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COUNTY COUNCIL OF CECIL COUNTY
Cecil County Administration Building
200 Chesapeake Boulevard, Suite 2110, Elkton, MD 21921

August 28, 2018

The Hon. Brian Frosh
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202

RE: Request for Opinion
State regulations for detectors in rental dwellings without carbon monoxide devices

Dear Attorney General Frosh:

I am asking for an opinion from your office as to whether a carbon monoxide detector is required in rental dwelling units that are supported solely by an electric power line. This issue has arisen regularly since Md. Code Ann., §12-1101 through §12-1104, Public Safety Article, was revised in 2016. Our Cecil County Council Attorney, Brian Anderson, has suggested that an interpretation is needed of this state law.

I have enclosed Mr. Anderson's legal opinion that suggested that we ask for an interpretation from your office.

Sincerely:

Joyce Bowlsbey

Joyce Bowlsbey
Council President

Enclosure

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August 8, 2018

MEMORANDUM

TO: Joyce Bowlsbey, Council President
Cecil County Council

FROM: Brian Anderson, Esq.
Victor Jackson LLC

SUBJECT: State Requirement for Carbon Monoxide Detectors in Rental Units

The County Council requested that we research whether Maryland law requires carbon monoxide detectors in all rental properties.

PUBLIC SAFETY, SUBTITLE 11—CARBON MONOXIDE ALARMS

PUBLIC SAFETY §12-1101(c) defines "dwelling" as "(1) ... a building or part of a building that provides living or sleeping facilities for one or more individuals. (2) "Dwelling" includes a one or two family dwelling, multifamily dwelling, hotel, lodging or rooming house, or dormitory." Thus, it seems that a "rental dwelling unit" would fall under the umbrella of "dwelling" for purposes of this Subtitle. PUBLIC SAFETY §12-1101(e) specifically defines "rental dwelling unit" by referring to the definition in §6-801 of the Environment Article:

> (1) "Rental dwelling unit" means a room or group of rooms that form a single independent habitable rental unit for permanent occupation by one or more individuals that has living facilities with permanent provisions for living, sleeping, eating, cooking, and sanitation. (2) "Rental dwelling unit" does not include: (i) An area not used for living, sleeping, eating, cooking, or sanitation, such as an unfinished basement;
> (ii) A unit within a hotel, motel, or similar seasonal or transient facility; (iii) An area which is secured and inaccessible to occupants; or (iv) A unit which is not offered for rent.

PUBLIC SAFETY §12-1102—Application of Subtitle makes it clear that Subtitle 11—Carbon Monoxide Alarms only applies to: "(1) a dwelling that: (i) relies on the combustion

of a fossil fuel for heat, ventilation, hot water, or clothes dryer operation; and (ii) is a newly constructed dwelling for which a building permit is issued on or after January 1, 2008; ***or (2) a hotel, a lodging or rooming house, or a rental dwelling unit."***

Reviewing the statute, it seems as though §12-1102 (1)(i, ii) only serve to modify "dwelling". That is, fossil fuel-powered dwellings for which a building permit was issued in 2008 or later would be subject to the statute. As §12-1102(2) is set off separately, it would seem that the legislative intent is that ***any*** hotel, lodging or rooming house, or rental dwelling unit would be subject to the requirement for carbon monoxide alarms. It would seem that, had the General Assembly wanted to exempt electric-only rentals from the statute, the statute would have been written as follows: "This subtitle only applies to a dwelling that: (1) relies on the combustion of a fossil fuel for heat, ventilation, hot water, or clothes dryer operation; and (2) is a newly constructed dwelling for which a building permit is issued on or after January 1, 2008." Or, the Legislature could have more easily defined the limitation of the statute's effect in the negative: "This subtitle does not apply to dwellings powered solely by electricity."

The question then becomes whether this interpretation of the statute is borne out by the legislative history of the statute. It would seem that it does.

BACKGROUND

During its 2016 Regular Session, the Maryland General Assembly passed House Bill 849/Senate Bill 182, expanding the types of properties required to have carbon monoxide detectors. This legislation was codified, in relevant part, as PUBLIC SAFETY §12-1101, *et seq.*

The State had previously had statutes requiring carbon monoxide detectors in hotels/motels/other transient lodging, but had not moved to require them in private or rental dwellings. At first blush, it does not seem to make sense to require carbon monoxide alarms in dwellings that do not rely on fossil fuels as an energy source. Without combustion, there would be no source of carbon monoxide. However, it seems from reviewing the hearings held before the House Environment and Transportation Committee and the Senate Education, Health and Environmental Affairs Committee, that the impetus for this legislation was the tragedy that befell Mr. Rodney Todd and his seven children in Princess Anne in 2015.

On or about April 6, 2015, law enforcement responded to the Princess Anne rented home of Mr. Todd because Mr. Todd's employer had not heard from him since March 28, 2015. Sadly, upon entering the home, the officers found that Mr. Todd and his children had all passed away from carbon monoxide poisoning from a gasoline generator Mr. Todd had been running in the kitchen. Apparently, the home had been without electrical service since March 25, 2015, so Mr. Todd was utilizing the generator to provide power to the home.

Delegate Sheree Sample-Hughes of Dorchester and Wicomico Counties was the primary sponsor of House Bill 849. Delegate Sample-Hughes testified before the House

Environment and Transportation Committee that she is a funeral director and assisted the Princess Anne funeral home that performed the funeral services for the Todd family, and that experience moved her to sponsor this legislation.

Senator James N. Mathias, Jr., representing Somerset, Dorchester and Wicomico Counties sponsored Senate Bill 182, the companion legislation to House Bill 849. Senator Mathias testified before the Senate Education, Health and Environmental Affairs Committee that he had attended the funeral for the Todd family and was very moved by the tragedy.

If the Legislature acted to limit the application of the statute to only rental dwellings served by fossil fuels, that would not have saved the Todd family. In their case, it was not a malfunctioning furnace or water heater that generated the lethal carbon monoxide, but a portable gasoline generator that was not intended for indoor use. Unfortunately, even a cursory internet search will reveal many accounts of people improperly using combustion devices indoors that are not intended to be used indoors inadvertently sickening or killing themselves with exposure to carbon monoxide.

Additionally, during the testimony before the House Environment and Transportation Committee, Delegate Anthony O'Donnell of Calvert County questioned a lobbyist Kathy Howard from the Maryland Multi-Housing Association regarding the Association's support for the legislation. Delegate O'Donnell was surprised that they would support this additional requirement being imposed on its members. Delegate O'Donnell asked Ms. Howard how many rental units were in the State of Maryland. While not sure of the exact number, Ms. Howard said it was approximately 235,000. Delegate O'Donnell asked if that meant that all 235,000 rental units would have to be retrofitted for CO detectors to which Ms. Howard replied that many counties already required CO detectors, so the number of affected units would be less than 235,000.

Encountering almost no opposition, HB 849/SB 182 easily passed through both the House of Delegates and the Senate. Governor Hogan signed the legislation into law on April 26, 2016.

THE PROBLEM

On or about January 6, 2017, the Maryland State Fire Marshal's Office issued Press Release NR 1/6/17: Carbon Monoxide Alarm Requirement for Maryland Rental Properties. The problem with this document is that it seems to contradict itself. The first paragraph of the document states that: "[i]n 2016, the Maryland General Assembly passed House Bill 0849 and its companion Senate Bill 0182. Both bills require the installation of carbon monoxide alarms for any new and existing rental dwelling units. This includes any type of dwelling unit that can be rented to an individual or a family." It seems then, that the statute requires a carbon monoxide alarm in any rental unit. Period.

However, the document goes on to reverse itself. The last sentence of Paragraph 2 states that "[carbon monoxide alarms] are not required in rental dwelling units that are

powered solely by an electric power supply." So now it seems as though all-electric units are exempt.

Unfortunately, the document reverses itself yet again in the last sentence. There, the document states that: "[a]lthough earlier is highly recommended, carbon monoxide alarms must be installed in all rental dwelling units by April 1, 2018." Again, we have gone back to the all rental dwelling units; no exceptions.

The Fire Marshal's Office participated in the hearings before the House of Delegates and Senate hearings, so presumably they are aware of the legislative intent of the bill. The problem is that their public guidance is contradictory.

CAN CECIL COUNTY PASS ITS OWN LEGISLATION ON THIS MATTER?

One of the potential solutions that was posed was whether the County could pass its own legislation to clarify the matter. Unfortunately this would not solve the problem. While the carbon monoxide alarm statute permits local jurisdictions to enact their own legislation in this regard, it only does so to the extent that local legislation is more strict than the State law. PUBLIC SAFETY §12-1106.

OUR RECOMMENDATION

Unfortunately, the carbon monoxide alarm statute was not particularly well-written. Delegate O'Donnell of the House Environment and Transportation Committee noted as much during the testimony before that Committee. While it seems from a review of the language of the statute that it applies to all rental dwelling units, there are many interpretations of the statute, and the implications of the many interpretations are manifold. Particularly distressing is the interpretation of the statute by the State Fire Marshal's Office. The State Fire Marshal is the foremost authority with regard to the enforcement of State Fire Code, yet its interpretation of the statute contradicts itself.

Given the potential cost involved for the affected parties with regard to this legislation, it would seem prudent to get an official opinion on the matter from the Office of the Attorney General. There is a provision for the Office of the Attorney General to render official opinions when requested to do so by local governments.