

M E M O R A N D U M

July 22, 1992

TO: John J. Kenney, Chief
Adult Services Division
Department of Social Services

VIA: Joyce R. Stern *Joyce R. Stern*
County Attorney

FROM: Marc P. Hansen *Marc Hansen*
Senior Assistant County Attorney

RE: Tenure Limitation for Adult Guardianship
Review Board

You have asked us to explore the issue of whether a waiver may be granted to the limit placed on the number of terms a person may serve as a member of the Adult Guardianship Review Board (AGRB). You have indicated that you believe that State law imposes a one-term limit on membership on AGRB and the County imposes a two-term limit. You also indicate that you do not believe that these limits may be waived.

The AGRB is established under MD Fam. Law Code Ann., Section 14-401, et seq. (1991 Repl. Vol.). Section 14-402(a) provides that the members of AGRB are appointed by the County Executive and confirmed by the County Council. Section 14-402(b) provides that the term of a member is three years and a member continues to serve until a successor is appointed and qualifies. Section 14-402(b) also provides that a member appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

Generally, public policy favors allowing individuals to hold public office. Accordingly, laws are interpreted wherever possible to avoid a construction of placing a limit on the right or eligibility to hold office. See, 63 Am. Jur.2d, Public Officers and Employees, Section 39. Therefore, we do not believe that Section 14-402(b) which provides "the term of a member is 3 years" imposes a limit on the number of terms a person may serve.

Section 2-148, Montgomery County Code (1984) states, "To promote broad participation, no individual should ordinarily serve more than 2 consecutive full terms or serve on more than 2 committees at any one time." Section 2-141 provides that

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Section 2-148 applies to all committees which function as part of the County government even if the committee is created by State law. Section 2-141 further provides that, in case of a conflict between County law and State law, the State law controls. Since State law does not impose a term limitation on AGRB membership, we believe that Section 2-148 applies to AGRB.

We believe that the provision in Section 2-148 which provides, "No individual should ordinarily serve more than 2 consecutive full terms . . ." (emphasis added) establishes a guideline only. The term "should" is used in legislative drafting to establish a non-mandatory guideline. See, Montgomery County Plain Language Drafting Manual, Section 806(b) (Resolution 10-1182). Accordingly, we believe that the County Executive and Council may waive, in appropriate cases, the two-term limit suggested by Section 2-148.

We trust this memorandum is responsive to your inquiry. If you have any further questions regarding this matter, please contact Marc Hansen at X7761.

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cc: Sherry L. Leichman, Assistant County Attorney
Carol Mannix