June 29, 2022

The Honorable President

Members of the City Council

c/o Natawna Austin, Executive Secretary

409 City Hall

Baltimore, MD 21202

RE: City Council Bill 22-0211 – Employees and Retirees – Healthcare Reform

Dear President and Members:

 You have requested the advice of the Law Department regarding City Council Bill 22-0211. City Council Bill 22-0211 establishes the Employee and Retiree Health Benefits Program for Baltimore City employees and provides for the administration of the Program. The provides for membership, procedures, and duties for the City Health Insurance Committee and requires that certain information be available and that certain reports and certain data be provided upon request.

ISSUES PRESENTED

City Council Bill 22-0211 is an attempt to provide for healthcare for City employees and retirees by health care to be subject to collective bargaining and providing for authority to the exclusive employee organizations with respect to access to information and control over the use of certain funds.

The bill, however, in the course of providing for these programs and powers, goes beyond the scope of the authority of the City Council. In addition, the bill is preempted by State law regarding the disclosure of public documents.

ANALYSIS

**Express Powers**

City Council Bill 22-0211, calls for the creation of an Employee and Ret Health Benefits Program that covers City employees and retirees. The legislative authority of the City Council is found in the City’s Express Powers with are codified within the City Charter in Art. II. These powers are granted by the General Assembly and may only be amended by the General Assembly. Art. XI-A, Sec. 2 states “The General Assembly shall by public general law provide a grant of express powers for such County or Counties as may thereafter form a charter under the provisions of this Article. Such express powers granted to the Counties and the powers heretofore granted to the City of Baltimore, as set forth in [Article 4, Section 6](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000507&cite=MDCNART4S6&originatingDoc=N08A1A8509CD911DB9BCF9DAC28345A2A&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=09a09e53aa514762ba40eb7e84b549f5&contextData=(sc.Category)), Public Local Laws of Maryland (now found in Art. II of the City Charter), shall not be enlarged or extended by any charter formed under the provisions of this Article, but such powers may be extended, modified, amended or repealed by the General Assembly.”

Although Art. II, Sec. 24 provides for power to establish a pension system that section does not include the ability to provide for a healthcare program.

**Baltimore City Charter**

In addition to the conflict with the express powers, the bill calls for any surplus funds to be dedicated to sustaining the City’s Health benefits plans. This would be accomplished by the creation of the Premium Stabilization Fund into which all surplus generated by the Healthcare plans would be deposited. This earmarking if funds puts the bill in conflict with the Charter powers of the Board of Estimates to set the fiscal policies of the City. The law in Maryland provides that “[u]nless additional powers are conferred by statute or by the state constitution, a municipal corporation created by charter derives all its powers from the charter.” 2A McQuillin Mun. Corp. § 9:3.” *Id*. “In the event of an inconsistency between the provision in the Charter and any contrary [ordinance], the provision in the Charter would control….” *Swarthmore Co. v. Kaestner*, 266 258 Md. 517, 526–27 (Md. 1970). The Baltimore City Charter itself recognizes the supremacy of the City Charter over all municipal ordinances. Article III, § 11 provides, “The Mayor and City Council of Baltimore shall have power to pass all ordinances, not inconsistent with the Charter….”. The charter, therefore, supersedes all municipal laws, ordinances, rules or regulations that are inconsistent.”

The requirements of Sec.11-12 (B) that also mandates what the funds can be used for and

(D) which govern disbursements and deficits are similarly illegal because of their conflict with the Charter powers of the Board of Estimates. IN addition, Sec. 11-13 attempts to provide for the powers of the Director of Human Resources. This is in conflict with the provisions of Art. VII, Sec .98 of the Charter which vest certain powers in the Director and Department of Human Resources. The Director already has charge over the administration health benefits which has included the selection of providers and plans, as directed by the Board of Estimates pursuant to Charter Sec.98(k). Since the provision of health care is covered in the Charter which has placed that power with the Department of Human Resources, the City Council may not legislate in a manner that conflicts.

**Preemption**

Finally, the bill in Sections 11-6, 11-9(D), Sec. 11-10(D) mandates that certain documents and data be provided upon request. Requests for disclosure of documents in the custody of a governmental body are subject to the Maryland Public Information Act. The requests for documents in this bill must therefore be considered only in accordance with the MPIA which may or may not allow disclosure. The language of Sec. 11-6(4) provides that “access to data and documents granted to the HIC under this section shall be in addition to any right or remedies conferred under the Maryland Public Information Act.” This section is not effective to expand the ability of anyone to access records of the program that would not be disclosable under the MPIA. An ordinance enacted by a local government does not constitute other “law” for purposes of § 4-301(a)(1) and cannot by itself supply a basis for withholding a public record otherwise available under the PIA. Lamson v. Montgomery County, 460 Md. 349, 364 (2018); Police Patrol Security Systems v. Prince George’s County, 378 Md. 702, 710, 713-15 (2003); see also 86 Opinions of the Attorney General 94, 106-07 (2001) (municipal ordinance, if construed as a blanket prohibition on disclosure of certain records, would thwart the purpose of the PIA .) Since the MPIA preempts any local law, this section should be stricken from the bill.

The Law Department can not approve this bill for form and legal sufficiency. In addition, due to the breadth of the problems, simple amendments would not correct the bill.

 Sincerely yours,

 

 Elena R. DiPietro

 Chief Solicitor

cc: James L. Shea, City Solicitor

 Ebony Thompson, Deputy Solicitor

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