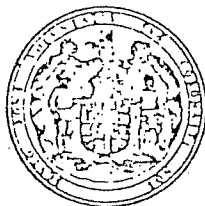


GEORGE A. NILSON
ATTORNEY GENERAL



WILLIAM A. KAHN
DEPUTY COUNSEL

BOARDS OF EDUCATION -
AUDITS - AUDIT LETTER
TO BE PUBLIC UNDER
EDUCATION ARTICLE AND
CHARLES COUNTY FREEDOM
OF INFORMATION ACT.

THE ATTORNEY GENERAL
EDUCATION DIVISION

ONE SOUTH CALVERT BUILDING
ROOM 1202
BALTIMORE, MARYLAND 21202
301 - 383 - 6016

April 3, 1979

Honorable James C. Simpson
316 Senate Office Building
Annapolis, Maryland 21401

Dear Senator Simpson:

You have asked for our opinion on whether the Superintendent of Schools of Charles County ("Superintendent") may withhold from a Charles County Commissioner and the County Director of Finance a "managerial audit letter" prepared for the Charles County Board of Education ("Board") by independent certified public accountants. For the reasons given below, we believe that the Superintendent may not withhold the "managerial audit letter".

We understand that independent certified public accountants retained by the Board prepared this managerial audit letter^{1/} possibly in conjunction with or at the same time as their most recent annual audit of the Board's financial transactions and accounts. The annual financial audit is required by Education Article § 5-108 of the Maryland Code, which provides as follows:

^{1/} Although we have not seen the "managerial audit letter", we believe that it is a letter to the Board indicating weaknesses in the Board's internal accounting controls and recommending ways to improve the control system. We understand that the separate auditors' certification of the financial statements (which certification and statements are publicly available) does not refer to internal accounting problems or to an accompanying "managerial audit letter".

We do not know the circumstances that caused the accountants to send a managerial audit letter to the Board. If the letter was the accountants' response to the Board's separate request for management advice and was unrelated to the recent annual audit required by § 5-108, it is conceivable that the letter might not be considered a "result of the audit" as contemplated by § 5-108(c) nor, therefore, a public record under that section.^{2/} On the other hand, it seems more probable that the letter was prompted by the accountants' findings in or during the annual audit or otherwise resulted from the audit. Such a product of the audit, however communicated to the Board (whether or not in the form of a "managerial audit letter") constitutes a "result of the audit". For this reason, we believe the letter is a public record under § 5-108(c).

We also find that the managerial audit letter is a public document under Article 76A, § 6 of the Maryland Code, the Charles County Freedom of Information Act (the "Act").^{3/}

^{2/} We understand that the County Board of Education has neither seen the managerial audit letter nor reviewed it in a Board meeting. Because the provision of the Charles County Freedom of Information Act governing governmental meetings, Article 76A, § 6(e) of the Maryland Code, and the State Public Meetings Act, Article 76A, §§ 7 to 15 of the Maryland Code (to the extent it is applicable), do not appear to permit the Board to discuss or to act on the letter in a closed session, if the letter is presented to the Board at a meeting, it will be available to the public as part of the Board's proceedings. See also, Education Article §§ 3-404 and 4-106(e) of the Maryland Code and Maryland Board of Education Bylaw 13.02.01.06 A.

^{3/} Other than as discussed above, we have found no statutory provision that gives either the Director of Finance or the County Commissioners an independent or superior right to that of the public to obtain this information. For example, as we have previously ruled, the right of public officials to governmental information under the State Public Information Act, Article 76A, §§ 1 to 5 of the Maryland Code, is no greater than that of the general public. See e.g., 60 Opinions of the Attorney General 559 (1975) (State Accident Fund); 58 Opinions of the Attorney General 53 (1973) (State Senator). The Charles County Freedom of Information Act compels the same conclusion.

(1)]^{5/} are required by statute to keep and maintain, or reports paid for by public funds." (Emphasis added) A managerial audit letter from outside public accountants, whether or not presented as a part of or in conjunction with an annual audit of financial transactions, is a "[report] paid for by public funds". Consequently, it is an "official record" that must be made available for public inspection, unless otherwise excepted from the Act. In this regard, we do not believe that a managerial audit letter falls within any of the exceptions set forth in the Act..

Under § 6(c) of the Act, the following records are expressly excluded:

"(1) Memoranda, correspondence, evidence and complaints related to criminal investigations, and reports submitted to the State Police in confidence.

(2) Income tax returns, medical and mental records, scholastic records, welfare records, adoption records, illegitimate births and personnel records.

(3) Memoranda, working papers and correspondence held by the office of the chief executive officer of Charles County. ^{6/}

(4) Memoranda, working papers and records compiled specifically for use in litigation and material furnished in confidence to the offices specified in (3).

(5) Memoranda, working papers, and records held by central committees of political parties."

^{5/} Among the "groups, agencies or organizations" enumerated in § 6 (b)(1) are "school boards". It is thus clear that the Charles County Board of Education is within the purview of the Act.

^{6/} The Charles County Board of Education is clearly not a political subdivision of the County. See State v. Canova, 278 Md. 483 (1976); Maryland-National Capital Park and Planning Comm. v. Montgomery Co., 267 Md. 82 (1972); 59 Opinions of the Attorney General 560 (1974).

Honorable James C. Simpson

April 3, 1979

Page 7

7/ cont...It is not intended to prevent clients (such as the Board) from disclosing advice (such as the managerial audit letter) given to them by their accountants. Compare Geisey v. Geisey, 190 Md. 618 (1948) with Hare v. Family Publications Service, Inc., 334 F. Supp. 953 (D. Md. 1971).

8/ We have been advised that some previous managerial audit reports have been oral, rather than written. Such reports obviously cannot be read or copied.