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January 16, 2008

BY HAND DELIVERY

Delegate William Bronrott, Chairman, Land Use and Transportation Committee

Delegate Karen Montgomery, Vice-Chair, Land Use and Transportation  
Committee

Delegate Anne Kaiser, Chairman, County Affairs Committee

Delegate Roger Manno, Vice-Chair, County Affairs Committee

Delegate Saqib Ali, Member, County Affairs Committee

Delegate Brian Feldman, Member, County Affairs Committee

Delegate Jim Gilchrist, Member, County Affairs Committee

Delegate Ana Sol Gutierrez, Member, County Affairs Committee

Delegate Sheila Hixon, Member, County Affairs Committee

Delegate Susan Lee, Member, County Affairs Committee

Delegate Charles Barkley, Member, Land Use and Transportation Committee

Delegate Kumar Barve, Member, Land Use and Transportation Committee

Delegate Henry Heller, Member, Land Use and Transportation Committee

Delegate Heather Mizeur, Member, Land Use and Transportation Committee

Delegate Craig Rice, Member, Land Use and Transportation Committee

Delegate Jeff Waldstreicher, Member, Land Use and Transportation Committee

RE: PG/MC 109-08 Maryland-National Capital Park and Planning Commission -  
Montgomery County – Term Limits (Sponsor – Chairs on behalf of Maryland-  
National Capital Park and Planning Commission) (Pending before the Land Use  
and Transportation Committee)

MC 807-08 Montgomery County – Alcoholic Beverages – Licenses Held by  
Revenue Authority for Public Golf Courses (Sponsor – Chairman on behalf of  
Montgomery County Government) (Pending before the County Affairs  
Committee)

MC 813-08 Montgomery County – Local Government Tort Claims Act – Inclusion  
of Montgomery County Revenue Authority (Sponsor – Chairman on behalf of  
Montgomery County Government) (Pending before the County Affairs  
Committee)

Dear Delegates:

Collectively, the three above-referenced bills are currently pending before your committees. For the reasons stated below we are requesting that these bills be immediately withdrawn from further consideration to avoid any questions that may later arise regarding your participation in the cover-up of the illegal scheme described herein.

In April, 2006, Montgomery County's Executive Douglas Duncan and his presumptive successor, Montgomery County Councilmember Steven Silverman, put into effect a deal they had designed to protect and/or advance each other politically. In exchange for Mr. Silverman's assistance in securing the transfer of four public golf course operations (not including the land) to the Montgomery County Revenue Authority and his further assistance in obtaining approval of Mr. Duncan's proposed reorganization of Montgomery County's Department of Liquor Control, Mr. Duncan agreed to provide \$80 million in revenue bonds backed by the County's Liquor Fund to underwrite a transportation initiative that Mr. Silverman intended to use as the centerpiece of his County Executive campaign in 2006. The transaction was intended to bail out the Revenue Authority's financially ailing proprietary operations (*i.e.*, its existing five public golf courses and the Montgomery County Airpark) in violation of Montgomery County law, which requires the Revenue Authority to be self-supporting and specifically prohibits any taxpayer subsidies of Revenue Authority debt ("Revenue Authority Enrichment Scheme"). Mr. Duncan and Mr. Silverman enlisted the help of Councilmember George Leventhal, a Duncan loyalist, to shepherd the transactions through the County Council as Council President.

The four public golf course operations at issue were owned by The Maryland-National Capital Park and Planning Commission. The revenues associated with the Commission's golf courses were needed by the Revenue Authority for a number of reasons. First, the revenues were needed to help pay the increasing golf course debt obligations of the Revenue Authority pursuant to a December, 2002 bond issue, in light of lower-than-expected golf revenues being produced by the Revenue Authority's own public golf courses. Second, the revenues were needed to pay the operating costs of the perennially money-losing Airpark which could no longer rely upon Revenue Authority golf course revenues to cover shortages as in the past. Third, the revenues were needed to assure the Federal Aviation Administration ("FAA") that the Revenue Authority had sufficient income and assets to justify the FAA's grant of tens of millions of dollars in Airpark capital improvements. Fourth, the revenues were needed to improve the financial reports of the Revenue Authority to convince M&T Bank to extend a letter of credit agreement which helped to secure the December 2002 bond issue. That five-year letter of credit agreement was set to expire in December 2007.

The Commission's golf course operations were transferred to the Revenue Authority by vote of the Montgomery County Planning Board on April 6, 2006, the day the measure was first publicly discussed, pursuant to an interim operating agreement that was not available for the Planning Board or the public to review. The transfer was effective April 15. The interim operating agreement permitted the Planning Board and Revenue Authority to effect the transfer without County Council review of the lease it purported to precede, in violation of state law requiring Council approval of Commission leases in excess of 20 years.<sup>1</sup> In addition, the interim operating agreement violated state law because it transferred operation, maintenance and control of Commission assets without General Assembly approval.<sup>2</sup>

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<sup>1</sup> MARYLAND STATE CODE ANN. art. 28 § 5-110 (Leases, permits and concessions).

<sup>2</sup> MARYLAND STATE CODE ANN. art. 28 § 5-103 (Title to property; General Assembly approvals; transfer of property within Prince Georges County).

The Planning Board approved the interim operating agreement upon the vote of a slim majority consisting of Chairman Derick Berlage, Vice-Chair Wendy Perdue, and Commissioner John Robinson. Commissioner Robinson made the motion which approved the interim agreement. At the time the interim agreement was approved, Chairman Berlage and Commissioner Robinson both were actively courting the support of the Montgomery County Council and County Executive Duncan in their quests to be appointed Planning Board Chairman when Chairman Berlage's first term ended on June 14, 2006. Both Chairman Berlage and Commissioner Robinson understood that they were unlikely to win that appointment unless they had the support of Mr. Silverman. Both men also understood that Mr. Silverman was the prime mover on the Council of the initiative to transfer the Commission's golf courses to the Revenue Authority.

The Revenue Authority's actions in facilitating the golf course transaction have exposed it to significant civil liability. The Revenue Authority has liability to every Commission employee whose employment suffered as a result of the illegal transfer. The Revenue Authority also has liability to the upper level managers of the Commission whose careers were ended in order to remove them as obstacles to completion of the deal. The Revenue Authority ultimately may also be liable to both M&T Bank, to golf course bondholders, to the FAA, and to Bank of America, which had a security interest in the golf revenues generated by one of the Commission golf course operations that was transferred. Taken in its entirety, the Revenue Authority's potential liability for its participation in this illegal and fraudulent scheme could be ruinous. At a minimum, the uncertainty of the scope of the Revenue Authority's liability is likely to impair its credit rating and therefore compromise the terms under which it can issue its bonds for future projects or to refinance its debt on existing projects.

The purpose of Mr. Duncan's proposed reorganization of Montgomery County's Department of Liquor Control ("DLC Reorganization") was to place the Office of the Board of License Commissioners ("OBLC"), the entity charged with enforcing alcoholic beverage control laws in Montgomery County, under the direct control of the DLC. We believe this reorganization violates state law by undermining the ability and will of the OBLC to conduct its licensing and enforcement activities. The reorganization was important to the Revenue Authority Enrichment Scheme for two reasons, both of which were hidden by Mr. Duncan and the other proponents of the measure. First, the reorganization conveyed the OBLC's annual revenues to the DLC, where they could be used to implement the County Executive's promise to provide Liquor Fund-backed revenue bonds to support Mr. Silverman's campaign-driven transportation initiative. Second, the reorganization forestalled the OBLC's enforcement of alcoholic beverage control laws against the Revenue Authority. This was important because the Revenue Authority anticipated the need to sell alcoholic beverages at the Commission's golf courses without legal authority until state law could be quietly changed to permit such sales. State law only permits the Revenue Authority to sell alcoholic beverages on golf courses located on land owned by the Revenue Authority.<sup>3</sup> The land under the park golf courses is not owned by the Revenue Authority. The Executive, the Council and the Revenue Authority knew that the parkland on which the Commission's golf courses are built could not be conveyed to the Revenue Authority on the short notice required by the

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<sup>3</sup> MARYLAND STATE CODE ANN. art. 2B § 8-216 (a)(3) – Revenue Authority allowed to sell beer only during daylight hours in connection with the operation of a public golf course on land owned by the Revenue Authority.

interim operating agreement. Such a transfer would require General Assembly approval as well as, in some instances, approval of the National Capital Planning Commission pursuant to the federal Capper Cramton Act, which funded the Commission's acquisition of one or more of the park golf courses.

Since the interim operating agreement went into effect on April 15, 2006, the Revenue Authority has been selling alcoholic beverages at the Commission's golf courses in violation of state and county law. The OBLC has failed to enforce the law against the Revenue Authority. The Revenue Authority has continued to generate substantial revenues from the illegal sale of alcoholic beverages at the Commission's golf courses. The DLC has continued to generate substantial revenues by wholesaling those alcoholic beverages to the Revenue Authority for resale. This is precisely the sort of "impropriety" and actual or apparent "conflict of interest" that Ida Ruben, then-Chair of the Montgomery County Senate Delegation, referred to in a July 6, 2006 letter to then-Council President Leventhal. Unfortunately, that letter was not entered into the Montgomery Council's correspondence log until July 25, 2006 – the morning of the day that the Council took final action on the proposal to reorganize the DLC. (See Attachment.) At least Senator Ruben's letter made it into the Council's correspondence log. A September 5, 2006 letter to then-Council President Leventhal from the President of the Municipal & County Government Employees Organization ("MCGEO"), Gino Renne, calling into question the transfer of the Commission's golf courses to the Revenue Authority, never made it into the County Council's correspondence log. (See Attachment.)

The effect of Bill PG/MC 109-08 (term limits on Planning Board members) will be to enable the Montgomery County Council to appoint Commissioner Robinson to the position of Planning Board Chairman for a period of up to eight years after Chairman Hanson steps down. The bill is designed to place Commissioner Robinson, the only remaining Planning Board member who voted for the interim operating agreement, in a position to continue to protect the deal. The bill has the effect of conferring upon Commissioner Robinson the reward he sought by voting for the deal. That bill, clearly applicable only to Commissioner Robinson, should be withdrawn immediately.

Bill MC 813-08 (the Local Government Tort Claims Act bill) is a transparent attempt to insulate the Montgomery County Revenue Authority from liability to those it has damaged, or may damage in the future, in furtherance of the scheme. If, as Montgomery County maintains, it has been correct in treating the Revenue Authority as being covered by the Local Government Tort Claims Act, the Revenue Authority has nothing to fear in advancing that position before a court of law. The General Assembly should not aid and abet the Revenue Authority's violations by placing its imprimatur on the Revenue Authority's legal position by either (a) expressly including the Revenue Authority in the Local Government Tort Claims Act to "clarify what the General Assembly intended"; or (b) making a pronouncement that no such amendment is necessary because it has always been the General Assembly's intent that the Local Government Tort Claims Act applies to the Revenue Authority. The bill must be withdrawn without comment.

Bill MC 807-08 (alcoholic beverage laws) is designed to cure through the back door the Revenue Authority's knowing, continuing and politically embarrassing illegal sale of alcoholic beverages on the Commission's golf courses. In order to accomplish this goal without drawing attention to the existing problem, Montgomery County has

disingenuously presented as ministerial a change to law that will have a substantive effect. The bill proposed is designed to strengthen the Revenue Authority's legal position in the event its continuing violation is ever discovered.

The bill would accomplish this goal in two ways. First, by permitting the Revenue Authority to hold licenses for the sale of alcoholic beverages on the Commission's golf courses, the bill would make it politically impossible for the General Assembly to later refuse to amend the substantive provisions of law that permit the Revenue Authority to sell alcoholic beverages only on golf courses built on land that it owns. Second, if adopted, the bill will create a conflict by permitting the Revenue Authority to hold licenses to sell alcoholic beverages on the Commission's golf courses, while prohibiting the Revenue Authority from selling alcoholic beverages on golf courses built on land it does not own (*i.e.*, the Commission's golf courses). In the event of a later challenge, the alcoholic beverage law requires that these conflicting provisions be harmonized.<sup>4</sup> For the reasons stated above, the provisions would have to be harmonized to permit the Revenue Authority to sell alcoholic beverages on the Commission's golf courses, even though the Revenue Authority does not own the land on which they are built. This bill, too, should be withdrawn immediately.

In summary, this unholy trinity of bills should be seen for what it is – a transparent attempt by some political interests in Montgomery County to pull the wool over the eyes of other members of the General Assembly to protect the legally indefensible actions of numerous Montgomery County actors. The idea that Montgomery County's state-level lawmakers might be willing to engage in this type of deception, or might be deceived to engage in these actions by their colleagues, highlights the County's desperation. As things now stand, the County cannot move forward with its plans to renovate the Commission's golf courses. Nor can the County undo the transaction without undoing the Revenue Authority. We ask that the members of the Montgomery County Delegation immediately stand up and insist that these three bills be withdrawn. In addition, we call upon the General Assembly to immediately convene an independent fact-finding panel to look into the circumstances surrounding the Revenue Authority Enrichment Scheme to assess the potential ethical and criminal violations arising from it.

Sincerely,

/s/

Douglas E. Rosenfeld, Esq.

/s/

Michele M. Rosenfeld, Esq.

Attachments:

- (1) Montgomery County Senate Delegation Chair Ida Ruben Letter re: DLC Reorganization dated July 6, 2006
- (2) MCGEO President Gino Renne Letter re: golf course transfer dated September 6, 2006

Cc: All General Assembly Members

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<sup>4</sup> Maryland State Code Ann. art. 2B § 1-103 (exceptions prevail over general rule).

Liquor Control  
IDA G. RUBEN

20th Legislative District  
Montgomery County

PRESIDENT PRO TEM

Chair

Montgomery County Senate Delegation

Budget and Taxation Committee

Capital Budget Subcommittee

Legislative Policy Committee

Joint Committee on Spending Affordability

Executive Nominations Committee

Joint Committee on Protocol



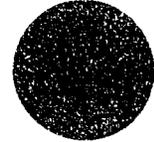
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July 6, 2006

024222



Mr. George L. Leventhal  
President, Montgomery County Council  
100 Maryland Ave, 6th Floor  
Rockville, Maryland 20850

Dear George:

I am writing you with regard to the reorganization plan that proposes the Office of the Board of Licensed Commissioners should be relegated under the Department of Liquor Control (DLC). I have a problem with this proposal in that the Board of Licensed Commissioners is the enforcement arm for the dispensary system of wine and cheese stores and should not be directed to answer to the DLC, which is a retail licensee in its own right.

As a matter of principle, a regulatory watchdog office should not be subservient to one of the regulated entities who has an inherent interest in gaining every business advantage over its fellow competitors. If implemented, this scenario is ripe for impropriety.

The Director has upgraded the Board's image and otherwise done a very good job. Why take a chance in raising scrutiny by creating the appearance of, or an actual, conflict of interest?

I look forward to your response.

Warm wishes,

Ida

IGR:yms

2006 JUL 25 AM 9:14

EVANS CITY  
MONTGOMERY COUNTY  
COUNCIL



☐ GINO RENNE PRESIDENT  
 ☐ YVETTE CUFFIE SECRETARY-TREASURER  
 ☐ NELVIN RANSOME RECORDER  
 ☐ WWW.MCGEO.ORG

## FYI: ALL M-NCPPC BARGAINING UNIT MEMBERS

September 5, 2006

The Honorable George Leventhal, President  
 Montgomery County Council  
 100 Maryland Ave.  
 Rockville, Maryland 20850

Dear Mr. Leventhal:

Enclosed is a letter to the Montgomery County Council dated May 23, 2006, in which Ms Michele Rosenfeld explains why, after seventeen (17) years with the Maryland National Capital Park & Planning Commission, she resigned as the attorney to the Montgomery County Planning Board. I have reviewed this letter and, if the concerns raised are even close to being true, then the implications are indeed disturbing. Additionally, the letter has been vetted with several bargaining unit employees as well as non-bargaining unit employees who also find the letter to be of substantial concern.

While it is no secret that our members who were assigned to the golf courses were affected by the decision to remove these functions from the Commission, the public policy concerns raised by Ms. Rosenfeld are disturbing in and of themselves regardless of any impact to our membership.

It has been said that "behavior speaks louder than words" and I believe that is very true. That is why the "behavior" related to process and procedure regarding the so-called "public" meetings is also disturbing.

Due to the perceived irregularities surrounding the transfer of the golf courses, I believe that there is sufficient justification to request of the County Council that an independent audit be conducted to determine whether such action is in the best interest of the affected employees, the M-NCPPC and /or the taxpayers of Montgomery County.

Sincerely,

Gino Renne  
 President

cc Washington Post  
 Montgomery County Gazette

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VICE PRESIDENTS: ☐ LYNETTE ANDREWS-BAKER ☐ CYNTHIA CARRINGTON ☐ ANTHONY CHASE ☐ SEAN COLLINS ☐ PAULETTE KEE-DUDLEY ☐ GREGORY GOEBEL ☐ BARBARA JACKSON ☐ CRAIG LONGCOR ☐ JOCELYN RAWAT ☐ SUSAN SMITHERS ☐ TONY THOMAS ☐ KRISTINE TUCKERMAN

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