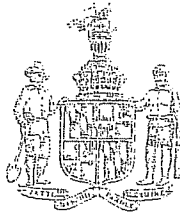


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May 14, 2004

The Honorable John Adams Hurson, Chairman
Health and Governmental Operations Committee
160 Lowe House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Hurson:

You have asked for advice concerning whether materials supplied to the Health and Governmental Operations Committee ("the Committee") by a lobbyist are public records available to the public, including an opposing lobbyist, for inspection and copying. It is my view that the materials are public records.

State Government Article § 10-613(a) provides that "[e]xcept as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time." A "public record" is one that "is made by a unit or instrumentality of the State government ... or received by the unit or instrumentality in connection with the transaction of public business." SG § 10-611(g)(1). It is my understanding that the materials in question are a survey of the law in other states with respect to matters contained in a specific bill, provided to the committee by a lobbyist in connection with its consideration of the bill. As such, there seems to be little question that it is a public record, and that inspection must be permitted unless it falls within some exception in the law.

State Government Article § 10-615(1) requires denial of inspection of a record if "by law, the public record is privileged or confidential." This includes the constitutionally recognized speech and debate privilege for members of the General Assembly. *Moberly v. Herboldsheimer*, 276 Md. 211 (1975). This privilege would cover letters and memoranda prepared for individual legislators by staff, Letter to the Honorable Catherine I. Riley from Robert A. Zarnoch, dated March 24, 1987, and materials that are an integral part of the deliberative process, *id.*, as well as the results of information gathering initiated by a member or a member's staff, Letter to the Honorable Thomas E. Dewberry from Richard E. Israel dated February 25, 1999.

Had the survey in question been prepared by staff, or in response to a specific request by a legislator, it could fall within the exception of § 10-615(1). However, it is not my understanding that this is the case. Moreover, it is the typical practice of the committees to make this type of material a part of the legislative file that is available to the public at large. Letter to the Honorable Catherine

The Honorable John Adams Hurson
May 14, 2004
Page 2

I. Riley from Robert A. Zarnoch, dated March 24, 1987. In fact, the former Director of the former Department of Legislative Reference entered into a Memorandum of Understanding with the A.S. Abell Company that "factual and background data, information, and materials, regardless of where or how obtained, such as other laws, regulations, court cases, administrative decisions, and statistical and other factual material" in legislative files would be produced in response to Public Information requests. *The A.S. Abell Company v. Payne*, Memorandum of Understanding, (Circuit Court for Baltimore City, Docket 120A, folio 166, file no. A59505, February 28, 1980).

For the above reasons, it is my view that the materials in questions are public records subject to inspection under the Maryland Public Information Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Rowe', with a large, sweeping flourish at the end.

Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
hurson15.wpd