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Questions & Answers

from MML's Inquiry Program

Q. I need to know the proper procedures to follow once we adopt either an ordinance or an amendment to an ordinance. I have been told that ordinances are not enforceable until they are on file in Annapolis. I have also been told that we don't have to do anything to them except approve them. Which is correct?

A. Under "home rule" the procedure for passage of municipal ordinances is left up to each city and town as set forth in its municipal charter. You may be confusing the procedures for charter amendment (which is prescribed under state law) with how ordinances are enacted. Only charter amendments are required to be filed with the State; however, each municipality is required to publish an annual supplement to its code of ordinances for any new legislation that is enacted over the preceding year. Please consult your charter for ordinance enactment procedures and let me provide you with a checklist and other helpful information on how to amend a municipal charter under Maryland law.

Q. Do you know if municipalities can keep the same (real property tax) rate for land and improvements for residential properties, but charge different rates for land and improvements for commercial properties?

A. The answer is generally yes. Municipalities have significant authority, particularly compared to counties, in creating separate classes for different tax treatment as long as a reasonably justifiable rationale exists to support a distinct class of property. Please review the *Opinion of the Attorney General* (Op. No. 95-002, Jan. 25, 1995) for more details.

Q. Our Board of Elections Supervisors is considering recommending to the Mayor and Council that the minimum number of candidates under

our charter needed to run for office to justify a primary election be increased for both the mayoral and councilmanic races. I think our town is fairly unique in having a primary at all, but does MML have any information with regard to the minimum number of candidates required in other Maryland cities/towns to conduct a primary election?

A. MML maintains a spreadsheet on municipal elections including information on who conducts primaries. Eighteen of the 157 municipalities have primary elections. Using this list and researching the charters, I have found several cities or towns that have different thresholds for the minimum number of candidates required to cancel their primaries and then place the existing names on the general election ballot.

Q. Must city/town boundaries be included in the municipal charter?

A. No; however, State law does require that municipalities provide the Department of Legislative Services with a resolution, ordinance or "other device" indicating the current boundaries. Many cities and towns initially modeled their charters after the old Article 23B (repealed) of the Annotated Code, where the metes and bounds are included in Section 4. Some contended that excluding the metes and bounds makes for a more succinct charter. As an example, instead of listing the metes and bounds, the Bel Air Charter provides the following language: "The Town boundaries shall be as they existed immediately prior to the effective date of this section B and as they may be hereafter amended as provided by law."

Q. Concerning highway user fee revenues (HUR's) that we receive, the Transportation Article, Section 8-408 specifies that municipalities can spend the money only on construction,

reconstruction, and maintenance of streets or bike paths or footpaths. Would traffic calming devices like curb extensions, speed humps, and chicanes be eligible for HUR monies and would "maintenance" include street cleaning and replacement of stop signs?

- A. Despite not having the less restrictive language as found in Section 8-408(a) for Baltimore City, Section 8-408(c), as it applies to all other municipalities, says that the funds can be used to pay for "...[t]he construction, reconstruction or maintenance of roads or streets." In Section 8-101 "Maintenance" is defined as "...the upkeep and repair by which a highway, building, equipment, and other property is kept in ordinarily efficient operating condition." The section goes on to say that maintenance does not include "construction, reconstruction or relocation." Section 8-410 states that constructed or reconstructed roads or streets must be approved by the State Highway Administration (SHA) to ensure proper integration within the secondary highway system.

Therefore, street cleaning and replacement of stop signs as well as street signage and street lighting would appear to be necessary maintenance (recall the words "upkeep" and "efficient

operating condition") and would qualify for HUR's. As for "curb extensions, speed humps, chicanes:..." and other traffic control devices, the question may be which device(s) is/are considered "new construction?" It appears, and I believe SHA agrees, that these devices would be considered "maintenance" items and not new construction, especially if placed on roads or streets already registered as "qualified mileage." These items serve to control, regulate or enhance the safe flow of traffic on an existing roadway. In fact an Attorney General's Opinion concerning speed humps (AG OP No. 86-021) states that a speed hump is a "pavement design feature" and not a traffic control device. Certainly, rumble strips, grooves, speed humps, embedded pavement reflectors, shoulder pavement warning cuts and the like would serve to enhance safety, efficiency and upkeep and not be considered major new construction warranting approval under Section 8-410.

Answers contained in this column should not be construed as legal counsel; they are the product of research conducted by MML staff. Questions concerning legal issues should be directed to your municipal attorney. ■

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