
In The
**Court of Appeals
of Maryland**

No. 52
September Term, 2020
COA-REG-0052-2020

MAYOR AND CITY COUNCIL OF OCEAN CITY, *et al.*,

Petitioners,

vs.

COMMISSIONERS OF WORCESTER COUNTY, MARYLAND, *et al.*,

Respondents.

*Writ of Certiorari to the Court of Special Appeals of Maryland from its
Decision in No. 2751, Sept. Term 2018, on the Appeal from the Circuit
Court for Worcester County No. C-23-CV-18-000021*

**AMICUS BRIEF OF CITY OF SALISBURY, TOWN
OF DENTON AND TOWN OF CHESTERTOWN**

S. MARK TILGHMAN
C.P. F. #8501010609
SEIDEL, BAKER & TILGHMAN, P.A.
110 N. Division Street
Salisbury, MD 21801
(410) 742-8176

*Counsel for City of Salisbury
as Amicus Curiae*

TABLE OF CONTENTS

Table of Contents	i
Table of Citations.....	ii
Constitutional Provisions.....	ii
Statutes.....	ii
Statement of the Case	1
Questions Presented for Review	1
3. Whether the provisions of <i>Tax-Property Article</i> §§6-305, 6-305.1 and 6-306 violate Article XI-E, §2 of the Maryland Constitution as an illegal classification of municipal corporations based upon the county in which the municipal corporation is located rather than “on population as determined by the most recent census,” as required by Article XI-E, §2, which directs that “[m]unicipal corporations shall be classified only as provided in this section and not otherwise.”	1
Statement of Facts	1
Summary of Argument	2
Argument.....	2
Conclusion.....	4
Certification under Rule 8-112.....	5
Verbatim Text of Constitutional Provisions.....	6
Verbatim Text of Statutes.....	6
Certificate of Service.....	16

TABLE OF CITATIONS

Constitutional Provisions:

Maryland Constitution Article XI-E, §1.....3

Maryland Constitution Article XI-E, §2.....1, 2, 3, 4

Statutes:

Maryland Code Annotated *Property-Tax Article* §6-3051, 2, 3

Maryland Code Annotated *Property-Tax Article* §6-305.1.....1, 2, 3

Maryland Code Annotated *Property-Tax Article* §6-3061, 2, 3

Maryland Code Annotated *Local Government Article* §4-102.....2

STATEMENT OF THE CASE

The parties hereto, by their Counsel, incorporate by reference the Statement of the Case as presented in Petitioner's Brief.

QUESTIONS PRESENTED FOR REVIEW

The parties hereto, by their Counsel, incorporate by reference, the Questions Presented for Review by Petitioner. In addition to the two issues raised by Petitioner, the parties hereto assert that a third issue be considered by this Court as follows:

3. Whether the provisions of *Tax-Property Article* §§ 6-305, 6-305.1 and 6-306 violate Article XI-E, § 2 of the Maryland Constitution as an illegal classification of municipal corporations based upon the county in which the municipal corporation is located rather than "on population as determined by the most recent census," as required by Article XI-E, § 2, which directs that "[m]unicipal corporations shall be classified only as provided in this section and not otherwise."

STATEMENT OF FACTS

The parties hereto, by their Counsel, incorporate herein by reference the entire Statement of Facts, as presented in Petitioner's Brief, without change.

SUMMARY OF ARGUMENT

The parties hereto, by their Counsel, incorporate herein by reference the Summary of Argument, in its entirety, as presented by Petitioner, with the addition that *Tax-Property Article* §§6-305, 6-305.1 and 6-306 are in violation of Article XI-E, § 2 of the Maryland Constitution.

ARGUMENT

The parties hereto, by their Counsel, incorporate herein by reference the Summary of Argument, in its entirety, as presented by Petitioner.

In addition to the Argument submitted by Petitioner, the parties hereto assert that although *Local Government Article* § 4-102 states that “[t]here is one class of municipalities in the State, and every municipality is a member of that class,” the *Tax-Property Article* §§ 6-305, 6-305.1, and 6-306 provide for an unconstitutional classification of municipalities which is dependent only upon the county of situs for each municipality. *Tax-Property Article* § 6-305 is applicable to all municipalities in Allegany County, Anne Arundel County, Baltimore County, Garrett County, Harford County, Howard County, Montgomery County and Prince George’s County, section 6-305.1 is applicable only to municipal corporations located in Frederick County, and section 6-306 is applicable to all other municipalities, not located within the counties previously identified.

Petitioner relies upon Article XI-E, §1, but section 1 must be applied in conjunction with section 2 to be fully understood.

Article XI-E, §1, provides as follows:

The General Assembly shall act in relation to the incorporation, organization, government or affairs of any such municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes provided for in section 2 of this Article.

Article XI-E, §2, provides as follows:

The General Assembly, by law, shall classify all such municipal corporations by grouping them into not more than four classes based on population as determined by the most recent census made under the authority of the United States or the State of Maryland. . . Municipal corporations shall be classified only as provided in this section and not otherwise [emphasis added].

The classification authorized by section 2 allows only for the classification of municipalities “based on population determined by the most recent census.”

Any classification not specifically authorized by section 2 is forbidden. The provisions of sections 6-305, 6-305.1 and 6-306 are directed both to the counties and the municipal corporations and are determinative of whether those municipal corporations “shall” or “may” be granted a tax setoff. These sections of the *Tax-Property Article* by their terms and in their effect classify a municipal corporation’s eligibility for a tax setoff based upon the county in which that

municipal corporation is located. This classification system is in direct violation of the clear and unambiguous language of Article XI-E, §2.

CONCLUSION

The parties hereto, by their Counsel, incorporate herein by reference, the Conclusion and prayer for relief, as set forth in Petitioner's brief.

SEIDEL, BAKER & TILGHMAN, P.A.

/s/S. Mark Tilghman
S. Mark Tilghman
C.P.F.#8501010609
City Solicitor, City of Salisbury
110 N. Division Street
Salisbury, MD 21801
(410) 742-8176

/s/Christopher F. Drummond
Christopher F. Drummond
Town Attorney, Town of Denton
C.P.F.#8011010089
119 Lawyers Row
Centreville, Maryland 21617
(410) 758-0030

COOKERLY & BARROLL, LLC

/s/R. Stewart Barroll
R. Stewart Barroll
Town Attorney, Town of Chestertown
C.P.F.#800501000
123 Court Street
Chestertown, MD 21620
(410) 778-2112

This Brief has been prepared in Book Antiqua, 13-point font.

CERTIFICATION OF WORD COUNT AND
COMPLIANCE WITH RULE 8-112

1. This Brief contains 1036 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This Brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ S. Mark Tilghman
S. Mark Tilghman

CONSTITUTIONAL PROVISIONS

Maryland Constitution, Article XI-E, §1.

Except as provided elsewhere in this Article, the General Assembly shall not pass any law relating to the incorporation, organization, government, or affairs of those municipal corporations which are not authorized by Article 11-A of the Constitution to have a charter form of government which will be special or local in its terms or in its effect, but the General Assembly shall act in relation to the incorporation, organization, government, or affairs of any such municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes provided for in Section 2 of this Article. It shall be the duty of the General Assembly to provide by law the method by which new municipal corporations shall be formed.

Maryland Constitution Article XI-E, §2.

The General Assembly, by law, shall classify all such municipal corporations by grouping them into not more than four classes based on population as determined by the most recent census made under the authority of the United States or the State of Maryland. No more than one such grouping of municipal corporations into four (or fewer) classes shall be in effect at any time, and the enactment of any such grouping of municipal corporations into four (or fewer) classes shall repeal any such grouping of municipal corporations into four (or fewer) classes then in effect. Municipal corporations shall be classified only as provided in this section and not otherwise.

Statutes

Maryland Code Annotated *Property-Tax Article §6-305. County tax rate in certain municipal corporations.*

(a) "Tax setoff" defined. -- In this section, "tax setoff" means:

- (1) the difference between the general county property tax rate and the property tax rate that is set for assessments of property in a municipal corporation; or

(2) a payment to a municipal corporation to aid the municipal corporation in funding services or programs that are similar to county services or programs.

(b) Applicability of section. -- This section applies only in:

- (1) Allegany County;
- (2) Anne Arundel County;
- (3) Baltimore County;
- (4) Garrett County;
- (5) Harford County;
- (6) Howard County;
- (7) Montgomery County; and
- (8) Prince George's County.

(c) Discussion and adjustment. -- The governing body of the county shall meet and discuss with the governing body of any municipal corporation in the county the county property tax rate to be set for assessments of property in the municipal corporation as provided in this section. After the meeting if it can be demonstrated that a municipal corporation performs services or programs instead of similar county services or programs, the governing body of the county shall grant a tax setoff to the municipal corporation.

(d) Setting county rate for municipal corporation. -- In determining the county property tax rate to be set for assessments of property in a municipal corporation, the governing body of the county shall consider:

- (1) the services and programs that are performed by the municipal corporation instead of similar county services and programs; and
- (2) the extent that the similar services and programs are funded by property tax revenues.

(e) Rate need not be uniform. -- The county property tax rate for assessments of property located in a municipal corporation is not required to be:

- (1) the same as the rate for property located in other municipal corporations in the county; or
- (2) the same as the rate set in a prior year.

(f) Tax setoff request. –

(1) At least 180 days before the date that the annual county budget is required to be approved, any municipal corporation in the county that desires that a tax setoff be provided shall submit to the county a proposal that states the desired level of property tax setoff for the next fiscal year.

(2) (i) A request submitted under paragraph (1) of this subsection shall be accompanied by:

1. a description of the scope and nature of the services or programs provided by the municipal corporation instead of similar services or programs provided by the county; and
2. financial records and other documentation regarding municipal revenues and expenditures.

(ii) The materials submitted under subparagraph (i) of this paragraph shall provide sufficient detail for an assessment of the similar services or programs.

(3) After receiving a proposal from a municipal corporation requesting a tax setoff under this subsection, the governing body of the county shall promptly submit to the municipal corporation financial records and other documentation regarding county revenues and expenditures.

(g) Meetings, officers, information and services. –

(1) At least 90 days before the date that the annual county budget is required to be approved, the county and any municipal corporation submitting a tax setoff request under subsection (f) of this section shall designate appropriate policy and fiscal officers or representatives to meet and discuss the nature of the tax setoff request, relevant financial information of the county and municipal corporation, and the scope and nature of services provided by both entities.

(2) A meeting held under paragraph (1) of this subsection may be held by the county representatives jointly with representatives from more than one municipal corporation.

(3)

(i) The county officers or representatives may request from the municipal corporation officers or representatives additional information that may reasonably be needed to assess the tax setoff.

(ii) The municipal corporation officers or representatives shall provide the additional information expeditiously.

(h) Statement of intent. –

(1) At or before the time the proposed county budget is released to the public, the county commissioners, the county executive of a charter county, or the county council of a charter county without a county executive shall submit a statement of intent to each municipal corporation that has requested a tax setoff.

(2) The statement of intent shall contain:

(i) an explanation of the level of the proposed tax setoff

(ii) a description of the information or process used to determine the level of the proposed tax setoff; and

(iii) an indication that, before the budget is enacted, appropriate officials or representatives of the municipal corporation are entitled to appear before the county governing body to discuss or contest the level of the proposed tax setoff.

(i) Municipal representatives may testify at hearings. -- Representatives of each municipal corporation in the county requesting a tax setoff shall be afforded an opportunity to testify before the county governing body during normally scheduled hearings on the county's proposed budget.

(j) Agreements regarding tax setoff. -- Notwithstanding the provisions of subsections (d), (f), and (g) of this section:

- (1) a county and one or more municipal corporations may enter into an agreement setting different terms or timing for negotiations, calculations, or approval of a tax setoff; and
- (2) a county may grant a tax setoff to a municipal corporation that does not make a request in the fashion described in this section.

(k) Prince George's County. -

- (1) On or before January 31 each year, the governing body of Prince George's County shall complete a report that includes:
 - (i) the amount of the tax setoff granted to each municipal corporation in the current fiscal year;
 - (ii) in the form provided by each municipal corporation, a detailed description of the scope and nature of the individual services or programs provided by each municipal corporation instead of similar services or programs provided by the county; and
 - (iii) a detailed description of the methodology used by the county to determine the amount of the tax setoffs, including any formulas.
- (2) Notwithstanding any other provision of law, the report required under this subsection shall be:
 - (i) available to municipal corporations in Prince George's County on request; and
 - (ii) submitted to the Prince George's County House Delegation and the Prince George's County Senators.

Maryland Code Annotated *Property-Tax Article §6-305.1. County tax rate in certain municipal corporations -- Frederick County.*

- (a) "Tax setoff" defined. -- In this section, "tax setoff" means:

- (1) the difference between the general county property tax rate and the property tax rate that is set for assessments of property in a municipal corporation; or
- (2) a payment to a municipal corporation to aid the municipal corporation in funding services or programs that are similar to county services or programs.

(b) Discussion and adjustment. -

- (1) The governing body of Frederick County shall annually meet and discuss with the governing body of each municipal corporation in the county the county property tax rate to be set for assessments of property in the municipal corporation.
- (2)
 - (i) After the meeting if it can be demonstrated that a municipal corporation performs services or programs instead of similar county services or programs, the governing body of Frederick County shall grant a tax setoff to the municipal corporation in accordance with a formula agreed to by the county and the municipal corporation.
 - (ii) If the governing body of Frederick County and the governing body of a municipal corporation fail to reach an agreement concerning the formula by which a tax setoff is to be calculated, the governing body of Frederick County shall grant a tax setoff in accordance with the formula used during the preceding taxable year.
- (3) Frederick County and a municipal corporation shall agree to phase in over a period of 3 to 5 years, beginning on July 1, 2016, any increase in the level of a tax setoff above the level of the tax setoff granted in the fiscal year beginning July 1, 2015, if the increase is attributable to the funding of new services or programs.

Maryland Code Annotated *Property-Tax Article §6-306. County tax rate in certain other municipal corporations.*

- (a) Tax setoff. -- In this section, "tax setoff" means:

- (1) the difference between the general county property tax rate and the property tax rate that is set for assessments of property in a municipal corporation; or
- (2) a payment to a municipal corporation to aid the municipal corporation in funding services or programs that are similar to county services or programs.

(b) Applicability of section. -- This section applies to any county not listed in § 6-305 of this subtitle.

(c) Discussion and adjustment. -- The governing body of the county shall meet and discuss with the governing body of any municipal corporation in the county the county property tax rate to be set for assessments of property in the municipal corporation as provided in this section. After the meeting if a municipal corporation performs services or programs instead of similar county services or programs, the governing body of the county may grant a tax setoff to the municipal corporation.

(d) Setting county rate for municipal corporation. -- In determining the county property tax rate to be set for assessments of property in a municipal corporation, the governing body of the county may consider:

- (1) the services and programs that are performed by the municipal corporation instead of similar county services and programs; and
- (2) the extent that the similar services and programs are funded by property tax revenues.

(e) Rate need not be uniform. -- The county property tax rate for assessments of property located in a municipal corporation is not required to be:

- (1) the same as the rate for property located in other municipal corporations in the county; or
- (2) the same as the rate set in a prior year.

(f) Request for property tax setoff. -

(1) At least 180 days before the date that the annual county budget is required to be approved, any municipal corporation in the county that desires that a tax setoff be provided shall submit to the county a proposal that states the desired level of property tax setoff for the next fiscal year.

(2) (i) A request submitted under paragraph (1) of this subsection shall be accompanied by:

1. a description of the scope and nature of the services or programs provided by the municipal corporation instead of similar services or programs provided by the county; and
2. financial records and other documentation regarding municipal revenues and expenditures.

(ii) The materials submitted under subparagraph (i) of this paragraph shall provide sufficient detail for an assessment of the similar services or programs.

(3) After receiving a proposal from a municipal corporation requesting a tax setoff under this subsection, the governing body of the county shall promptly submit to the municipal corporation financial records and other documentation regarding county revenues and expenditures.

(g) Officers, information and services. –

(1) At least 90 days before the date that the annual county budget is required to be approved, the county and any municipal corporation submitting a tax setoff request under subsection (f) of this section shall designate appropriate policy and fiscal officers or representatives to meet and discuss the nature of the tax setoff request, relevant financial information of the county and municipal corporation, and the scope and nature of services provided by both entities.

(2) A meeting held under paragraph (i) of this subsection may be held by the county representatives jointly with representatives from more than one municipal corporation.

- (3)
 - (i) The county officers or representatives may request from the municipal corporation officers or representatives additional information that may reasonably be needed to assess the tax setoff.
 - (ii) The municipal corporation officers or representatives shall provide the additional information expeditiously.

(h) Statement of intent. -

- (1) At or before the time the proposed county budget is released to the public, the county commissioners, the county executive of a charter county, or the county council of a charter county without a county executive shall submit a statement of intent to each municipal corporation that has requested a tax setoff.

(2) The statement of intent shall contain:

- (i) an explanation of the level of the proposed tax setoff;
- (ii) a description of the information or process used to determine the level of the proposed tax setoff; and
- (iii) an indication that, before the budget is enacted, appropriate officials or representatives of the municipal corporation are entitled to appear before the county governing body to discuss or contest the level of the proposed tax setoff.

(i) Municipal representatives at county proposed budget hearings. -

- Representatives of each municipal corporation in the county requesting a tax setoff shall be afforded an opportunity to testify before the county governing body during normally scheduled hearings on the county's proposed budget.

(j) Agreements regarding tax setoffs. -- Notwithstanding the provisions of subsections (d), (f), and (g) of this section:

- (1) a county and one or more municipal corporations may enter into an agreement setting different terms or timing for negotiations, calculations, or approval of a tax setoff; and

(2) a county may grant a tax setoff to a municipal corporation that does not make a request in the fashion described in this section.

Maryland Code Annotated *Local Government Article §4-102. Classification of Municipalities.*

There is one class of municipalities in the State, and every municipality is a member of that class.

CERTIFICATE OF SERVICE

Court of Appeals

COA-REG-0052-2020

-----)

MAYOR AND CITY COUNCIL OF
OCEAN CITY, et al.,

Petitioners,

vs.

COMMISSIONERS OF WORCESTER
COUNTY, MARYLAND, et al.,

Respondents.

-----)

I, John C. Kruesi, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by SEIDEL, BAKER & TILGHMAN, P.A., counsel for Amicus Curiae, City of Salisbury, to print this document. I am an employee of Counsel Press.

On the **22nd Day of March, 2021**, the Motion and Brief for Amicus Curiae has been filed and served electronically to registered users via the Court's MDEC system. Additionally, on this date I will serve paper copies upon:

Victoria M. Shearer
Eccleston and Wolf, P.C.
Baltimore-Washington Law Center
7240 Parkway Drive, 4th Floor
Hanover, Maryland 21076
410-752-7474
Shearer@ewmd.com

Brian E. Frosh
Attorney General
Sarah W. Rice
Assistant Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
410-576-7847
srice@oag.state.md.us

Bruce F. Bright
Ayres, Jenkins, Gordy & Almand, P.A.
6200 Coastal Highway, Suite 200
Ocean City, Maryland 21842

410-723-1400
bbright@ajgalaw.com

via Express Mail, by causing 2 true copies of each to be deposited, enclosed in a properly addressed wrapper, in an official depository of the United States Postal Service.

Unless otherwise noted, 8 copies have been sent to the Court on this day via overnight delivery.

March 22, 2021

/s/ John C. Kruesi
John C. Kruesi, Jr.
Counsel Press