
CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor



DEPARTMENT OF LAW
DANA P. MOORE, ACTING CITY SOLICITOR
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November 7, 2020

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 20-0625 – Landlord Tenant – Right to Counsel Eviction
Cases

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 20-0625 for form and legal sufficiency. The bill would establish a mechanism for providing legal counsel to individuals facing legal proceeding related to eviction. The Law Department does not find any legal impediments to the concept of offering the opportunity for legal representation in eviction matters but does have a few concerns regarding the procedural requirements of the bill.

First, in Sec. 6A-1(E)(1)(II), the definition of “covered proceeding” includes “any proceeding deemed by a designated organization as the functional equivalent of a proceeding described in subparagraph(I). This provision allows a not for profit entity to determine when a City law is applicable. This is an unlawful delegation of discretion to a non-governmental body.

The rule is plain and well established that legislative or discretionary powers or trust devolved by law or charter in a council or governing body cannot be delegated to others, but ministerial or administrative function may be delegated to subordinate officials." *City of Baltimore v. Wollman*, 123 Md. 310, 342 (1914); accord *Andy's Ice Cream v. City of Salisbury*, 125 Md. App. 125, 161 (1999); see also 72 Op. City Sol. 18, 20 (1980)(citing 73 C.J.S. §75, p. 381-382)("In general, administrative officers and bodies cannot alienate, surrender or abridge their powers and duties, and they cannot legally confer on their employees or others authority and functions which under law may be exercised only by them or by other officers or tribunals. Although mere ministerial functions may be delegated, in the absence of permissive constitutional or statutory provisions, administrative officers and agencies cannot delegate to a subordinate or another power and functions which are discretionary or quasi-judicial in character, or which require the exercise of judgment; and subordinate officials have no power with respect to such duties."); see also *Dyer v. Board of Education of Howard County*, 216 Md. App. 530, 539-540 (2014)(reaffirming holding in *Andy's Ice Cream* as not allowing delegation of quasi-judicial powers, but distinguishing the facts of the *Dyer* case as presenting an issue of administrative or ministerial function). In the absence of express authorization to delegate a discretionary power, all such

powers must be exercised by the council even though a ministerial or administrative function related to implementing a discretionary decision may be delegated to an agent. Wollman, 123 Md. at 316." *Andy's Ice Cream v. City of Salisbury*, 125 Md. App. 125, 161 (Md. Ct. Spec. App. 1999).

This provision of the bill allows the designated organization to determine when a proceeding is the equivalent of a proceeding in (I). This amounts to a delegation of the discretionary authority of the Commissioner. This is not a ministerial task and there is no authority allowing for its delegation. This provision, therefore, should be stricken or should be made subject to final approval by the Commissioner.

Second, and in a similar vein, Sec. 6A-1(E)(1)(III), delegates to the designated organization the authority to decide when "good grounds for an appeal" exists triggering the right to counsel in a first appeal. For the reasons set forth in the previous paragraph, this also is an illegal delegation of governmental authority. This provision, therefore, should be stricken or should be made subject to final approval by the Commissioner.

Third, in Sec. 6A-1(F), considering the context of the bill, "Director" in the definition of "designated organization" should be changed to "Commissioner." Another consideration regarding this section is that the Commissioner cannot unilaterally appoint and contract with the "designated organization." The provisions of Art. IV, Sec. 11 of the City Charter regarding procurement would have to be followed.

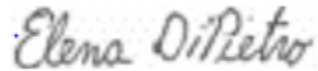
Fourth, in Sec. 6A-3(1), the word "receive" should be stricken and replaced with "offered." It would, in all likelihood, not be possible to ensure that all covered individuals "receive" legal representation. There will be that some individuals who will not want legal representation and it cannot be forced on them. By using "offered," compliance will be more realistic and reporting will show better results.

Fifth, in Sec. 6A-3(B), the bill again vests discretionary decision-making in a non-governmental body. In this case, the designated organization makes the determination regarding whether there is a conflict in a individual case that makes it infeasible to provide legal representation. The same analysis provided in the discussion of the First concern above applies to this section. The reference should either be stricken or made subject to final approval by the Commissioner.

Finally, in Sec. 6A-3(C), the Commissioner is to engage designated community groups to provide outreach and educational services to inform tenants of their rights under the bill. This section should be made subject to Art. VI, Sec. 11 of the City Charter which provides the procedures for procuring goods and services by City agencies.

The Law Department has attached amendments to this report to address the concerns it has with the bill. Provided our concerns are addressed by appropriate amendments, the Law Department can approve the bill for form and legal sufficiency.

Sincerely,

A handwritten signature in cursive script that reads "Elena DiPietro".

Elena R. DiPietro
Chief Solicitor

cc: Dana Moore, City Solicitor
Matthew Stegman, Mayor's Office of Government Relations
Caylin Young, President's Legislative Director
Dominic McAlily
Nina Themelis, MOGR
Hilary Ruley, Chief Solicitor
Victor Tervalá, Chief Solicitor
Ashlea Brown, Assistant Solicitor
Avery Aisenstark

LAW DEPARTMENT AMENDMENTS
CITY COUNCIL BILL 20-0625

1. On page 3, strike lines 16-18.
2. On page 3, line 21, after “appeal” insert “and that determination is approved by the Commissioner”
3. On page 4, line 5 strike “Director” and replace with “Commissioner”. On that same page and line after “subtitle” insert “and subject to Art. VI, Sec. 11 of the Baltimore City Charter regarding procurement”
4. on page 5, line 8, strike “receive” and substitute “offered”.
5. On page 5, line 20, after “organization” insert “and that determination is approved by the Commissioner”
6. On page 5, line 22 at the beginning of that line, insert “Subject to Article VI, Sec. 11 of the Baltimore City Charter regarding procurement,”