



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan  
County Executive

Charles W. Thompson, Jr.  
County Attorney

MEMORANDUM

June 9, 1998

To: Honorable Douglas M. Duncan  
County Executive

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

Via: Charles W. Thompson, Jr.  
County Attorney *Ch W Thompson*

Re: Department of Liquor Control Budget

---

We are responding to your request for advice regarding Note 21 of the FY 1999 Budget Resolution:

For FY 1999, the County Council appropriates \$18,981,200 to the Department of Liquor Control. The Director of Finance must transfer to the General Fund all Liquor Control Fund "Income Before Operating Transfers," as defined in the Comprehensive Annual Financial Report for FY 1999. The Council has estimated that this transfer will amount to at least \$14,500,000.<sup>[1]</sup>

The Department of Liquor Control is a creature of state law. That law provides for the Director of Finance and the Director of the Department of Liquor Control, with the approval of the County Executive, to determine the amount of working capital required by the Department and to retain from the Department's net profits, before making any deposit into the General Fund of the County, funds

---

<sup>1</sup> There is, of course, no Comprehensive Annual Financial Report for FY 1999 as of this date. However, we understand that the term "Income Before Operating Transfers" is intended to have the same meaning as in the Annual Report for FY 1997, and therefore is synonymous with "net operating revenues" as used in state law. See Article 2B, §15-207 (e) below.

necessary to (1) service DLC related debt and (2) provide adequate working capital for the operation of the DLC:

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.<sup>2</sup>

As noted in the prior advice of both this Office and the Attorney General of Maryland,<sup>3</sup> the working capital authority that this state law vests in the Directors and the County Executive is inconsistent with the Council's budget and appropriation authority, and prevails over the Council's budget and appropriation authority.<sup>4</sup> Consequently, the determination of the funds required for these purposes is the exclusive province of the Directors and the County Executive and is not subject to the Budget Resolution. The Council does not have the authority to budget for these purposes. Neither may the Council require, contrary to state law, that the net revenues of the Department be deposited in the General Funds of the County before they are applied for debt service and adequate working capital. State law provides for the balance of DLC revenues to be deposited in the General Fund *after* deductions for debt service and working capital, not *before*.

Therefore, because it would require the Director of Finance to transfer all DLC net operating expenses from the Liquor Control Fund to the General Fund prior to the debt service and working capital applications required by state law, and because it impermissibly conflicts with the working capital authority state law places exclusively in the Directors and the County Executive, Note 21 is of no binding legal effect.<sup>5</sup>

---

<sup>2</sup> Md. Ann. Code, Art. 2B, §15-207(e).

<sup>3</sup> See our December 16, 1996 opinion letter to Council President Praisner; May 8, 1998 opinion memorandum to the OMB Director Kendal; and May 22, 1998 opinion memorandum to Council President Leggett; and the Attorney General's June 4, 1997 opinion letter to you and November 18, 1997 opinion letter to Council President Praisner.

<sup>4</sup> Compare Md. Code, art. 24, §8-101, which expressly provides for such creatures of state law as the Board of Supervisors of Elections, the State's Attorney's office, the Sheriff's office, the Board of Liquor License Commissioners, and the Circuit Court to be subject to the County's budget and fiscal policies and purchasing laws.

<sup>5</sup> The appropriation contained in Note 21 could be given effect only if it were intended to authorize the disbursement of General Fund monies in addition to the working capital authorized by state law. We do not understand that to have been the intent of the Council.