OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

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County Attorney

AMENDED M E M O R A N D U M

TO: Kathleen Boucher
Assistant Chief Administrative Officer
Offices of the County Executive

VIA: Karen Federman-Henry, Chief
Division of Finance and Procurement

FROM: Scott R. Foncannon
Associate County Attorney

DATE: July 1, 2008

RE: County's obligation for municipal revenue reimbursement for municipal police department services within Montgomery County

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This memorandum amends the previous memorandum dated June 6, 2008, on this issue. I was asked to add a reference to Chevy Chase Village to the memorandum.

Issue

You have asked this office to give you a written opinion on whether Montgomery County is required to reimburse municipalities that have a municipal police force under County law or grant a tax setoff to those municipalities under state law.

Answer

For the reasons stated below, Montgomery County is not required to reimburse a municipality that has a municipal police force or to grant a tax setoff where Montgomery County also provides police department services in the municipality.

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Facts

In January of 2007, the Montgomery County Executive, Isiah Leggett, requested the formation of a municipal revenue sharing task force (Task Force). As a result of this request, the Task Force, consisting of both County and municipal representatives, was formed to discuss tax duplication and revenue sharing issues between the County and the municipalities located within the County. During the course of discussions among the County representatives on the Task Force on the issue of revenue sharing with municipalities that had a municipal police force, the question arose as to whether the County was legally obligated to make a tax duplication payment or to grant a tax setoff to the City of Rockville, the City of Gaithersburg, or Chevy Chase Village under existing County or State law for the cost of their municipal police services. I was advised that the County provides police services and coverage in all three districts where these municipalities are located, as if the municipal police departments did not exist and that County Police Officers are dispatched to calls in all three municipalities. In addition, the County provides other law enforcement services to all of these municipalities including, but not limited to, police recruit training at the County training academy, computerized dispatch, emergency response team coverage, 911 center operations, crime scene and forensic specialist, crime lab services and special investigation divisions. In light of the fact that the County provides police services in these municipalities, the question was asked whether, based on the language of the County Code and the State Code, the County is legally required to make any reimbursement to the municipalities for the police department services provided by these municipalities.

Legislative History of Tax Duplication Payments

Since the 1950's there have been statewide discussions about State and local legislation to create tax duplication payments by Counties to municipalities. In 1972 the County Council commissioned a study to determine the service areas where tax duplication might exist, calculate the estimated overlap, develop alternatives to overcome duplication and to determine the fiscal impact on both the County and the municipalities. This report concluded, among other things, that tax duplication was limited primarily to street maintenance. In 1973 Montgomery County enacted Chapter 30A of the Montgomery County Code that established a "program to reimburse municipalities ...for those public services provided by municipalities which would otherwise be provided by the County government." This code section has remained unchanged since 1973.

In 1977 the County Council established a joint Task Force on County-Municipal Financial Relationships to examine the formula used to provide payments to the municipalities. The Task Force report revised the formula for municipal rebates and the County Council established a new procedure for reimbursement to the municipalities by resolution dated October 17, 1978. A similar task force was appointed by the County Council in 1981 and again in1995 to study and review tax duplication issues and to report their findings to the Council. One of the findings of the 1995 Task Force concluded that "Municipal police services provided were

determined to be supplemental warranting no reimbursement."

Meanwhile in 1975 the State passed tax duplication legislation that is now codified in Section 6-305 of the Tax-Property Article, Annotated Code of Maryland. The original text of the law applied to Montgomery County and was permissive. In 1985 the State revised the law and made it mandatory that the County grant a "Tax Setoff" to municipalities to "aid the municipal corporation in funding services or programs that are similar to county services or programs." TP§6-305(a)(2). Under State law the County is required to consider "the services and programs that are performed by the municipal corporation instead of similar county services and programs;..." TP§6-305(d)(1).

Further details of the legislative history appear in a memorandum dated August 30, 2002, from this Office to the Director, Office of Management and Budget. The memorandum is attached for your reference.

Statutory Instruction and Interpretation

The Appellate courts in the State of Maryland have repeatedly explained that the goal of statutory construction is to discern and effectuate the legislature's intent. The Maryland Court of Special Appeals summarized these rules in *Maryland-National Capital Park and Planning Commission v. State Depart.,* 110 Md. App. 677, 688, 678 A.2d 602, 607 (1996):

> Ever mindful of our desire to discern and effectuate the General Assembly's intent, *Oaks. v. Connors*, 339 Md. 24, 35, 660 A.2d 423 (1965), we examine the language of the enactment and give to the language its natural and ordinary import, *Montgomery County v. Buckman*, 333 Md. 516, 523, 636 A.2d 228 (1994). If the language is plain and free from ambiguity and expresses a definite and sensible meaning, we will, ordinarily, end our inquiry. *Id.* We are not, however, rigidly bound to the precepts of the "plain meaning" rule. *Department of Gen. Servs. v. Harmans Assocs. Ltd. Partnership*, 98 Md. App. 535, 545, 633 A.2d 939 (1993). Where the General Assembly has chosen not to define a term used in a statute, we will give that term its ordinary and natural meaning and will not resort to the subtle or forced interpretations for the purpose of extending or limiting the operation of the statute. *Brown v. State,* 285 Md. 469, 474, 403 A.2d 788 (1979). Furthermore, we examine the entire statutory scheme and consider the purpose behind the particular statute before us. *Department of Public Safety v. Howard*, 339 Md. 357, 369, 663 A.2d 74 (1995). Cognizant that the language of the statute is the foundation from which our inquiry commences, we also review legislative history

> and the prior state of law, and contemplate the particular evil, abuse, or defect that the General Assembly wished to remedy with the enactment of the statute at issue. *Lemley v. Lemley,* 102 Md. App. 266, 290, 649 A.2d 1119 (1994). Moreover, the examination of related statutes is not beyond our reach. *GEICO v. Insurance Comm'r*, 332 Md. 124, 132, 630 A.2d 713 (1993).

To ascertain the legislative intent, the Court examines "the language of the enactment and gives that language its natural and ordinary meaning." *Montgomery County v. Buckman,* 333 Md. 516, 523, 636 A.2d 448, 452 (1994). Where no ambiguity exists, no further review is needed. And where a specific definition does not appear in the statute, the court will apply the ordinary and natural meaning of the word. *Brown v. State*, 285 Md. 469, 474, 403 A.2d 788, 791 (1979). In applying statutory construction principles, the appellate court may refer to dictionary definitions and common usage. *Id. See also Benson v. State,* 389 Md. 615, 634-635, 887 A.2d 525, 536 (2005); *Board of License Commissioners for Prince George's County v. Global Express,* 168 Md. App. 339, 348, 896 A.2d 432, 437 (2006). Often the entire statutory scheme becomes relevant to consider the purpose behind the statute. *Comptroller v. Phillips*, 384 Md. 583, 591, (2005).

In this case both the State and the County have enacted laws relating to the same topic-reimbursement of funds to municipalities for duplication of services. When interpreting similar statutes adopted by State and local governments it is important to consider whether a conflict between the two laws exists and, if so, the effect of that conflict. The Maryland Courts have recognized the concurrent power of the State and a political subdivision to enact laws regulating the same topic, providing there is no irreconcilable conflict between the two and the State has not chosen to preempt the entire field. *Baltimore v. Sitnick,* 254 Md. 303 (1969). Generally, a local law is "preempted by conflict when it prohibits an activity which is intended to be permitted by State law, or permits an activity which is intended to be prohibited by State law." *Coalition for Open Doors v. Annapolis Lodge No. 622 Benevolent and Protective Orders of Elks,* 333 Md. 359 (1964).

When the State legislature passes a law, it is presumed to have knowledge of its prior enactments, *State v. Briker,* 321 Md. 86 (1990), as well as all other relevant enactments, *Cicoria v. State,* 332 Md. 2 (1993), and to have knowledge of appellate Court interpretations. *State v. Sowell,* 353 Md. 719 (1999).

Principles of statutory construction also require that when construing statutes that relate to the same topic "those statutes must be read together, interpreted with reference to one another, and harmonized, to the extent possible, both with each other and with other provisions of the statutory scheme; neither statute should be read to render the other, or any portion of it, meaningless, surplusage, superfluous, or nugatory." *Geico v. Insurance Commissioner,* 332 Md.

124 (1993). In the event there is a conflict and the conflict cannot be harmonized or reconciled, the superior authority, in this case the State law, will prevail. *City of Baltimore v. Sitnick, supra.*

Discussion

A. To qualify for tax duplication payments under County Law, the service must not actually be provided by the County in the municipality.

Section 30A-2 of the Montgomery County Code lists four conditions that must be met to qualify for tax duplication payments:

1. The municipality provides the services to its residents and taxpayers;
2. The service would be provided by the County if it were not provided by the municipality;
3. The service is not actually provided by the County within the municipality; and
4. The comparable County services funded from tax revenues derived partially from taxpayers in the participating municipality.

Condition 3 requires that the service provided by the municipality is "not actually provided by the County within the municipality." Section 30A-2, Montgomery County Code. The word "actually" is not otherwise defined in this Section or elsewhere in the Code, so the ordinary and natural meaning of the word will be applied. The word "actually" is defined in Webster's New Collegiate Dictionary, 150th Anniversary Edition, 1981 as "in act and in fact, really, at the present moment, in point of fact, in truth."(p.12) The ordinary and natural meaning of the word "actually" in the context of Section 30A-2(3), plainly and clearly states that in order to qualify for reimbursement, the County does not really or in point of fact provide the services. As described above, the County does in point of fact and actually provide police services in both Rockville and Gaithersburg. This interpretation is supported by the plain language of Section 30A-2(2) as well, which states the service "would be provided by the County if it were not provided by the municipality," again suggesting that only under those circumstances where the County does not provide the service is the County required to reimburse the municipality. The plain language of this section and the natural and ordinary meaning of the word "actually" clearly indicate that, if the County is providing police services within the municipality, then the County is not required to reimburse the municipality.

B. To qualify for a tax setoff under TP§6-305, the municipality must perform services and programs in place of similar services and programs performed by the County.

In order to qualify for a tax setoff or payment to a municipality, TP§6-305(c) requires a municipality to demonstrate that the municipality "performs services or programs instead of similar County services or programs." The words "instead" or "instead of" are not otherwise defined in this section or elsewhere in the Code, so the ordinary and natural meaning of the words will be applied. The word "instead" is defined as "1. as a substitute or equivalent; 2. as an alternative to something expressed or implied." And the phrase "instead of" is also defined as "a substitute for or alternative to." Webster's New Collegiate Dictionary, 150th Anniversary Edition, 1981. (p. 593)

The ordinary and natural definition of these words in the context of the statute states that, unless the municipal service or programs are in place of or a substitute for similar County services or programs, the municipality does not qualify for a tax setoff or other payment. In this case, because the County continues to provide a variety of police services within these municipalities, the County is not required to provide a tax setoff. The plain language of the section, together with the ordinary and natural definitions of the words, limits the payment by the County to only those situations where no County services are provided within the municipality. Because the language is not ambiguous, further review or analysis is not required.

C. The State law and County law concerning tax duplication payments are not in conflict regarding the requirement to make payment.

After review of the requirement of the County law that the County not "actually" provides service and the requirement of State law that the municipality provide the service "instead of" the County, it is my opinion that these provisions are similar and harmonious with each other and do not present a conflict that requires one to have priority over the other. Both requirements plainly state that the reimbursement or tax setoff is only required if the County does not provide the service within the municipalities. The facts indicate that the County is providing police services to Gaithersburg, Rockville and Chevy Chase Village.

Conclusion

Consistent with the statutory construction principles that require the State and County laws to be read in harmony whenever possible, both of these laws require that the reimbursement or tax setoff is appropriate only where the County does not provide any police services within the municipality. The facts indicate that the County provides police services to all three of these municipalities. Therefore, under both the County law and the State law, the County is not legally obligated to reimburse the municipalities for those police services.

SRF:jq