispensary system efficiently and meet its current obligations. The County budget and appropriation authority extends only to the surplus, if any, that is paid into the general fund of the County once the DLC revenues have been applied to its debt and adequate working capital requirements.

SUMMARY

The DLC is not a creature of County law. Neither the Charter nor any law enacted by the Council created the DLC. Indeed, the Express Powers Act specifically denies charter counties power with regard to “licensing, regulating, prohibiting or submitting to local option, the manufacture or sale of malt or spirituous liquors,” and this includes the funding of county liquor dispensaries.

The DLC is a creature of state law, and although that law makes the DLC a County agency and gives the County Council oversight over the DLC, it does not give the County Council control or budget and appropriation authority over the operation of the DLC’s dispensary system. On the

contrary, the DLC law expressly provides for DLC revenues to be deposited into a special fund, known as the Liquor Control Fund, and to be used exclusively for certain purposes specified and prioritized by state law, viz.: (1) to service DLC related debt; (2) to provide working capital adequate for the continued operation of the dispensary system as determined by the Director of the Department of Liquor Control and the Director of Finance, subject to the approval of the County Executive; and (3) to provide revenue for the general funds of Montgomery County.

In providing for the Directors, with the approval of the County Executive, to determine the amount of funds required to provide working capital adequate for the continued operation of the DLC dispensary system, state law on its face and in the light of its history and its relationship to other provisions of state law, is inconsistent with the budget and appropriation authority of the Council and not within the Council's home rule authority. Consequently, the dedication and expenditure of those funds for those purposes is not subject to the Council's budget and appropriation authority.

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