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Recent Developments: Selected Opinions of the Maryland Attorney General

Samuel N. Shapiro

John B. Bratt

John Magee

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Selected Opinions of the Maryland Attorney General

Opinion No.: 97-009

Reported: April 7, 1997

APPLICATION OF LEAD POISONING PREVENTION PROGRAM ACT

This Attorney General's opinion addressed the applicability of a landlord's liability for lead poisoning under the Lead Poisoning Prevention Program Act, Chapter 114 of the Laws of Maryland (1994). 82 Op. Atty. Gen. ___ (1997), 1997 WL 186831 (Md. A.G.). Under the Act, a property owner's liability for lead poisoning extends only to tenants

The stated effective date of the Act was October 1, 1994, although the regulations implementing the Act were not put into place until February 24, 1996. The Attorney General, therefore, determined that the latter was the actual effective date. *Id.* at 2. Further, cases of lead poisoning exposure occurring after the Act's effective date would still subject the property owner to liability. *Id.* at 3.

The Act requires property owners of rental properties built before 1950 to register them so as to comply with standards aimed at reducing the levels of lead exposure. *Id.* In addition, landlords must notify their tenants of their rights under the Act. *Id.* Whether the Act applies to a particular tenant is determined by the levels of lead in the tenant's blood, referred to in the Act as "elevated blood level." *Id.* at 1. In order to trigger the provisions of the Act, a person must have an elevated blood level of twenty-five micrograms per decaliter of blood at any time after the effective date or twenty micrograms per decaliter five years after the effective date. *Id.* Therefore, after the effective date, an individual has no cause of action if he or she has an elevated blood level lower than these amounts, even if it can be attributed to exposure to lead. *Id.* If the exposure spans the period before and after the effective date of the Act, the exposure should be divided according to when it occurred to determine liability. *Id.*

The opinion identifies three policy issues behind the Act. First, the Act aids in meeting the need for housing that is safe from lead hazards. *Id.* Second, it promotes the maintenance of an affordable stock of rental properties. *Id.* Finally, it provides a way for those who are exposed to lead to receive compensation. *Id.*

- Samuel N. Shapiro

Opinion No.: 97-021

Reported: August 29, 1997

ATTORNEY GENERAL DESCRIBES AUTHORITY OF MEDICAL ADVISORY BOARD

In response to an inquiry by Delegate Elizabeth Bobo, the Attorney General examined the question of whether police and citizen observations can warrant a referral to the Motor Vehicle Administration Medical Advisory Board ("MAB"). 82 Op. Atty. Gen. ___ (1997), 1997 WL 566400 (Md. A.G.).

The incident which prompted this opinion involved an elderly motorist who nearly caused a collision on Maryland Route 175. The motorist was later stopped and interviewed by Howard County police officers. After the interview, the officers submitted a "Request for Re-examination of Driver" to the Motor Vehicle Administration. The officer, based on the interview, identified that "memory and awareness," "depth perception and reflexes," and physical defects should be examined. This referral resulted in the motorist being sent an evaluation questionnaire by the MAB that asked a number of personal questions, allegedly in an attempt to gain information about possible medical problems.

The first issue addressed in the opinion was whether the police observations constituted good cause for referral to the MAB as required by section 16-118(c) of the Transportation Article of the Annotated Code of Maryland. *Id.* at 2. In determining this issue, the opinion analogized the referral to a report of a drunken driver because the information is obtained from an identifiable person having no interest the situation. *Id.* Actual observation of driving behavior by such a person, supported by the results of the police interview, can be good

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cause for a referral to the MAB. *Id.* The combination of the observation and interview could lead a reasonable person to think that the driver had a medical condition affecting his ability to drive. *Id.*

The opinion also addressed the scope of the MAB questionnaire, which is extremely broad. *Id.* The opinion stated that depriving a person of the privilege of driving is an important decision, therefore the MAB needs detailed accurate information. *Id.* at 4. The form states that the information provided is protected from disclosure. *Id.* The need for personal information and the confidentiality with which it is treated authorizes the MAB to ask many varied and personal questions. *Id.* The subject matter of the questions themselves is left to the MAB's discretion. *Id.* at 5. However, the MAB must "have a basis well grounded in scientific literature and in its own experience" to request information a driver would normally not disclose. *Id.*

- John Bratt

Opinion No.: 97-023

Reported: September 19, 1997

OBLIGATION OF SCHOOLS TO NOTIFY PARENTS OF INAPPROPRIATE TEACHER/STUDENT RELATIONSHIPS

The Attorney General's Office issued an opinion on whether public schools have an obligation to notify parents when the school learns of a potential inappropriate relationship between teacher and student. 82 Op. Atty. Gen. ___ (1997), 1997 WL 643413 (Md.A.G.). Clarification of the statutory scheme was sought that requires or authorizes parental notification of possible inappropriate personal relationships between teachers and students. *Id.* at 2. The Attorney General opined that a person having reason to believe a student has been subjected to abuse has an affirmative duty to report the incident. Thereafter, the school system may investigate the incident to a limited extent, but the local police department carries the primary responsibility of investigating alleged child abuse. *Id.*

Pursuant to section 5-702(b)(2) of the Family Law Article of the Annotated Code of Maryland, the investigating police department must notify parents of the allegations and attempt to interview them within twenty-four hours after receiving allegations of abuse. *Id.* at 2. If it is determined that the relationship between the teacher and the student does not rise to the level of abuse, but is still grounds for disciplinary action, the school may disclose the alleged contact between teacher and student. *Id.* at 3. A school is expressly prohibited under section 10-616(i)(1) of the State Government Article, however, from disclosing "documentary materials" of a teacher's personnel file. *Id.*

However, assuming there is no child abuse, the school may inform parents of firsthand observations and may release portions of a personnel file that relate to the student so long as the confidential portion of the personnel record was preserved. *Id.* These duties and privileges of disclosure apply regardless of whether the student has reached the age of majority. *Id.* at 2.

- John Magee

Opinion No.: 97-026

Reported: October 7, 1997

DEPUTY CLERK OF THE CIRCUIT COURT MAY SERVE AS A MEMBER OF THE MARYLAND GENERAL ASSEMBLY

The Attorney General issued an opinion stating that the Constitution of Maryland does not prohibit a person from simultaneously serving as both a deputy clerk of the Circuit Court and a member of the General Assembly. 82 Op. Atty. Gen. ___ (1997), 1997 WL 643429 (Md. A.G.). The opinion determined that to hold both positions was not violative of the dual office prohibitions contained in Article 35 of the Declaration of Rights and Article III of the Constitution of Maryland, nor did it violate the separation of powers doctrine as expressed in Article 8 of the Declaration of Rights. *Id.* at 1.

Article III of the Constitution of Maryland states that "[n]o person holding any civil office of profit, or trust, under this State shall be eligible as Senator or Delegate. . . ." *Id.* In addition, Article 35 of the Declaration of

Rights provides that "no person shall hold, at the same time more than one office of profit created by the Constitution or laws of this State. . . ." *Id.* The Attorney General determined that service in the General Assembly by a deputy court clerk could violate the above provisions only if the deputy clerk was considered a "public office." *Id.*

In opinions dating back 70 years, the Office of the Deputy County Clerk has been considered a "public office," largely because Article IV of the Maryland Constitution provided not only for the appointment of deputy clerks, but also required they share in the duties of the exercise of the office of the clerk. *Id.* at 2. In 1990, however, Article IV was amended, so that "[d]eputy clerks and other employees of the Office of the Clerk shall be appointed and removed according to law." *Id.* This change removed the requirement that deputy clerks share in the duties of the Office of the Clerk. *Id.* According to the Attorney General, the primary effect of the changes was to treat deputy clerks as employees, rather than constitutionally mandated officers. *Id.* at 3. Such a distinction is evidenced by the fact that the deputy clerk's position is not created by law and has no term, and that the oath taken by deputy clerks is a statutory oath, not the one required by the Maryland Constitution of those who hold offices of profit or trust. *Id.* As a result, it was determined that a deputy clerk does not wield the power of the state in his own right; consequently, the position will no longer be considered a public office. *Id.*

The opinion further concluded that a holder of both offices does not violate the separation of powers doctrine. *Id.* The basis for this conclusion was that a deputy clerk is not a court officer and cannot exercise the power of the judicial branch. *Id.* at 4. Under similar reasoning, the clerk would not be precluded from serving as a member of the legislative branch.

- John Bratt



