Nor do we at this time infer that other banks operated under the auspices of or in conection with the federal government (such as national banks — U.S.C. Title 12, Section 21 *et seq.* — and those insured by the Federal Deposit Insurance Corporation—Article 12, Section 1811 *et seq.*) are instrumentalities of the federal government in the same sense that the Federal Reserve Bank is.

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POLICE — BALTIMORE CITY PUBLIC SCHOOL EMPLOYEE — ARREST OF—LEGALITY OF NOTIFICATION BY BALTIMORE CITY POLICE DEPARTMENT AT THE REQUEST OF A PUBLIC SCHOOL OFFICIAL.

July 18, 1973.

Commissioner Donald D. Pomerleau,
Baltimore City Police Department.

You have asked our opinion as to the legality of the Baltimore City Police Department notifying a designee of the Baltimore City Public School System at the request of an official of said system of the arrest of any school employee shortly after such arrest. Specifically you ask whether such automatic notification of arrest would violate existing laws or infringe upon an arrestee's right of privacy. We assume that such employees are adults.

In *Whittle v. Munshower*, 221 Md. 258 (1959), the Court of Appeals of Maryland held that in the absence of a statute to the contrary, records made by Maryland police officers are not public records or open to inspection by the public. See 49 Opinions of the Attorney General 350 (1964). However, on July 1, 1970, Article 76A of the Annotated Code of Maryland, titled "Public Information," took effect. Section 1(a) of Code Article 76A defines the term "Public Records" as follows:

> "(a) The term 'public records' when not otherwise specified shall include any paper, correspondence, form, map drawing, or other document, regardless of physical form or characteristics, and including all copies thereof, that have been made by the State and any counties, municipalities and political subdivisions thereof and by any agencies of the State, counties, municipalities, and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law."

In view of the foregoing definition, it would appear that the records of arrest referred to are, in fact, public records

and as such are open to inspection by members of the public pursuant to Section 2 of Code Article 76A, unless there exists privilege or confidentiality requiring nondisclosure.

The Court of Appeals of Louisiana had occasion to examine a similar statute in *Francois v. Capital City Press, et al.*, 166 So. 2d 84 (1964). *Francois* involved the publication by the defendant newspaper of the fact that an individual had been arrested. The information concerning the arrest was obtained from an official log book of the Louisiana State Police. In attempting to decide whether the log book containing the records of arrest was a public record, the Court looked to Louisiana Statutes Annotated, Section 44:1, which defines Louisiana public records as follows:

> "All records, writings, accounts, letters and letter books, maps, drawings, memoranda and papers, and all copies or duplicates thereof, and all photographs or other similar reproductions of the same, having been used, being in use, or prepared for use in the conduct, transaction or performance of any business, transaction, work, duty or function which was conducted, transacted or performed by or under the authority of the Constitution or the laws of this state, or the ordinances or mandates or orders of any municipal or parish government or officer, or any board or commission or office established or set up by the Constitution or the laws of this state, or concerning or relating to the receipt or payment of any money received or paid by or under the authority of the Constitution or the laws of this state are public records, subject to the provisions of this Chapter except as hereinafter provided."

The Court found as a matter of law that the log book entries were public records and accordingly, were subject to examination by the public. The similarities between the definitions of public records contained in the Maryland and Louisiana public information statutes lead us to conclude that the records of arrest of individuals contained in the

records of the Baltimore City Police Department are, in fact, public records.

Having found that the records involved are public in nature, our attention must turn to whether there exists some privilege preventing revelation of the materials found in these records. In *Piracci v. Hearst Corporation*, 263 F. Supp. 511 (D. C. Md. 1966), the Court was faced with deciding whether the defendant newspaper was liable for printing substantially correct information concerning the arrest of an individual. Judge Northrop in rendering his decision found that any privilege which might exist remained intact so long as the information printed was substantially correct and was gleaned from official records of a police agency. The Court found that there was no infringement upon an arrestee's right to privacy by virtue of making public the fact of his arrest. Accordingly, it would appear that disclosure to the requesting agency of the fact that certain individuals have been arrested would in no way infringe upon that individual's right to privacy.

The record of arrest discussed herein is contained on file cards located in the Central Records Division of the Baltimore City Police Department. We are advised that these cards are an exact copy of a portion of the arrest report prepared by the arresting officer following the apprehension of individuals charged with crime. Having examined the form of arrest report used by the Baltimore City Police Department, we find that said report contains information concerning the identity of a complainant, a description of the alleged criminal conduct committed, and other information used by the Baltimore City Police Department in investigating reports of crime and apprehending those suspected of criminal conduct. The character of information contained in these reports would appear to us to fall within the purview of Code Article 76A, Section 3(b)(i) which permits the custodian of public records to deny inspection to the public where the public interest so dictates where the records sought are "records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the Attorney

General, police department or any investigatory files compiled for any other law enforcement or prosecution purposes."

It is our opinion that you, as custodian of the records of the Baltimore City Police Department, may, under the Public Information Act, grant or deny public access to these records based upon a reasonable determination as to whether disclosure would be contrary to the public interest.

A further benchmark for our opinion may be found outside the statute. In *Menard v. Mitchell,* 328 F. Supp. 718 (D. C. District of Columbia, 1971) the Court at page 726 stated: "[W]here the Government engages in conduct, such as the wide dissemination of arrest records, that clearly invades individual privacy by revealing episodes in a person's life of doubtful and certainly not determined import, its action cannot be permitted unless a compelling public necessity has been clearly shown." Although it is our conclusion that, under the statute, you may deny the right of inspection of arrest records if you find that disclosure would be contrary to the public interest, we believe that you should permit inspection of such records only when a compelling public necessity for such disclosures has been shown.

The Public Information Act (Article 76A) speaks only of the "right of inspection" of public records or "access to" such records. We do not believe that this compels you to take affirmative action on a continuing basis to notify an employer (be it either a public or private employer) of the arrest of any of its employees although there exists no prohibition for such action. You may permit access or the right of inspection of arrest records to the employer if you, in your sound discretion, find such disclosure to be in the public interest (or supported by a compelling public necessity), but we believe that you should act affirmatively to disseminate this information only after careful consideration is given to the public interest involved.

FRANCIS B. BURCH, *Attorney General.*

MILLARD S. RUBENSTEIN, *Assistant Attorney General.*

POLICE, MARYLAND STATE — HANDGUNS — CONFLICT BETWEEN FEDERAL AND STATE STATUTES AS TO WHAT CRIMINAL CONVICTIONS BAR AN INDIVIDUAL FROM RECEIVING A PERMIT TO WEAR, CARRY, BUY, SELL OR TRANSFER A HANDGUN—MENTAL ILLNESS OR COMMITMENT TO A MENTAL INSTITUTION AS A BAR—HOW CONFLICT BETWEEN FEDERAL AND STATE LAW SHOULD BE RESOLVED.

December 6, 1973.

Colonel Robert J. Lally, Secretary,
Department of Public Safety
and Correctional Services.

In your recent correspondence, you have requested our opinion concerning what appears to be a conflict between the federal law and the law of the State of Maryland as to whether or not an individual convicted of certain classes of crimes may purchase or be approved by the Superintendent of the Maryland State Police for the purchase of a pistol or revolver.

Section 442 of Article 27, Annotated Code of Maryland, prohibits the sale or transfer of pistols and revolvers (handguns) to any individual who has been convicted of a crime of violence in this State or elsewhere. Section 445 of the said Article, paragraph (d), provides as follows:

> "It shall be unlawful for any dealer or person to sell or transfer a pistol or revolver to a person whom he knows or has reasonable cause to believe has been convicted of a crime of violence . . ."

Section 442 of the said Article provides that an application to purchase or transfer a handgun must be filed with the Maryland State Police by the prospective seller. Approval of the transfer by the Maryland State Police is based upon the application and an ensuing investigation as required by law. For purposes of the prohibition contained in Sections 445 and 442, Section 441 of the said Article 27 defines crime of violence as follows: