

**Office of the County Attorney  
Montgomery County, Maryland**

**MEMORANDUM**

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July 29, 1998

TO: Toodle Shipley, Permits Section Chief  
Department of Permitting Services

VIA: ✓ Marc Hansen, Chief *MPH*  
General Counsel Division

FROM: Clifford L. Royalty *CLR*  
Assistant County Attorney

RE: Applicability of the Montgomery County Code to the Housing Opportunities Commission, the Washington Metropolitan Area Transit Authority, and the Independent Fire Corporations

**QUESTION**

You have requested our opinion as to whether your office may require the Washington Metropolitan Area Transit Authority ("WMATA"), the Housing Opportunities Commission of Montgomery County ("HOC"), and the Independent Fire Corporations ("Fire Corporations") to obtain permits, pay fees, and otherwise comply with Chapters 8, 17, 19, 22, 27A, 49, and 59 of the Montgomery County Code.

**ANSWER**

As is more fully discussed below, we have concluded that the foregoing chapters of the County Code are enforceable against WMATA, the HOC, and the Fire Corporations.

**ANALYSIS**

The general rule in Maryland is that "a statute regulating or affecting the activity of persons or corporations is ordinarily construed as not encompassing the government itself unless it expressly so provides." Nationwide Mutual Insurance Company v. United States Fidelity & Guaranty Company, 314 Md. 131, 137, 550 A.2d 69 (1988). The State of Maryland is "not deemed to be bound by an enactment of the General Assembly unless the enactment specifically

names the State or manifests a clear and indisputable intention that the State is to be bound.” Id. at 142, quoting, Mayor and City Council of Baltimore v. State of Maryland, 281 Md. 217, 223, 378 A.2d 1326, 1329 (1977). Nor is a state bound by a county law unless a state law so provides. See Mayor and City Council of Baltimore v. State of Maryland, 281 Md. 217, 223, 378 A.2d 1326, 1329 (1977) and Lomax v. Comptroller of the Treasury, 323 Md. 419, 593 A.2d 1099 (1991). Likewise, a county government is not subject to its own laws and regulations unless a state or county law clearly manifests a contrary intent. See Glascok v. Baltimore County, Maryland, 321 Md. 118, 581 A.2d 822 (1990).

### WMATA

The United States Congress created WMATA “as an interstate Compact agency of Virginia, Maryland, and the District of Columbia.” Maxwell v. Washington Metropolitan Area Transit Authority, 98 Md. App. 502, 506, 633 A.2d 924 (1993). That Compact is codified at § 10-204 of the Maryland Transportation Article. Maryland’s Court of Special Appeals has ruled that WMATA is a state entity. See Maxwell v. Washington Metropolitan Area Transit Authority, 98 Md. App. at 512. Thus, one would presume that it is exempt from the requirements of the foregoing chapters of the County Code. But WMATA’s Compact expressly states as follows:

The board [of Directors of WMATA] shall comply with all laws, ordinances and regulations of the signatories and political subdivisions and agencies thereof with respect to the use of streets, highways and all other vehicular facilities, traffic control and regulation, zoning, signs and buildings. Md. Trans. Code Ann. § 10-204 (75). But see Md. Trans. Code Ann. § 10-204 (77).

The language of this provision is broad enough to include virtually all of the activities regulated by Chapters 8, 17, 19, 22, 27A, 49, and 59 of the Montgomery County Code, although only the construction of buildings would involve Chapter 19. Insofar as the County laws regulate the use of streets, the construction of buildings, and the other activities listed in the WMATA Compact provision, WMATA is bound to adhere to these laws. For these activities, WMATA is required to obtain the necessary permits and pay the requisite permit fees. For any activities that WMATA performs that are outside the scope of § 10-204 (75), WMATA would be exempt. Of course, as a state entity, WMATA would be entitled to avail itself of the mandatory referral provisions of Article 28, § 7-112 of the Maryland Code.

### HOC

The HOC is a government agency that was created under Article 44A of the Maryland Code, the “Housing Authorities Law.” Title I of the Housing Authorities Law sets forth the required corporate structure for all housing authorities within the State of Maryland and enumerates their powers. Section 1-104 of Title I exempts the housing authorities from local special assessments and taxes, but requires the housing authorities to pay the equivalent thereof pursuant to an agreement with the local governments. More important for the purposes of this

memorandum, § 1-404 of Title I states as follows:

All housing projects of an authority shall be subject to the planning, zoning, sanitary, health, fire, housing, subdivision, and building laws, ordinances, codes, rules, and regulations applicable to the locality in which the housing project is situated . . . .

A “housing project” is defined to include “any work or undertaking” by the HOC to “demolish, clear or remove buildings” and to “provide decent, safe, and sanitary living accommodations for persons of eligible incomes.” Md. Ann. Code art. 44A, § 1-103 (1)(1)(i)(ii). The term “also may be applied to the planning of the buildings and improvements,” “the acquisition of property,” and the “alteration and repair of improvements.” Md. Ann. Code art. 44A, § 1-103 (2). It is arguable whether the term “housing project” applies to the HOC’s administration buildings or other such buildings that house its offices or staff, but, because the HOC is generally subject to our laws and has complied with our laws in the past, we should apply the County Code to all of the HOC’s buildings.

Title II of the Housing Authorities Law creates the Housing Authority for Montgomery County and delineates its powers. Section 2-101 of Title II states that Title I of the Housing Authorities Law “shall apply to the Housing Opportunities Commission of Montgomery County to the extent it is not inconsistent with this Title II.” Under § 2-102, the HOC must exercise its powers “pursuant to and in accordance with local law or a contract or contracts with Montgomery County.”

Although § 5-301 of the Maryland Courts and Judicial Proceedings Article includes the HOC within the definition of a “local government,” Maryland’s Court of Special Appeals has ruled that the HOC is a state agency. See Jackson v. Housing Opportunities Commission of Montgomery County, 44 Md. App. 304, 408 A.2d 1337 (1979), reversed on other grounds, 289 Md. 118, 422 A.2d 376 (1980). Thus, the HOC would be exempt from the requirements of our County Code but for the fact that the HOC’s enabling statutes, Titles I and II of the Housing Authorities Law, specifically provide that the HOC must comply with local law. Because § 1-104 of Title I is not inconsistent with Title II, it applies to the HOC. State law requires that the HOC exercise its powers in conformity with our County Code. State law authorizes the County to exempt the HOC from the County Code. See Md. Ann. Code art. 44A, § 1-305 (11). Unless we have exempted the HOC from our Code, the HOC must obtain permits through your office and pay any required fees. Like WMATA, the HOC would be subject to mandatory referral under Article 28, § 7-112 of the Maryland Code.

### FIRE CORPORATIONS

The legal status of the Fire Corporations is less clear. The Fire Corporations are privately chartered, but they perform a governmental function. See Chapter 21 of the Montgomery County Code (1994). Maryland’s Court of Appeals grappled with this issue in Potter v. Bethesda Fire Department, Inc., wherein the court concluded that the Bethesda fire

corporation is a “quasi-public” corporation under the worker’s compensation law and that the County’s fire corporations are “governmental in nature.” 309 Md. 347, 364, 524 A.2d 61 (1987). Because the Fire Corporations were created primarily to perform a public service, it is likely that the courts would treat the Fire Corporations as an arm of local government, akin to a County agency. Therefore, the Fire Corporations are subject to County law in the same manner and to the same degree as any other County agency. As is discussed in this memorandum in the first paragraph of the Analysis section, the County is governed by its own laws so long as it permits itself to be. Even if the Fire Corporations are determined to be private entities, they would still be required to comply with the County Code and County regulations.

All of the foregoing chapters of the County Code apply to public facilities and entities, including the County. Chapter 8 (the “Building Code”) applies to all public buildings and includes the County within the definition of a “person” under the statute. See §§ 8-1 and 8-2 of the Montgomery County Code (1994). Chapter 17 (the “Electrical Code”) also applies to all public buildings. See § 17-1 of the Montgomery County Code (1994). Chapter 19 (Sediment Control) requires all persons to obtain a permit and defines the term “person” to include the County. See §§ 19-1, 19-2, and 19-48 of the Montgomery County Code (1994). Chapter 22 (the “Fire Code”) applies to all County buildings. See § 22-3 of the Montgomery County Code (1994). Chapter 27A (Well and Septic) prohibits any “person” from constructing or altering a water supply system without a permit. See § 27A-5 of the Montgomery County Code (1994). A “person” is any entity, including a governmental entity and a public corporation. See § 27A-2 of the Montgomery County Code (1994). Chapter 49 (Streets and Roads) is divided into seven Articles. Article I, § 49-2 states that Chapter 49 governs the construction of all public roads and streets, but Article I does not specifically define the entities that are subject to its provisions. Article II (the “Road Construction Code”) applies to all public roads within the County except state and federal roads. See § 49-32 of the Montgomery County Code (1994). Article IV establishes the statutory requirements for roads that the County constructs. See § 49-51, et seq., of the Montgomery County Code (1994).

In sum, all of the foregoing Code provisions apply to the Fire Corporations and to any public buildings, facilities, or roads that the Fire Corporations own or construct. As to any buildings that the Fire Corporations use for a public purpose, the Fire Corporations are subject to mandatory referral under Article 28, § 7-112 of the Maryland Code.

We trust that you will find this memorandum responsive to your inquiry.

cc: Robert C. Hubbard, Director, Department of Permitting Services

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