

M E M O R A N D U M

December 19, 1991

TO: Graham J. Norton, Director  
Department of Transportation

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

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

RE: Homeowners Association Roadway Reimbursement Program

You have asked for legal advice concerning the Homeowner Association Roadway Reimbursement Program. Our analysis follows.

BACKGROUND

The Division of Operations in the Department of Transportation administers Executive Regulation 18-88, Reimbursement for Association Roadways. The Regulation establishes a process for reimbursing homeowners' associations for maintaining certain roads open to the public. Executive Regulation 18-88 was adopted to implement Chapter 24B of the Montgomery County Code. At the time Executive Regulation 18-88 was adopted, Chapter 24B: (i) regulated certain procedures concerning the governance of homeowners' associations; (ii) established a dispute resolution process; and (iii) created the Roadway Maintenance Reimbursement Program. In order for a homeowners' association to qualify for roadway maintenance reimbursement under Executive Regulation 18-88, the homeowners' association was required to agree that certain disputes between homeowners' and the association would be submitted by the association to either:

- "1. The dispute resolution bureau in the Office of Consumer Affairs for mediation, and if it fails, arbitration, or
2. Another form of mediation and arbitration approved by the Office of Consumer Affairs."

Since Executive Regulation 18-88 was adopted, the County enacted Bill 44-89 which created a Commission on Common Ownership Communities. Bill 44-89 established a new program to resolve disputes through the Commission on Common Ownership Communities and transferred to a new Chapter 10B most of the provisions of old Chapter 24B, except the

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Association Roadway Maintenance Reimbursement Program. Bill 44-89 amended the Roadway Maintenance Reimbursement Program to provide that an association in order to be eligible to participate in the program must agree to submit eligible disputes to either:

- "1. The dispute resolution process under Article 2 of Chapter 10B; or
2. Other mediation or arbitration approved by the Commission on Common Ownership Communities."

Apparently, no municipalities made Chapter 10B applicable within that municipality. Accordingly, homeowners' associations within municipalities cannot go to the Commission on Common Ownership Communities for dispute resolution. You have asked whether homeowners' associations can qualify for participation in the Roadway Maintenance Reimbursement Program if the association is located in a municipality that has not adopted Chapter 10B.<sup>1</sup>

To the extent that there is a conflict between Regulation 18-88 and the Montgomery County Code, the Code must prevail. Sutherland Stat Const., Section 31.02 (4th Ed). Accordingly, Section 24B-3, as amended by Bill 44-89, establishes the criteria for qualifying a homeowners association to participate in the Roadway Maintenance Reimbursement Program. Among other qualifying criteria established in Section 24B-3, a homeowners' association must agree that eligible disputes will be submitted by the homeowners' association to a mediation or arbitration process approved by the Commission on Common Ownership Communities. The Division of Operations should inform homeowners' associations which are located in municipalities which have not adopted Chapter 10B that the association must apply to the Commission on Common Ownership Communities for approval of an alternate

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<sup>1</sup>We have taken the liberty of rephrasing the actual question posed to us in your memorandum of November 1, 1991. That memorandum states:

We need to know whether or not the incorporated cities will/should qualify for the reimbursement program since they are not eligible to go through the Office of Common Ownership Communities if they elected not to adopt the new legislation."

In fact, Chapter 24B only applies to homeowners' associations; it does not apply to municipalities. Municipalities receive revenue sharing under Chapter 30A of the Montgomery County Code. Accordingly, we have rephrased your question to apply to homeowners' associations, not municipalities.

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dispute resolution process before the association can participate in the Roadway Maintenance Reimbursement Program.

We trust this memorandum has been responsive to your inquiry. If you have further questions, please do not hesitate to contact us.

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91.06906

cc: Richard J. Ferrara, Director/ DHCD  
Richard H. Melnick, Assistant County Attorney  
Christopher Hitchens, Assistant County Attorney