

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

MEMORANDUM

May 22, 1998

TO: Jacob S. Frenkel, Member
Eastern Area Recreation Advisory Board

FROM: Marc P. Hansen, Chief *Marc Hansen*
Division of General Counsel

RE: Authority of Recreation Area Board to Select Representatives to County Recreation Board

As a follow-up to our telephone conversation, I am writing to confirm my advice that a recreation area advisory board does not have the authority to elect representatives to the County Recreation Board. The reason is that both the County Charter and County Code Section 41-21 provide that the County Executive appoints those representatives.

Charter Section 215 provides, "Except for commissions appointed to advise the Council, the County Executive shall appoint, subject to the confirmation of the Council, all members of boards and commissions unless otherwise prescribed by State law or this Charter." As the "constitution" for the County, every effort must be made to read Section 41-21 in a manner to avoid a conflict with the Charter.¹

Section 41-21 provides that, "Each member [of the County Recreation Board] is appointed by the County Executive and confirmed by the County Council." Section 41-21 further provides that the voting members of the County Recreation Board include two representatives of each recreation area advisory board. In order to give meaning to the first sentence the representatives from the recreation area board must be selected by the County Executive.

¹*Ritchmount Partnership v. Bd. of Suprvs. of Elections*, 283 Md. 48 (1978) (Charter is a local government's constitution); *Pickett v. Prince George's County*, 291 Md. 648 (1981) (statute should be construed to avoid its illegality).

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Accordingly my advice has two overwhelming advantages: 1) it gives meaning to the entire statute²; and 2) it is consistent with Charter Section 215.

You have suggested that the statute's use of the term "representative" **necessarily** implies that the recreation area board elects its representatives to the County Recreation Board. This argument has two flaws, both of which are fatal.

First, in 1995 the County Council amended Section 41-21 eliminating language that provided that the recreation area advisory board appointed its representatives to the County Recreation Board.³ This legislative history demonstrates that Section 41-21 intends that the County Executive appoint the representatives from the recreation area advisory boards who serve on the County Recreation Board. In fact since 1995, the County Executive has appointed the representatives from the recreation area advisory boards who serve on the County Recreation Board, although the Executive does seek recommendations from the area boards.

Second, the meaning of the term "representative" does not carry with it an inescapable implication that a "representative" must be elected or selected by the body the representative is to act on behalf of.⁴ Websters New World Dictionary of the American Language defines a representative as, "a person duly authorized to act or speak for another or others."⁵ Although the term representative is often associated with an elected representative assembly, the term does not necessarily carry with it the implication you urge—especially in the context of a statute which **expressly** provides that the representative is selected by the County Executive.

In summary, Section 41-21 provides that the representatives from the recreation area advisory boards are selected by the County Executive. This conclusion is supported by the

²*Management Personnel Services, Inc. v. Sandefur*, 300 Md. 332 (1984) (statute should be read to avoid rendering portions of a statute meaningless.)

³Copy of Bill 18-94 is attached.

⁴*Harbor Island Marina, Inc. v. Board of County Commissioners of Calvert County*, 286 Md. 303 (1979) (generally language used in a statute should be given its ordinary and popularly understood meaning).

⁵Websters New World Dictionary of the American Language (College Edition, 1962).

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language of Section 41-21; the legislative history of Section 41-21; and the mandate of Charter Section 215.

MPH:pb
cc: Greg Bayor, Director, Department of Recreation
Deborah Goodwin, Special Assistant to the County Executive
Charles Steinbraker, Department of Recreation

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Bill No.: 18-94
Concerning: County Recreation Board
membership
Draft No. & Date: 1 6/17/94
Introduced: June 21, 1994
Enacted: February 7, 1995
Executive: February 15, 1995
Effective: May 18, 1995
Sunset Date: None
Ch. 2, Laws of Mont. Co. 1995

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to increase the number of members of the County Recreation Board.

By amending

Montgomery County Code
Chapter 41, Recreation and Recreation Facilities
Section 41-21, Recreation board-created; composition; appointment and
terms of members; ex officio members

EXPLANATION: **Boldface** indicates a heading or a defined term
Underlining indicates text that is added to existing law
by the original bill
[Single boldface brackets] indicate text that is deleted
from existing law by the original bill
Double underlining indicates text that is added to the
bill by amendment
[[Double boldface brackets]] indicate text that is
deleted from existing law or the bill by amendment
* * * indicates existing law unaffected by the bill

The County Council for Montgomery County, Maryland, approves the following act:

1 Sec. 1. Section 41-21 is amended as follows:

2 41-21. Recreation Board-created; composition; appointment and terms
3 of members; ex officio members.

4 (a) There is a County Recreation Board. Each member is
5 appointed by the County Executive and confirmed by the
6 County Council for a 3-year term beginning on July 1. A
7 member serves until a successor is appointed and confirmed.

8 **(b)** The voting members of the Board are:

9 **(1)** [Each recreation area advisory board created under
10 Section 41-26 appoints] 2 representatives of each
11 recreation area advisory board [to serve on the County
12 Recreation Board. In addition, 7]; and

13 **(2)** 15 members [are] appointed from the County at large to
14 represent a cross-section of the population of the
15 County. [Each member serves a term of 3 years. A
16 member of the Recreation Board must not serve more
17 than 2 consecutive full terms, but any member may be
18 reappointed after a lapse of one year. Appointments
19 to unexpired terms of less than one year are not a
20 full term. Members serve until their successors are
21 appointed and confirmed. Terms begin on July 1.]

22 **[(b)](c)** [Ex officio] The ex officio, nonvoting members of the Board
23 [shall consist of] are:

24 **(1)** [A] a representative of the Department of Parks of the
25 Maryland-National Capital Park and Planning
26 Commission[.];

27 **(2)** [An] an administrative representative of the Board of

1 Education[.];

2 (3) [The] the immediate past chairperson of the County
3 Recreation Board, unless serving on the Board in
4 another capacity[.];

5 (4) [A] a representative [appointed by] of the
6 [Interagency Coordinating Board,] Office of Community
7 Use of [Educational Facilities and Services]
8 Schools[.];

9 (5) [A] a representative of the Community Action
10 Committee[.];

11 (6) [A] a representative of the Commission on Aging[.]; and

12 (7) a representative of the Commission on People with
13 Disabilities.

14 (d) There are 4 alternate members appointed from the County at
15 large. Alternate members must be designated first, second,
16 third, and fourth alternates. Alternate members may
17 participate in Board discussions, but may not vote unless
18 acting in place of an absent Board member. In the event a
19 vacancy is created by the resignation of a regular Board
20 member, an alternate immediately fills the vacancy
21 according to the order of designation and has the rights
22 and obligations of a regular Board member for the remainder
23 of the unexpired term.

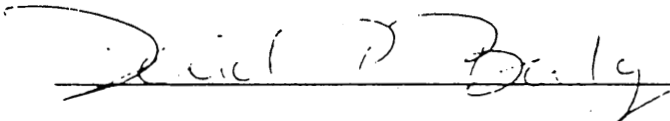
24 **Sec. 2. Initial appointments.**

25 (a) The initial terms of the 8 new voting members authorized by
26 Section 1 of this act are to be staggered as follows: two
27 appointments must be for a one-year term, three

1 appointments must be for a two-year term, and three
2 appointments must be for a three-year term.

3 (b) The initial terms of the 4 new alternate members authorized
4 by Section 1 of this act are to be staggered as follows:
5 one appointment must be for a one-year term, one
6 appointment must be for a two-year term, and two
7 appointments must be for a three-year term.

8 Approved:

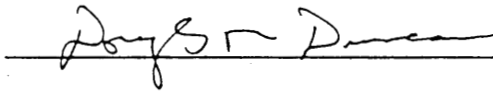
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Feb. 5, 1995

11 Derick Berlage, President, County Council

Date

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13 Approved:

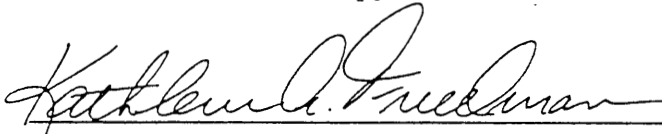
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2/15/95

16 Douglas M. Duncan, County Executive

Date

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19 This is a correct copy of Council action.

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2/17/95

22 Kathleen A. Freedman, CMC

Date

23 Secretary of the Council
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