

ELECTIONS — SUPERVISOR OF ELECTIONS KENT COUNTY —  
INSPECTION OF REGISTRATION RECORDS — FURNISHING  
REGISTRATION LISTS TO NON-PROFIT AND/OR CHAR-  
TABLE ORGANIZATIONS.

August 17, 1977.

Mr. Willard A. Morris, Administrator,  
State Administrative Board of Election Laws.

At the request of the Board of Supervisors of Elections of Kent County, you have asked our opinion on the following questions involving voter registration records and lists:

1. Does Section 3-22, Article 33, prohibit the board from furnishing registration lists to non-profit and/or charitable organizations?
- 2 (a). Who is entitled to inspect registration records pursuant to Section 3-11, Article 33? (b). Are these persons entitled to copy registration records as well as inspect them; and if so must this be done in accordance with the restrictions of Section 3-22, Article 33?

1. Does Section 3-22, Article 33, prohibit the Board from furnishing registration lists to non-profit and/or charitable organizations?

Section 3-22 (a) provides in its entirety:

(a) List of all persons registered — The Board shall furnish to any person registered to vote in Maryland making written application therefor, within ten days after the application has been received, a certified copy, under their hands, of the names, addresses and party affiliations, of all persons registered in any precinct. The State Administrative Board of Election Laws shall furnish such lists at the request of a local board. The method and cost of reproduction of these registration lists shall be determined by the State Administrative Board of Election Laws and the

boards. Any application must be filed at least 45 days prior to a primary election and at least 30 days prior to a general election and shall be accompanied by cash or certified check to cover the cost or estimated cost of the list. Registration lists shall be certified by the board or the State Administrative Board of Election Laws as correct. Each application for a registration list shall be accompanied by a statement, under oath, by the individual filing the application, that the list is not intended to be used for purposes of commercial solicitation or other business purposes. Any person who, knowingly, allows a registration list under his or her control to be used for commercial solicitation or other business purposes is guilty of a misdemeanor and shall be punished under the provisions of §24-27 of this article.

Article 33, Section 3-22 (a) (Emphasis added).

While this statute is obviously designed to provide easy access to voter registration lists for those interested in contacting the registered voter in a given precinct or precincts for political purposes, *i.e.*, campaigning, surveying public opinion, etc., it explicitly prohibits the use of those lists only for "commercial solicitation or other business purposes." Therefore, it would seem that any other use of the lists, while perhaps not forming a part of the purpose for which the statute was enacted, is permissible.

Thus, the first problem to be resolved is exactly what is "commercial solicitation or other business purposes." Since this statute has not been interpreted by the Maryland courts, we look to other situations in which the courts have had occasion to consider similar language. In *Atlantic Gulf & Pacific Co. v. State Depart. of Assessments & Taxation*, 252 Md. 173, 179 (1969), the Court of Appeals cited with approval a definition of commerce as including, but not limited to "trade, traffic, purchase, sale or exchange of commodities." Citing 15 C.J.S. Commerce, Section 1 at 383-

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384 (1967), the Court also used Websters New Twentieth Century Dictionary, Unabridged 2d Ed. (1964), to show that commerce was synonymous with business. 252 Md. at 179.

In *Zurich Insurance Co. v. Friedlander*, 261 Md. 612, 660 (1971), in discussing the term "business and commercial pursuits", the Court of Appeals adopted the United States Supreme Court's broad definition of "business": "that which occupies the time, attention and labor of man for the purposes of a livelihood or profit." *Fiant v. Stone Tracy Co.*, 220 U.S. 107, 171 (1910). However, in *Zurich*, the Court found that the "ordinary and customary meaning" of business was that reflected in dictionary definitions, *e.g.*:

- A. commercial or mercantile activity customarily engaged in as a means of livelihood  
Websters Third New International Dict.
- B. 1. a pursuit or occupation that employs or requires energy, time or thought, trade, profession, calling  
2. any occupation connected with the operations and details of trade or industry.  
Funk & Wagnall's New Standard Dict.  
of the English Language
- C. "business" is often synonymous with calling, occupation or trade.  
Black's Law Dictionary, Third Edition

The Court noted that the Funk & Wagnall's definition has been used by various courts as a test of whether one was engaged in a business.

None of these definitions absolutely requires that the activities in question be for profit. Even the Supreme Court in *Fiant v. Stone Tracy Co.*, *supra* 171, recognized that "business" is a very comprehensive term and embraces everything about which a person can be employed. Moreover, Maryland has adopted a broad definition of "business" for the purposes of its Uniform Preservation of Business

Records Act. Article 15B, Section 1(a) provides that "[b]usiness includes every kind of private business, profession, occupation, calling or operation of private institutions, whether carried on for profit or not." (Emphasis supplied). This sweeping definition would certainly encompass a private non-profit non-charitable organization. Thus, while it is not entirely clear it does seem that even such a non-profit institution could engage in commercial solicitation or activities for business purposes within the contemplation of Article 33, Section 3-22. Therefore, unless a non-profit non-charitable organization provides the sworn statement required by the statute that it does not intend to use the requested lists for such activities, the Board should refuse to furnish the list to that institution.

However, non-profit *charitable* organizations present a somewhat different question. Maryland law explicitly recognizes a distinction between solicitation for charitable purposes and solicitation for business or other commercial purposes. Some charitable organizations are specifically required to register as charities and are not permitted to engage in any form of solicitation that does not have a charitable purpose. Article 41, Section 103E provides:

A charitable organization may not solicit funds from the public or expend them except for the charitable purposes stated in its registration statement.

The charitable purposes contemplated by this subtitle are benevolent, educational, philanthropic, human, patriotic, religious, or eleemosynary. Article 41, Section 103A(b). Moreover, Section 103L, specifically provides that solicitation by these charitable institutions for a commercial or business purpose leads to revocation of the charity's registration, civil sanctions of the Attorney General, or prosecution by the States Attorney. Article 41, Section 103L. It seems to us that this distinction between solicitation for charitable purposes and that for commercial or business purposes which has been explicitly recognized by the General Assembly in Article 41, Section 103A, *et seq.*, must

also be recognized by the boards of supervisors of elections for purposes of Article 33, Section 3-22(a). Accordingly, a board should furnish voter registration lists to a representative of a charitable institution, registered under Article 41, Section 103A, *et seq.*, provided that the representative is a registered voter in the State of Maryland and makes proper written application for, and affidavit as to the use of, such lists.

Moreover, in our opinion, while the specific statutory prohibition against engaging in commercial or business solicitation does not apply to those charities exempted from registration under Article 41, Section 103C, the distinction between commercial and business solicitation on one hand and charitable solicitation on the other, could apply with equal force to these charities. For it is perfectly clear from the statute exempting certain charities from registration requirements that these charities, (*e.g.*, a "bona fide religious organization" which has received "a declaration of current tax exempt status from the government of the United States") may well actually engage only in charitable rather than business or commercial solicitation. Thus, in our view, if a representative of a bona fide charitable organization exempted from the requirements of Article 41, Section 103A *et seq.*, who is a registered voter, makes proper written application for, and affidavit as to the use of such lists, a board of election supervisors should furnish the list.

We would suggest that prior to receiving any sworn statement pursuant to Section 3-22, Article 33, the Board of Election Supervisors furnish the applicant with a copy of this Opinion and advise him of the criminal penalty prescribed by Section 3-22 itself and Sections 24-27 for "using a registration list" under his control for "commercial solicitation or other business purposes," and the criminal penalty prescribed by Sections 24-12 and 13 for perjury and subordination of perjury. Moreover, if an applicant, after he reads this Opinion, (and even if he signs the required affidavit), informs the Board that he does not agree with

the Opinion and plans to use the registration lists in a way contrary to its guidelines, the Board should deny him the use of the registration lists. For only in this way can the Board be assured that it itself does not violate the injunction of Section 3-22 not to "knowingly" allow a registration list under its "control" to be used "for business or other commercial solicitation purposes."

2(a). *Who is entitled to inspect registration records pursuant to Section 3-11, Article 33?*

Section 3-11(a) provides in pertinent part:

(a) Cards or loose-leaf pages; binders; records open to inspection; removal. — . . . Except when an electronically reproduced precinct register is used, in accordance with subsection (b), the original forms shall be filed in different filing cases or loose-leaf binders, arranged by precincts in alphabetical order, and shall constitute the precinct register for use in polling places on election days. The registration records shall be open to public inspection under reasonable regulations at all times when the office of the board is open for the registration of voters except upon the special order of the board. The registration records may not be removed from the office of the board except on the order of a court and except for temporary removal solely for purposes of data processing, provided that in any removal for data processing, one duplicate copy is always retained in the office of the board.

Article 33, Section 3-11(a). (Emphasis added). Thus, except upon "special order of the Board," any member of the public is entitled to inspect registration records pursuant to the reasonable regulations of the Board and its offices when they are open for registration. This is so, we might note, even though as discussed within, only a person registered to vote in Maryland may obtain the voter registration lists of a particular precinct under Section 3-22.

2 (b). Are these persons entitled to copy registration records as well as to inspect them? If so, must this be done in accordance with the restrictions of Section 3-22?

The registration records open to public inspection pursuant to Section 3-11(a) are clearly "public records", as defined in Maryland's Public Information Act, that is "documents made by governmental agencies" in connection with "the transaction of public business", and not privileged or made confidential by law. Article 76A, Section 1(a). They are therefore also subject to the right of inspection created by Article 76A, Section 3 and the accompanying right to copy set forth in Article 76A, Section 4(a):

(a) In all cases in which a person has the right to inspect any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian.

If there are no facilities for making copies "the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs," *Id.* at Section 4(b); although removal of the records from the board's office is specifically precluded by Article 33, Section 3-11(a), whether for copying or for any other purpose. These statutes demonstrate a recognition that the right to copy records is a necessary incident to the right to inspect. As one State court has held: "the right to inspect would in many cases be valueless without the right to make copies." *Fuller v. State*, 17 So. 2d 607 (Fla. 1944). See also, *People v. Peller*, 181 N.W. 2d 376, (Ill. 1962). The mechanics of copying and the imposition of a reasonable fee may, however, be regulated by the board. Therefore, in our opinion any member of the public who is entitled to inspect the "registration records" of the Board of Election Supervisors pursuant to Section 3-11(a) is also entitled to copy those records in the absence of a "special order of the board."

Moreover, in our view this right may be enjoyed without any of the restrictions set forth in Section 3-22 unless a

Board itself makes a "special order" or "reasonable regulation", pursuant to Section 3-11, to the contrary. For Section 3-22 only restricts the use of lists of the names, addresses, and party affiliations of registered voters prepared by the boards of election supervisors; it makes no restriction on inspection or use of base registration records. Rather, Section 3-11(a) specifically deals with these records, stating they shall "be open to public inspection under reasonable regulations." While perhaps it can be argued that Section 3-22's prohibition against the use of registration lists for commercial or business purposes is an automatic "reasonable regulation" of the right of public inspection of registration records under Section 3-11(a), we do not find this argument persuasive for several reasons. First, neither Section 3-11 nor Section 3-22 so states. It is Hornbook law that in construing a statute one may not surmise a legislative intention contrary to the "plain meaning" of the words in the statute, "nor insert or omit words" to make a statute express an intention not evident in its original form. *St. Paul Fire & Marine Ins. Co. v. Insurance Comm'r.*, 275 Md. 130 (1975). Secondly, the Court of Appeals has specifically held that when statutes relate to the similar subject matter — here voter registration lists and records — and make no reference to each other, they will be construed so as to give as full effect to each other as possible. *Mayor & City Council of Baltimore v. Clerk of Superior Court*, 270 Md. 316 (1973); *Accord, Board of Fire Comm'r's v. Potter*, 268 Md. 285 (1973). If this stricture is followed here then Section 3-22(a) cannot be regarded as a limitation on Section 3-11(a). Finally, Section 3-22 is quite clearly a penal provision: "any person who knowingly allows a registration list under his or her control to be used for commercial solicitation or other business purposes is guilty of a misdemeanor. . . ." In construing another section of the Election Code, the Court of Appeals has instructed that a penal clause is to be literally construed so that "no man can be held guilty of violating a statute unless he comes plainly within both the letter and spirit of the statute." *Smith v. Higginbotham*, 187 Md. 115, 130-131 (1946). If Section

3-22 is strictly construed, it cannot be read to restrict a right given in Section 3-11 when another construction is both possible and reasonable.

Thus, in the absence of a "special order of the board" or a "reasonable regulation" by the Board so providing, in our opinion, any member of the public is entitled to inspect and copy registration records of the Board of Election Supervisors pursuant to Section 3-11(a), without any of the restrictions set forth in Section 3-22.

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ELECTIONS — REFERENDUM — POWER OF GENERAL ASSEMBLY TO REPEAL, AMEND OR REPLACE A LAW PETITIONED TO REFERENDUM.

September 20, 1977.

*The Honorable John J. Garrity,  
Maryland House of Delegates.*

You have requested our opinion on a series of questions on the power of the General Assembly to repeal, amend or replace a law petitioned to referendum.

Your questions revolve around Chapter 856 of the Laws of 1977, which was approved by the Governor on May 26, 1977 to take effect on June 1, 1977, and which your letter mistakenly describes as having been enacted as an emergency measure. The law, which provides new taxing authority for Prince George's County, was timely petitioned to referendum by a sufficient number of voters, so that pursuant to Article XVI of the Maryland Constitution, Chapter 856 is now suspended and awaiting action by the voters at the 1978 general election.

Against this background you ask: (1) whether the General Assembly may now repeal Chapter 856 and if so whether the question must still be placed on the 1978 ballot; (2) whether the General Assembly may amend Chapter 856, either by limiting or expanding the power to be granted the county; (3) whether the Legislature may repeal and reenact Chapter 856 either as ordinary or emergency legislation and how that action would affect the pending referendum.

Article XVI of the Maryland Constitution reserves to the people the power of referendum to approve or reject at the polls laws enacted by the General Assembly. This Article, which is self-executing, provides in Section 2 that if a referendum petition is timely and properly filed with the Secretary of State, as to a particular law "the same shall be referred" by him to a vote of the people at the next ensuing election. In the interim, the law is suspended.