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,

v.

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 Appeal from the Circuit Court for Worcester County No. C-23-CV-18-000021

BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

Petitioners, the Mayor and City Council of Ocean City, along with the Mayor individually and individual members of the Council and their respective spouses (individually named as taxpayers of the City and County)("Ocean City"), filed this declaratory judgment action in the Circuit Court for Worcester County against Worcester County and its Commissioners (the "County") seeking a declaration that the provisions of Maryland Code, §§6-305 and 6-306 of the Tax-Property Article ("tax setoff" statutes) are unconstitutional as violating Article XI-E, §1 of the Maryland Constitution. Ocean City contends that the State's tax setoff scheme, first adopted in 1975, which requires some Maryland counties to grant tax setoffs to municipalities (§6-305), but makes it discretionary for other counties to do so (§6-306), violates the provision in Article XI-E, §1, that requires "the General Assembly [to] 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."

Ocean City also requested that the Circuit Court sever §6-305(b), which lists the counties that are subject to the "shall grant" section, and the entirety of §6-306, thereby judicially establishing a system where all Maryland counties are required to grant tax setoffs to municipalities within their borders. Although granting the aforementioned requested relief would require Worcester County to grant Ocean City and other municipalities in the County tax setoffs, Ocean City nevertheless additionally requested that the Circuit Court specifically declare that the County is required to grant tax setoffs to

Ocean City or its taxpayers "equal to the cost of the services and programs which are provided by the Town which would otherwise be provided by the County."

In the Circuit Court, the County filed a Motion to Dismiss or, in the Alternative, for Summary Judgment. Ocean City filed a Cross-Motion for Summary Judgment. A hearing was held on October 3, 2018. E. 565. The Circuit Court denied the County's Motion to Dismiss based on lack of jurisdiction, and granted summary judgment to the County on the basis that, as a matter of law, §§6-305 and 6-306 do not violate Article XI-E, §1. E. 590.

Ocean City subsequently noted a timely appeal to the Court of Special Appeals. Prior to oral argument, Ocean City submitted a Petition for a Writ of *Certiorari* to this Court, which was denied. Following oral argument, the Court of Special Appeals requested the views of the Attorney General. Subsequently, on February 12, 2020, the Attorney General filed an *amicus* brief. Thereafter, on October 13, 2020, the Court of Special Appeals issued an unreported opinion affirming the Circuit Court's rulings. App. 1.

Ocean City again filed a Petition for a Writ of *Certiorari*, which the County opposed. The Writ was granted by this Court on February 8, 2021. App. 19.

QUESTIONS PRESENTED

1. Whether §§6-305 and 6-306 of the Tax Property Article of the Maryland Code are constitutional and do not violate Article XI-E, §1 of the Constitution of Maryland because County-provided tax setoffs are not municipal affairs?

2. Whether, if the statutes are deemed unconstitutional, the provisions of those statutes may lawfully be severed as requested by Ocean City?

STATEMENT OF FACTS

This appeal involves a legal issue only. However, Ocean City has injected certain facts and extraneous policy arguments, none of which are relevant. In response to Ocean City's assertions (and not as an "appeal" of the County's motion to dismiss below based upon lack of jurisdiction), the following facts are offered.

A. Ocean City Is Provided With Substantial Funding From The County For Similar Services or Programs, Even Though It Is Not Required By The Statutes.

Ocean City's Brief begins, at page 1, by asserting that "Worcester County has repeatedly refused over many years to provide either a tax differential or a tax rebate (any tax setoff) to the Town or its taxpayers." See also Petitioners' Brief, at footnote 7 and at 10. However, the statutes challenged do not require the County to do so. Moreover, this contention is simply untrue.

A "tax setoff" is defined by the Tax Property Article as either a reduced property tax rate or "a payment to a municipal corporation to aid the municipal corporation in funding services or programs that are similar to county services or programs." See §§6-305(a)(2) and 6-306(a)(2). That is precisely what the County has provided to Ocean City for many years.

The County has provided Ocean City with millions of dollars in annual grants. E. 69. For instance, in FY2018, the County provided approximately $2.42 million in unrestricted grants to Ocean City. Id. Overall, the County provided total grants to Ocean City of over $5.5 million. Id. The explanations of Ocean City's Budget Officer in her Affidavit (E. 534), conceded as much. The Worcester County Budget Officer also reviewed

these grants, and her affidavit confirmed that a significant amount of the County's funding does in fact satisfy the definition of a tax setoff. See E. 535-37. These unrestricted grants to Ocean City may apply to offset the cost of any of the similar services that Ocean City may provide. Additionally, Ocean City receives funding for duplicative services with respect to parks and recreation, tourism and promotion of the County and Ocean City, and transportation. Id.[1]

The affidavit of the County Budget Officer also states that if the County were required to issue additional funds or reduce the property tax rate for Ocean City, the County would eliminate these grants from its budget. See id. The County consistently reported these grants to the State Department of Legislative Services when it sought information for the Department's tax surveys. These grants were not included as part of the Department's reports of tax setoffs, as the Department has consistently declined to include this funding in its reports, without overtly determining or informing the County that the funds do not qualify. See id.

The County has also met annually with Ocean City officials to discuss tax setoffs. Thus, the County fully complied with the "meeting" requirements of the statute (§6-306(c)). See, e.g., E. 517; 527.

Petitioners discuss various "studies" of tax setoffs that were procured by both Ocean

[1] Nowhere in §6-305 or §6-306 is there a requirement that the counties grant a tax setoff that offsets 100% of the claimed duplicative services. Rather, the statutory scheme requires only a negotiation process between counties and municipalities. There is no dispute that this process occurred here and that the County provides Ocean City with significant grants each year.

City and the County. Brief,11-14. However, the "studies" are not relevant to the legal issue at hand, and instead relate to failed legislative efforts to alter the statutes.[2]

B. Relevant Provisions of the Maryland Constitution and Code.

1. Sections 6-305 and 6-306 of the Tax-Property Article.

The challenged statutory scheme requires eight (8) of Maryland's twenty-four (24) counties to provide mandatory tax setoffs to municipalities (§6-305(b)), while it leaves such tax setoffs discretionary in all other counties (§6-306(b)). One County has a slightly different process, but also must grant tax setoffs. §6-305.1. Howard and Baltimore Counties do not have any municipalities.

2. Article XI-E, §1 of the Maryland Constitution.

Ocean City's claims arise from the language of Article XI-E, §1 of the Maryland Constitution, which provides as follows:

> 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

[2] For example, HB 690 was introduced in the House of Delegates on February 12, 2015 to address property tax setoffs. See https://perma.cc/5ADF-ZQAD. The bill would have, inter alia, placed all counties in the "shall" category where they must provide a property tax setoff if a county and a municipality in the county are providing parallel services paid for with property tax dollars. HB 690 failed to come to a vote in the House Ways and Means Committee. However, a local bill affecting only Frederick County (SB886/HB664) was considered and passed by the General Assembly. See https://perma.cc/4853-22HL. This demonstrates that the General Assembly's legislative intent was to maintain the dual-classification tax setoff system; and to not make the legislative changes that Ocean City seeks herein.

> more of the classes provided for in Section 2 of this Article.[3] It shall be the duty of the General Assembly to provide by law the method by which new municipal corporations shall be formed.

(emphasis added).

The "Sobeloff" Commission was formed in 1951 by the General Assembly to consider the issue of local laws. E. 120-21. The Commission issued the Sobeloff Report in 1952. E. 124. The Report noted that the majority of bills introduced in the General Assembly at that time were applicable to municipalities or counties. E. 126. Because such parochial concerns were diverting the Legislature's attention away from matters of State-wide concern, E. 144, and resulted in some inconsistent structures for local governments, E. 147, the Report recommended adoption of a constitutional amendment to prohibit the enactment of local laws and to allow municipalities home rule. E. 153-166. However, considerable power over local legislation with respect to taxation and debt would be left to the General Assembly because poor management of such matters could affect State-wide concerns. E. 160.

In 1954, the Legislature passed and the voters ratified Article XI-E, §1. At the same time, the issue of tax differentials also arose and, through the years, became controversial. E. 196; 200; 243. It was decided that determination of the nature of governmental services provided was of "countywide nature" and should be made "at the county level." E. 255.

[3] Although Article XI-E, §1 refers to the possibility of multiple classes of municipal corporations, which §2 does indeed permit, the General Assembly has decided to establish only one class of municipality. See Md. Code, §4-102 of the Local Government Article ("There is one class of municipalities in the State, and every municipality is a member of that class.").

The issue of tax setoffs also arose during this time period, and it was noted in reports to the Legislature that the counties were not uniformly providing tax setoffs to their municipalities. E. 246; 250-51; 255. The reports indicated that determination of the nature of services in each county required the issue to be addressed at the county, rather than the state, level. E. 255.

In 1975, the tax setoff law was enacted and, at first, it was permissive. E. 261-65. Certain counties were allowed to vary their tax rates for municipalities, while others were not. E. 265. The law was altered over the years, reducing the number of exempt counties. E. 274. In 1983, the dual-classification system that exists today was first adopted, where some counties "shall" grant tax setoffs, while others "may" grant tax setoffs to municipalities. 1983 Md. Laws, Ch. 603. E. 282-285.

ARGUMENT

I. STANDARD OF REVIEW.

The standard of review is de novo. State v. Davis, 415 Md. 22, 29, 997 A.2d 780, 784 (2010)(the appellate court conducts its own independent constitutional analysis).

Legislative acts are presumed to be constitutional and valid. Cider Barrel Mobile Home Court v. Eader, 287 Md. 571, 579, 414 A.2d 1246, 1257 (1980). Courts are reluctant to find a statute unconstitutional if, by any construction, it can be sustained. Dep't of Nat. Res. v. Linchester Sand & Gravel Corp., 274 Md. 211, 218, 334 A.2d 514, 520 (1975) (citations omitted).

When undertaking an exercise in statutory interpretation, the cardinal rule is to ascertain and effectuate the intent of the Legislature. Breslin v. Powell, 421 Md. 266, 286,

26 A.3d 878, 891 (2011)(citing Mayor & Town Council of Oakland v. Mayor & Town Council of Mountain Lake Park, 392 Md. 301, 316, 896 A.2d 1036, 1045 (2006)). In attempting to discern the intent of the Legislature, courts look first to the plain language of the statute, giving it its natural and ordinary meaning. Id. (citing State Dep't of Assessments & Taxation v. Maryland-Nat'l Capital Park & Planning Comm'n, 348 Md. 2, 13, 702 A.2d 690, 696 (1997)). If the language of a statute is clear and unambiguous, courts will give effect to the plain meaning of the statute and no further sleuthing of statutory interpretation is needed. Id. at 286-87, 26 A.3d at 891 (citing Marriott Emps. Fed. Credit Union v. MVA, 346 Md. 437, 445, 697 A.2d 455, 458 (1997)("When the statutory language is clear, we need not look beyond the statutory language.")); Kaczorowski v. Mayor & City Council of Baltimore, 309 Md. 505, 515, 525 A.2d 628, 633 (1987)("Sometimes the language in question will be so clearly consistent with apparent purpose . . . that further research will be unnecessary.")). However, courts "may resort to legislative history to ensure that [their] plain language interpretation is correct." Lockshin v. Semsker, 412 Md. 257, 279, 987 A.2d 18, 31 (2010) (citations omitted). In Board of County Commissioners of St. Mary's County v. Marcas, L.L.C., 415 Md. 676, 685, 4 A.3d 946, 951 (2010), this Court explained:

> We, however, do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone. Rather, the plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute. We presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute's object and scope.

Id. 415 Md. at 685, 4 A.3d at 951.

If the sense of a statute is either unclear or ambiguous under the plain meaning magnifying glass, a court must resolve the ambiguity by searching for legislative intent in other indicia, such as the structure of the statute, the relation of the statute to other laws in a legislative scheme, the legislative history, and the general purpose and intent of the statute. Breslin, 421 Md. at 287, 26 A.3d at 891 (citation omitted); see also Marcas, 415 Md. at 685-86, 4 A.3d at 951-52.

A statute must be read in the context of its statutory scheme, ensuring that no word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory, and that any illogical or unreasonable interpretation is avoided. Breslin, 421 Md. at 287, 26 A.3d at 891 (citing Mayor of Oakland, 392 Md. at 316, 896 A.2d at 1045); see also Whiting-Turner Contracting Co. v. Fitzpatrick, 366 Md. 295, 302-03, 783 A.2d 667, 671 (2001)("[S]tatutes on the same subject are to be read together and harmonized to the extent possible, reading them so as to avoid rendering either of them, or any portion, meaningless, surplusage, superfluous or nugatory.")(citations and quotation marks omitted)). In every case, the statute at issue must be given a reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense. See Marcas, 415 Md. at 685-86, 4 A.3d at 951-52.

II. THE STATE'S TAX SETOFF LAWS DO NOT RELATE TO MUNICIPAL "AFFAIRS," AND THEREFORE, THEY DO NOT VIOLATE ARTICLE XI-E, §1.

The central dispute in this lawsuit is the interpretation of Article XI-E, §1. The relevant portion of that provision states: "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."

Thus, in addressing whether a particular State law violates Article XI-E, §1, three things must be examined:

> (1) whether the law relates to municipal incorporation, organization, government, or affairs;
>
> (2) if 1 is true, whether the law is a "general law"; and
>
> (3) if 1 and 2 are true, whether the law is applied uniformly to all municipal corporations.

Accordingly, if a statute relates to, inter alia, municipal "affairs," it must be both a "general law" and it must apply uniformly to all municipal corporations. Conversely, if the statute in question does not relate to the incorporation, organization, government, or affairs of Maryland municipal corporations, then the "general" and "uniform" provisions of Article XI-E, §1 are not implicated. Here, if the tax setoff laws do not pertain to the "affairs" of the local government, then they do not violate Article XI-E, §1, even if they are not uniform. The issue, then, is the nature and scope of the word "affairs" as used in Art. XI-E, §1.[4]

The term "affairs" is left undefined in Article XI-E, §1. Throughout this case, Ocean City's interpretation has been and is broad, suggesting that "affairs" includes matters that

[4] Ocean City asserts that the first inquiry is "are the statutes general laws?" Brief, 17. However, this is not the first issue and it has not been contested by the parties, as the County agrees that the tax setoff laws are "general" laws. Ocean City agrees that, unless the tax setoff laws relate to municipal affairs within the meaning of Article XI-E, §1, the issue of uniformity does not arise. Brief, 17.

merely "concern" or interest a municipal government because such matters may have "an impact on" the municipality and its citizens. Brief, 21-22 ("Any tax rate set by a county on property owned by municipal taxpayers has an impact on, and therefore relates to, the tax rate the municipality can and will charge and therefore relates to the 'affairs' of the municipality…"); See also Brief, 22 (incorrectly equating "municipal concern" with municipal "affairs" as used in Article XI-E, §1).

Ocean City certainly has an interest in many things that impact the municipality, both within and outside its jurisdiction, but simply having an interest or being impacted does not make it an "affair" of the municipality as contemplated by Art. XI-E. Article XI-E, §1 is concerned with municipal home rule, not the infinitely broad interests of municipalities, and the extent of Art. XI-E's limitation on the General Assembly must be understood in light of the greater purpose of the Home Rule Amendment.

A. The Attorney General Opinion Letters Correctly Conclude That the Tax Setoff Statutory Scheme Does Not Violate Article XI-E, §1.

The Office of the Attorney General of Maryland has advised members of the General Assembly on this issue at least twice and has arrived at the same conclusion on both occasions. As discussed below, the Office has advised that mandating tax setoffs in some counties ("shall") while simultaneously granting other counties discretion whether to grant the same ("may") is not a violation of Article XI-E because it does not interfere with municipal home rule. These letters,[5] albeit brief, are nevertheless well-reasoned and

[5] Although these letters offered legal advice on the issues relevant in this case, it does not appear that these advisory letters were published opinions of the Attorney General. They are nevertheless persuasive for the reasons discussed.

persuasive.[6]

The first Attorney General advisory letter, dated March 29, 1983, addressed "the constitutionality of exempting various counties from Senate Bill 277, which generally requires counties to levy a lower tax rate on property in municipalities which provide some or all of their own services or to make a grant to such municipalities." E. 70. The letter cites Prince George's County v. Laurel, 262 Md. 171, 188-90, 277 A.2d 262, 271 (1971), in which this Court "concluded that Art. XIE does not forbid the General Assembly to enact legislation which affects a particular municipality if the law affects persons who live outside the municipality." Id. The Office of the Attorney General explained:

> The distinction appears to be that in legislating on matters of purely municipal concern, the General Assembly must act by general laws which affect all municipalities alike, but that in legislating on matter of more than just municipal concern the General Assembly may act by laws which affect less than all municipalities.
>
> As the bill is concerned with the levying of county taxes in municipalities which provide some or all of their own services, it clearly is not a matter of purely municipal concern but is a matter of concern to county taxpayers, generally.

E. 70-71 (citations omitted).

In the Laurel case, this Court addressed a challenge to the General Assembly's enactment of Chapter 373, "which had the effect of enlarging the Maryland-Washington Regional District [of the Maryland-National Capital Park and Planning Commission] to include all of Prince George's County, with the exception of the Town of Laurel." Laurel,

[6] The Office of the Attorney General submitted an a*micus* brief below at the request of the Court of Special Appeals, providing its view that the challenged statutes do not relate to municipal "affairs" and, thus, are constitutional.

262 Md. at 187, 277 A.2d at 270. The trial court held that the law was unconstitutional because it violated Article XI-E, §1. Id., 262 Md. at 187-88, 277 A.2d at 270-71. This Court disagreed, stating that the trial court erroneously "assumed that because the language of Chapter 373 . . . pertained in this instance to one county, it inherently violated the qualifications placed on a general law." Id., 262 Md. at 188, 277 A.2d at 271. This Court explained:

> [A]lthough in the instant case the boundary amendment expanding the area of the Regional District (Ch. 373) by necessity applied to only one county and one section of the total area encompassed by the Regional District, yet it was legislation which formed an integral part of the entire bicounty scheme (i.e., the Regional District). In view of the thrust of our [prior] decisions . . . we do not think that Chapter 373, by enlarging the boundaries of the bi-county District in one county or by its singular mention of Laurel violates that prohibition in Art. XI-E, section 1 of the Constitution which states that the General Assembly 'shall not pass any law relating to . . . municipal corporations . . . which will be special or local in its terms or in its effect . . . .'

Id., 262 Md. at 188-89, 277 A.2d at 271 (emphasis added). Noting that it had, in an earlier opinion, "stated the proposition that a law which affects persons residing beyond a municipality could hardly be a local law," this Court concluded that Chapter 373 did not violate Article XI-E, §1. Id., 262 Md. at 190, 277 A.2d at 272.

Similarly, §§6-305 and 6-306 could hardly be local laws, as they affect persons residing beyond a single municipality. Not only do the laws affect more than just Ocean City, they establish county property taxation, which affects all residents of Worcester County's three other municipal corporations and all non-municipal residents of the

County.[7] If Worcester County were required to grant a tax setoff to municipalities in its jurisdiction, then property taxes on non-municipal residents would likely have to increase in order to generate the same amount of tax revenue to the County. Additionally, the tax setoff laws affect all of the counties referenced in each of the two tax setoff sections, and a change in these statutes would certainly affect more than just Ocean City and Worcester County.[8]

The uniformity issue, as it relates to Maryland's tax setoff scheme, was addressed and discounted in the second Attorney General advisory letter. E. 72. Specifically, the letter to Delegate George Edwards, dated February 28, 1986, addressed whether amendments to Maryland's tax setoff scheme, which would apply only to Garrett County, might violate Article XI-E. The letter advised that §6-305 "does not concern the municipal property tax, but only the county property tax." Id. The letter discussed Mayor and Alderman of City of Annapolis v. Wimbleton, Inc., 52 Md. App. 256, 447 A.2d 509 (1982), where the City enacted a resolution purporting to annex a tract of land. Wimbleton, 52 Md. App. at 258, 447 A.2d at 510. The County Council subsequently enacted a bill "register[ing] the County's disapproval of the City's annexation resolution" and purporting to suspend the City's annexation resolution until a referendum could be held. Id., 52 Md. App. at 258-59, 447 A.2d 509. The County relied upon Art. 23A, §19(u), which granted "Anne Arundel

[7] Worcester County has four municipal corporations in its jurisdiction: Town of Berlin, Town of Ocean City, Pocomoke City, and Town of Snow Hill.

[8] Many of the residential properties in Worcester County, and Ocean City in particular, are second homes owned by persons who live primarily outside of the County, which further illustrates that the tax setoff laws at issue here affect persons State-wide.

County the ... power to register its disapproval of an annexation resolution by one of the two municipal corporations located within its geographical boundaries and thereby to require a referendum of the electorate of the County." Id., 52 Md. App. at 261, 447 A.2d at 511. The City then filed an action claiming, inter alia, that §19(u) was unconstitutional as a "special" or "local" law violating Article XI-E, §1. Id., 52 Md. App. at 259, 447 A.2d at 510-11. The Court of Special Appeals held that a statute which allowed Anne Arundel County to register its disapproval of a municipal annexation and required a county referendum on the issue violated Article XI-E, Sec. l. Although the Court found the statute to be a general law, the Court concluded that the statute did not satisfy the uniform application requirement of Article XI-E, Sec. l, as it clearly applied only to one county and the two municipal corporations in that county. Wimbleton, 52 Md. App. at 264-265, 267.

Assistant Attorney General Israel's letter correctly distinguished Wimbleton, stating:

> As the law at issue in Wimbleton, supra, concerned the process of municipal annexation, it manifestly dealt with the 'affairs' of municipal corporations within the meaning of Article XI-E, Sec. l. By way of contrast, the proposed amendment to the Tax Differential Law is only concerned with the setting of the county property tax rate.
>
> E. 73.

The letter concluded that the tax setoff statutes concern the setting of the County property tax rate, not the "affairs" of a municipal corporation under Article XI-E, §1. The tax setoff law is essentially concerned with the affairs of the counties and the services the counties provide to their residents who live in the municipalities rather than the affairs of the municipal corporations as such.

In a footnote, the author explained that, despite numerous opportunities, the State's tax setoff scheme had not been challenged or addressed by any Maryland court in this regard. As the letter indicates, the uniformity requirement does not invalidate the statutes at issue here because they do not pertain to a purely municipal matter, and therefore, they do not fall within municipal home rule as set forth in Article XI-E, §1.

B. Maryland Courts Have Interpreted Municipal "Affairs" to Include Only Matters Central to Municipal Self-Governance.

This Court has reiterated multiple times that "the general purpose of Article XI-E [] is 'to permit municipalities to govern themselves in local matters.'" Maryland-Nat. Capital Park & Planning Comm'n v. Town of Washington Grove, 408 Md. 37, 57-58, 968 A.2d 552, 564 (2009)(quoting Inlet Assocs. v. Assateague House Condo. Ass'n, 313 Md. 413, 425, 545 A.2d 1296, 1302 (1988)); see also 88 Md. Op. Atty. Gen. 156 (2003).[9] Accordingly, the restrictions set forth in Article XI-E, §1 regarding general laws and uniformity apply only when the General Assembly "act[s] in relation to the incorporation, organization, government, or affairs of any such municipal corporation"- i.e., when a law encroaches upon municipal home rule. If the statute in question does not affect those areas reserved purely for municipal home rule, it does not violate Article XI-E.

In Griffin v. Anne Arundel County, 25 Md. App. 1115, 333 A.2d 612 (1975), residents of the City of Annapolis sought a declaration that County imposition of an *ad*

[9] The Court in Ritchmount Partnership v. Board of Supervisors of Elections for Anne Arundel County, 283 Md. 48, 56, 388 A.2d 523, 529 (1978), provides a detailed discussion of "home rule" in Maryland.

valorem property tax and use of a tax rate differential for city taxpayers was arbitrary and violated the uniformity requirement of Article 15 of the Maryland Declaration of Rights. The City taxpayers claimed that they paid both the county and city governments for certain services, yet received the services only from the city, resulting in "double taxation." The Court of Special Appeals held that the city property owners were taxed as county property owners in the same manner and according to the same rate (before any differential adjustment) as those county property owners living outside the city. The county imposed no additional tax on the city dwellers, thus no double taxation resulted. The court found that the assailed tax was general and *ad valorem*, thus its legality did not depend upon the receipt of any special benefit by the taxpayer.

The Griffin Court next addressed a "novel" legal argument, first advanced in the City residents' reply brief, that the tax violated Article XI-A, §3, which limits the authority of charter counties with respect to their municipalities by preventing counties from "enact[ing] laws or regulations for any incorporated" municipality within the County "on any matter covered by the powers granted to" that municipality. The Court, citing Schneider v. Lansdale, 191 Md. 317, 61 A.2d 671 (1948), rejected this assertion, holding that Section 3 was not a limitation upon counties' powers to budget and levy taxes, which had long been considered non-municipal affairs delegated to the counties by the State. Griffin, 25 Md. App. at 137, 333 A.2d at 624.

In Bowie Inn, Inc. v. City of Bowie, 274 Md. 230, 232, 335 A.2d 679, 681 (1975), the plaintiffs challenged the enactment of a City waste disposal ordinance, which was "designed to combat the problem of roadside litter in that municipality." The ordinance

"made it unlawful for any person to sell any soft drink or malt beverage unless a deposit of at least five cents on each container were charged at the retail level and unless the deposit were given back upon return of the containers to the retail outlet." Id. The plaintiffs challenged the ordinance, arguing, inter alia, that the City "was not authorized by its charter or any act of the State Legislature to enact the ordinance." Id., 274 Md. at 233, 335 A.2d at 682. This Court rejected this argument, explaining that the "ordinance was expressly authorized by the General Assembly" pursuant to Art. 23A, §2, which granted municipal authority to regulate and provide for the proper disposal of waste. Id., 274 Md. at 247-48, 335 A.2d at 689.

Relevant here, this Court noted that, "[a]t the time of the enactment of Bowie Ordinance," State law granting waste disposal authority to municipal governments was "purported[ly] . . . inapplicable to municipalities in certain counties including Prince George's County," but the "General Assembly, apparently recognizing the unconstitutionality of" those county exemptions in light of Article XI-E, §1, repealed the exemptions, thereby making the grant of authority uniform among all counties. Id., 274 Md. at 248, 335 A.2d at 690.

In Birge v. Town of Easton, 274 Md. 635, 644, 337 A.2d 435, 440 (1975), this Court explained that determination of what is a local or municipal concern is for the courts to decide:

> Article XI-E is generally in accord with the recommendations of the Commission on Governmental Organization of the State (the so-called Sobeloff Commission); the report of that Commission stated that final determination of what constitutes a matter of purely local or municipal concern, *i.e.*, a matter relating to the 'incorporation, organization,

> government, or affairs' of the municipality, is for the courts to make in light of all existing circumstances. In determining whether a matter is local or is one of general state concern, 1 C. Antieau, Municipal Corporation Law § 3.36 (1973) states:
>
> > 'If the effect of local rules or municipal control is not great upon people outside the home-rule city, the matter is apt to be deemed local. . . .
> >
> > 'Contrariwise, if the effect of the regulation or the administration of a particular matter is likely to be felt by a considerable number of people outside the city and in a rather strong degree, courts are probably going to conclude that the concern is for the state.'

Birge, 274 Md. at 644, 337 A.2d at 440 (emphasis added); cf. Tyma v. Montgomery Cnty., 369 Md. 497, 507, 801 A.2d 148, 154 (2002)("A local law, on the other hand, applies to only one subdivision and pertains only to a subject of local import.")(citation omitted)). Birge involved a dispute over a charter amendment which "authorize[d] the acquisition of an interest in real property located beyond its corporate limits in Delaware for use in connection with the operation of its municipally owned electric system." Id., 274 Md. at 636, 337 A.2d at 436. This Court held that matters relating to the municipality's electrical system were a local concern:

> Considering the nature and needs of the Town's electric utility, its limited service area, its overall regulation by the State through the [Public Service Commission], and the negligible effect upon nonresidents of the Town, we think the power granted by the charter amendment with respect to the Town's electric system is in the sense contemplated by Article XI-E a local matter involving the 'incorporation, organization, government, or affairs' of the municipality.

Id., 274 Md. at 645, 337 A.2d at 440-41.

Waste disposal (as in Bowie Inn) is certainly a matter of municipal concern, i.e., it clearly falls within municipal home rule. Indeed, §5-209(d) of the Local Government

Article explicitly grants to municipal corporations the power to "regulate or prohibit the throwing or depositing of dirt, garbage, trash, or liquids in a public place; and . . . provide for the proper disposal of these materials."

On the other hand, unlike municipal annexation (Wimbleton), town electricity (Birge), and waste disposal (Bowie Inn), the tax setoff laws at issue here do not relate to municipal "incorporation," "organization," or "government," nor do they involve the purely local "affairs" of a municipality. County tax setoffs are matters of county taxation and not something that would be fairly included in municipal home rule as "affairs" of a municipality. They set forth a process for the setting of county tax rates for all county residents, not just residents of specific municipal corporations like Ocean City.

The word "affairs" relates to matters that are properly relegated to municipal authority, i.e., matters that are properly within their legislative power - in accordance with the purpose of municipal home rule, which was to give local municipalities limited authority to govern themselves with respect to purely local matters.

Birge intentionally equated the phrase "a matter of purely local or municipal concern" with the language used in Art. XI-E: "a matter relating to the 'incorporation, organization, government, or affairs' of the municipality." It did so based upon the Report of the Sobeloff Commission. Birge, 274 Md. at 644, 337 A.2d at 440. Moreover, it certainly was no accident that both §1 and §3 of Art. XI-E reference municipal "incorporation, organization, government, or affairs." As this Court in Birge explained, §3 permits municipal corporations to amend their charters and local laws with respect to matters relating to municipal "affairs." Id., 274 Md. at 644, 337 A.2d at 440. Thus, if tax setoffs

were truly a municipal "affair," Ocean City would have the authority to simply enact legislation to correct the alleged tax differential problem, and there would be no need for this lawsuit. Clearly, it cannot do that because Ocean City has no authority over what tax rate the County imposes on property owners, as that is not a municipal "affair," but rather, a County tax rate.

Like the bi-county scheme at issue in Prince George's County v. Mayor and City Council of Laurel, the inter-governmental scheme at issue here does not violate Article XI-E, §1. See also Baltimore Transit Co. v. Metropolitan Transit Authority ("MTA"), 232 Md. 509, 194 A.2d 643 (1963)(holding that creation of MTA, having jurisdiction over transportation across charter counties, did not violate Article XI-A, §4).

Petitioners attempted below to circumvent Birge's clear interpretation of municipal "affairs" as being matters of "purely local or municipal concern," by claiming that the Sobeloff Commission (in its Second Report, 1952) did not use the word "purely." The County responded by pointing out that the Sobeloff Commission used the word "solely," which is essentially the same. See E. 157. In the Court of Special Appeals and here, Petitioners now instead write that "[w]hile the Sobeloff Commission did not use the word 'purely' in its report, it did speak to 'matters considered solely as local in nature,' but only in the context of determining whether a law is local or general." Brief, 27. Contrary to Ocean City's evolving arguments, this Court's focus should be on the meaning of Art. XI-E, §1 as interpreted in light of its underlying purpose and intended operation, which the second Sobeloff Report explained:

> To supplement the home rule provision, the proposed amendment

would permit the General Assembly to divide all cities and towns into not more than four classes based on population and to pass general laws applicable to all municipalities in one or more classes. Local laws relating to the 'incorporation, organization, government, and affairs' of municipalities would be prohibited, except local laws setting maximum property tax and debt limits.

Prohibition of local legislation is necessary to prevent future legislatures from defeating the purpose of the amendments by passing local laws repealing locally-enacted charter provisions. Although local legislation for municipalities is prohibited, the proposed amendment would not limit the General Assembly's authority as drastically as do the provisions in some other state constitutions . . .

Maryland's municipalities would by no means become free agents, answerable to no one. The General Assembly would continue to pass general laws regulating municipal affairs, and municipalities would abide by these general laws. Therefore, under the suggested amendment, the General Assembly would be enabled to prevent abuse and misuse of home rule powers by the enactment of general laws applying to all municipalities in one or more classes.

* * *

The proposed constitutional amendment would not define matters of municipal organization, government, and affairs concerning which the General Assembly could pass no local laws. Since local affairs are not spelled out in the present Constitution, final determination as to what they are would continue to remain in the courts. Some states, in their home rule amendments, do attempt to list local powers, but such listings still must be made in general terms unless many pages are to be added to a state constitution. Also, the necessity for court interpretations of the listed powers probably could not be avoided. Furthermore, matters considered **solely** as local in nature must be reviewed as circumstances change. While regulation of traffic speeds was undeniably a local matter in 1800, today it is clearly of State concern to an ever-increasing extent. A reasonable listing of local powers today may seem very illogical twenty years from now. To ensure flexibility it seems preferable not to include a list of local powers in the Constitution. On matters of State concern, not affecting the government of municipalities as, for example, fish and game laws, the General Assembly would continue to enact local laws.

E. 155-58 (emphasis added).

Further, as the Second Sobeloff Report discusses, the purpose of amending the State

Constitution with Art. XI-E was to enable municipal self-governance with respect to local matters. To prevent the General Assembly from "defeating the purpose of the amendments" by passing legislation that overrides municipal enactments, the Sobeloff Commission recommended, and the General Assembly adopted, restrictions prohibiting the General Assembly from legislating on municipal "incorporation, organization, government, and affairs" except by broad uniform laws that apply to all municipalities.

Critical to the analysis here, the Sobeloff Report explains that the scope of municipal "affairs" was left undefined. However, it characterizes these "affairs" as "local powers," "solely as local in nature," and "affecting the government of municipalities." Id. This supports the conclusion that the limitations on the General Assembly written into Art. XI-E do not relate to the mere interests of municipal corporations, but rather, they concern the limited delegation of "powers" that were intended for municipal corporations to govern municipal "affairs" that are "solely local in nature."

The Report provides two illustrations of matters that may appear to be local matters, but are in fact matters of State concern, and therefore, are subject to non-uniform local legislation enacted by the General Assembly. First, the Report notes that the regulation of traffic speed was a local matter, but "today it is clearly of State concern." E. 157. Second, it notes that fish and game laws do not affect the "government" of municipalities, and therefore, they are "of State concern" and the General Assembly is permitted to enact local fish and game laws. E. 157-58.

Surely, speed on roads in Ocean City, just like tax setoffs, is a "concern" of Ocean City in the colloquial sense, i.e., that speed laws directly impact Ocean City and its citizens.

In fact, the Maryland Code expressly permits local authorities to modify highway speed limits under certain circumstances. See Md. Code, Transp. Art., §21-803; Town of Ocean City Code, §90-102 (limiting speeds on public highways and roads to 30 miles per hour unless otherwise posted). Under Ocean City's reasoning, traffic speed should be classified as an Art. XI-E municipal "affair" because Ocean City has roads and highways, it has been granted general powers to enact legislation to protect the safety of persons within its borders, and it has been granted express powers to regulate speed limits under limited circumstances. Nevertheless, as the Sobeloff Report makes clear, traffic speed is not a municipal "affair" as it is not "solely local in nature" as it perhaps was many years ago, meaning that the State Legislature can enact non-uniform traffic speed laws applicable to some municipalities but not others.

Indeed, the General Assembly has done just that. In 2018, Ocean City lobbied the General Assembly in favor of Senate Bill 872, ultimately enacted as §21-811 of the Transportation Article, which is a narrowly-focused law that permits the creation of temporary "special event zones" at the request of a "local authority" in Worcester County in which speed limits may be adjusted and fines for speed violations increased.[10] The Fiscal and Policy Note associated with the bill reveals that the law was specifically crafted for Ocean City, as the Note indicates that the new law will effect only Worcester County. It reads, in relevant part:

> Town of Ocean City hosts automotive and motor events in close proximity to highways, with crowds often swelling beyond manageable limits and

[10] See Shawn Soper, OC Contingent Endorses Special Event Zone Bill In Annapolis, The Dispatch (Mar. 1, 2018), https://perma.cc/M5K4-9NDP.

> disorderly conduct becoming a greater concern. The bill is intended to assist law enforcement officers in managing such events and restoring or ensuring safety of the public.

See Fiscal and Policy Note, Senate Bill 872, 2018 Session, available at https://perma.cc/ZA4X-H2L9.

If Ocean City's reasoning were correct, the regulation of traffic speeds and speeding tickets during Ocean City special events is an "affair" of the municipality by virtue of its interest in the matter, legislative authority related to roads, and the contention that municipal "affairs" do not have to be "purely" local. This law would be unconstitutional for the same reasons that Ocean City asserts with respect to the State's tax setoff scheme, i.e., the law concerns a municipal "affair" and it is not uniform because it only applies to Ocean City. But that is not the case because traffic speed is not a municipal "affair" only, despite any interest Ocean City clearly has in such matters.

Thus, it follows that, even if an issue "concerns" a municipal corporation - in the sense that the municipality has an interest in the matter - that does not render it an "affair" of the municipality such that the General Assembly cannot enact non-uniform legislation unless the General Assembly intended that regulation of such local matters be within the power or authority of municipal corporations.[11] With respect to County tax setoffs specifically, that is not an area of authority that is granted to municipal governments, but rather, is an area of authority granted to counties and is a County taxation issue. By way of

[11] It does not follow that, because the County must "examine the services the municipality provides which duplicate county services," that the tax rate that Ocean City concedes is a "county property tax rate" is a municipal "affair."

analogy, surely the State's income taxation is also a "concern" or interest of the municipal government and residents of Ocean City, but that certainly does not make that a municipal "affair" because that is obviously a matter within the authority of the State government, notwithstanding that it has a "direct impact" on the citizens of Ocean City.

Ocean City points to municipal authority to enact ordinances that "regulate government, protect municipal rights, property and privileges, preserve peace and order," etc. Brief, 20. They further argue that a municipality has express power to "provide for the control and management of its finances" and to collect property taxes. Id., 21. Ocean City concludes that "[a]ll those enumerated powers clearly deal with the 'affairs' of a municipality," and if "police and fire protection, ambulance services and the like are among the 'affairs' of the municipality, funding these services has to be among the municipality's affairs as well." Id.

Plainly, both the County and Ocean City have delegated powers. However, that Ocean City has such powers is not the proper analysis. Such municipal powers do not override the power of the Legislature to set County property tax rates or to adopt an inter-governmental scheme for doing so. That Ocean City has power to impose property taxes does not mean that it has the power to change the County's taxation of its citizens any more than it has the power to change the State's taxation of its citizens.[12]

[12] If Ocean City's position were correct, it would invalidate other non-uniform tax statutes. For example, §9-325(c) of the Tax-Property Article states: "The governing body of Worcester County or of a municipal corporation in Worcester County may grant, by law, a property tax credit against the county or municipal corporation property tax imposed on real property that is actually used as a historically operated amusement park." Nowhere else in the Maryland Code is there an equivalent provision granting authority to provide a

Ocean City next suggests that a 1963 Report from the Maryland Commission on City - County Fiscal Relationships supports its position that the county tax rate within the municipality is a "municipal concern." Brief, 22-23. Specifically, Ocean City highlights the Commission's discussion of tax setoffs and its statement that the issue "appears to be the kind of problem with which local officials, particularly municipal officials, are chiefly concerned." Brief, 23. Ocean City seizes upon the Commission's incidental use of the word "concerned" and offers it as having some legal significance. Id. However, the Commission also characterized the tax setoff issue as "a concern to many of the state's prominent citizens over a period of years …." E. 202. Further, the Commission stated that it was a concern of "local officials, particularly municipal officials." E. 204-05. Thus, the Commission's use of the word "concern" does not have any significance beyond its colloquial use to describe something of interest to various groups. The Commission was in no way indicating that tax differentials are an "affair" of municipalities as the term is used in Art. XI-E.

All authority points to the conclusion that the definition of municipal "affairs" encompasses only those matters that are "purely" or "solely" local in concern or, stated differently, those areas of local authority that would properly be included on a list of municipal powers, if the General Assembly had chosen to include such a list in Art. XI-E

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real property tax credit for such amusement parks to other counties and municipalities other than Worcester County. Under Ocean City's reasoning, this statute would also be unconstitutional as violating Article XI-E, §1 because, according to Ocean City's reasoning, property taxation is a municipal "affair," and this is a non-uniform law as it applies to less than all municipalities.

instead of offering broad categories.

Ocean City has offered no reasonable interpretation of their own that would serve to define the outer limits of the "affairs" of a municipal corporation other than to suggest that it includes everything that may impact the citizens of a local government. This interpretation, however, is not supported by the legislative history of Art. XI-E and is untenable because it would serve to invalidate multiple State laws that the Sobeloff Commission expressly deemed not to be municipal affairs.

Ocean City asserts that: "although Tax-Property Article, §§6-305 and 6-306 may, by derivative effect, implicate a county's tax rate, the clear and direct purpose of those statutes is to address the tax burden that taxpayers *within the municipality* will bear..." Brief, 24 (emphasis in original). Clearly, that is not the purpose of the tax setoff statutes, nor would it merely "implicate" a county's tax rate. Notwithstanding that the County's decision with respect to property taxation may have a "direct impact" on City taxpayers, the County's authority to impose property taxes at a particular rate is not a matter "solely local in nature," nor is it a "power" that is properly within the authority of a municipal corporation like Ocean City. Property taxation and tax setoffs are a County taxation matter that affect many persons who live outside of Ocean City. Accordingly, §§6-305 and 6-306 do not violate Art. XI-E, §1.

C. The New Constitutional Argument Presented by Amici Curiae Should Not Be Considered; If the Argument Is Considered, It Should Be Rejected.

The City of Salisbury, Town of Denton and Town of Chestertown have filed an *amicus* brief and motion to participate as *amici curiae*. The motion sets forth new (and unsubstantiated) factual allegations with respect to tax setoffs in Wicomico, Caroline and Kent Counties. Worcester County respectfully submits that these unsubstantiated allegations should not be considered by the Court since they are not at issue and were not raised below.

The motion filed by *amici* also contains legal arguments or, at least, the promise that certain legal arguments will be asserted in *amici*'s brief, though they are not asserted therein.[13] The motion states that "[t]he City of Salisbury, the Town of Denton, and the Town of Chestertown also wish to raise the issue of whether sections 6-305, 6-305.1 and 6-306 are in violation of Article XI-E, §2 of the Maryland Constitution." This legal argument was not raised in the Complaint or in argument below and, therefore, the County submits that it should not be considered by the Court here. *See* Md. Rule 8-131(a) and (b)(1).

If the Court considers the new constitutional challenge asserted by *amici*, the County submits that the statutory scheme does not implicate (or violate) Article XI-E, §2. *Amici* assert that "[s]ince Article XI-E, §2 prohibits classification except by population, the

[13] For instance, *amici*'s motion states that their brief will "discuss Gordon v. Commissioners of St. Michaels, 278 Md. 128 (1976)." Yet, the brief of *amici curiae* does not contain any discussion of Gordon.

statutory scheme of sections 6-305, 6-305.1 and 6-306 is, unconstitutional." However, the tax setoff statutory scheme does not classify municipal corporations at all. Rather, it provides the process for setting County tax rates, and it affects citizens outside of the municipalities. The Legislature has created one class of municipal corporations. There is no "special treatment" or discrimination as *amici* assert. See Griffin, supra. With respect to Article XI-E, §1, unlike in Gordon, here the tax setoff laws do not relate to municipal "affairs" and, thus, they need not be "uniform" in application. In fact, *amici* admit that the statutes and issues addressed by them are of "statewide concern." Motion, at par. 2.

III. SEVERING THE TAX SETOFF SCHEME AS REQUESTED BY OCEAN CITY WOULD BE ERRONEOUS.

Severing the laws in the manner that Ocean City suggests would render the statutory scheme incomplete and contrary to legislative intent.

In support of their severance argument, Ocean City points to the 1978 Joint Resolution. Brief, 38-39. However, this Resolution only indicates the General Assembly's desire to "encourage [] counties to meet with municipalities within the County to discuss tax differential." E. 275 (emphasis added).

Ocean City also reiterates the legislative history underlying the State's tax setoff scheme in support of their severance argument. Again, the General Assembly's intent is encapsulated in the legislation that it enacted, and that intent does not support Ocean City's arguments. The General Assembly intended to create a dual classification system where some counties would be required to grant tax setoffs and others would only be required to discuss and may grant tax setoffs. This intent is manifest in decades of amendments to the

tax setoff scheme (or defeated amendments) that culminated in the twin statute system that we have today.

Ocean City, however, suggests that the intent of the General Assembly is allegedly to "progress" toward mandatory tax setoffs in all counties. Brief, 39. Relying again on the 1978 Joint Resolution - which plainly does not say what Ocean City suggests that it does - Ocean City claims that "[t]he progress the General Assembly had sought in 1978 has been almost completely achieved, with the notable exception of [] Worcester County, Kent and Wicomico Counties [sic]," which Ocean City claims do not provide any setoffs.[14] Id. n.18. Ocean City further suggests that "not only *may* 'the dominant purpose of [the] enactment . . . largely be carried out' but in fact the dominant purpose *has been* carried out for virtually all municipalities in the State with the exception of those in Worcester, Kent and Wicomico Counties. Brief, 39 (quoting Bd. of Supervisors of Elections of Anne Arundel Cnty. v. Smallwood, 327 Md. 220, 246, 608 A.2d 1222, 1235 (1992)(emphasis in original)). Ocean City misconstrues this Court's statement.

The relevant "purpose" is not some unstated legislative goal, but rather, it is the "dominant purpose of [the] enactment" that informs whether the unconstitutional part of a statute is indeed ancillary, and therefore, capable of being severed. See Smallwood, 327 Md. at 246, 608 A.2d at 1235. The purpose of the tax setoff scheme is clear from its structure: to require tax setoffs in some counties (§6-305), but not in other counties (§6-306). The intent and "dominant purpose of [the] enactment" is not ambiguous, and Ocean

[14] As noted above, Worcester County provides tax setoffs, as defined by the statutes, to Ocean City in the form of grants each year.

City is improperly attempting to read into the statutory scheme an unstated objective that is directly contrary to what the Legislature actually did.

Ocean City's reliance upon Gordon v. Commissioners of St. Michaels, 278 Md. 128, 359 A.2d 543 (1976), and Shell Oil Co. v. Supervisor of Assessments, 276 Md. 36, 359 A.2d 543 (1975), is misplaced and does not support its severance arguments. This Court in Gordon explained that it was the "very nature of" the enactment itself that led the Court to conclude that the General Assembly would have enacted the statute anyway had it known that the one nonuniform provision that survived the comprehensive rewrite was unconstitutional. Id., 278 Md. at 134-35, 359 A.2d at 546-47.

In Shell Oil, this Court explained that the General Assembly enacted the legislation to substitute judicial review in the trial courts with direct judicial review by the Court of Appeals. Id., 276 Md. at 48, 343 A.2d at 528. Thus, when the Court of Appeals held that such direct review was unconstitutional, the Court could not conclude that the General Assembly would have repealed trial court review anyway had it known that its direct replacement was unconstitutional. Id. 276 Md. at 38-49, 342 A.2d at 528.

Neither of these cases support Ocean City's arguments. The "very nature of" the various amendments to the tax setoff scheme indicate that the General Assembly intended to mandate tax setoffs in only certain counties. Also, the creation of this dual classification scheme was not a simple substitution as in Shell Oil, but rather, a product of decades of legislation.

Ocean City also cites O.C. Taxpayers for Equal Rights, Inc. v. Mayor and City Council of Ocean City, 280 Md. 585, 601, 375 A.2d 541, 550 (1977), for the proposition

that "requiring that all municipalities be treated the same, as required by Article XI-E, §1, imposes no 'duty, sanction or substantial hardship' on any of them." Brief, 40-41. Ocean City's argument misconstrues §§6-305 and 6-306 as applying to municipalities. Those provisions apply to counties. The hardship would exist upon counties and their taxpayers generally, not the municipalities, if this Court severed the statutes to require that counties forego tax revenue by lowering their property tax rate or making payments to municipal corporations.

In sum, if the General Assembly intended to make tax setoffs a requirement for all Counties, it would have simply done so. In fact, Ocean City has been heavily involved in attempts to convince the General Assembly to do so, and those attempts have failed. Ocean City cannot ignore four decades of legislative history, encompassing numerous opportunities to amend the tax setoff scheme, including one as recent as 2015, and simply conclude that, if forced to choose, the General Assembly would have kept the half of the overall scheme that benefits Ocean City over the half that does not. This Court should not do what the General Assembly has consistently refused to do for over forty (40) years. Severing the laws in the manner suggested by Ocean City would be contrary to the clear intent of the General Assembly, and therefore, inappropriate in this case.

Moreover, Ocean City is generally arguing that the "may" provision should be severed because it results in a law that does not "apply alike to all municipal corporations." However, if the Court were to do as Ocean City requests, it still would not result in uniformity because all municipalities still would not be treated in a uniform manner. There is no set formula or method for determining a tax differential: some municipalities could

be left with negligible tax setoffs, while others could receive large tax setoffs. Thus, the relief sought will not result in "uniformity."

Furthermore, Ocean City seeks a declaration that Worcester County is required to grant a tax setoff "equal to the cost of the services and programs which are provided by the Town which would otherwise be provided by the County." E. 49. However, doing so would be improper because such relief is beyond the narrow controversy of this case, i.e., the constitutionality of the State's tax setoff system, and any tax setoff should, as required by the statute, be a product of negotiations between the county and municipality, and not by judicial decree. Griffin, 25 Md. App. at 138, 333 A.2d at 625 ("the very nature of the problems involved in adjusting City-County taxation, with their complex economic and policy considerations, argues persuasively for legislative rather than judicial action.").

CONCLUSION

For the forgoing reasons, Worcester County respectfully requests that this Court affirm.

Date: April 21, 2021

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH MARYLAND RULE 8-112

1. This Brief contains 9,446 words, excluding the parts of the Brief exempted from the word count by Md. Rule 8-503.
2. This Brief complies with the font, spacing, and type size requirements stated in Md. Rule 8-112.

/s/Victoria M. Shearer
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Pursuant to Md. Rule 8-504(a)(9), the following are the citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules and regulations cited in Respondents' Brief, except for those already included in the Petitioners' Brief.

Md. Const. art. XI-A, §3

Current through legislation effective March 24, 2021, from the 2021 Regular Session of the General Assembly.

MD - Maryland Constitution

CONSTITUTION OF MARYLANDARTICLE XI-A. LOCAL LEGISLATION

Section 3. Legislative bodies; chief executive officers; enactment, publication and interpretation of local laws

Every charter so formed shall provide for an elective legislative body in which shall be vested the law-making power of said City or County. Such legislative body in the City of Baltimore shall be known as the City Council of the City of Baltimore, and in any county shall be known as the County Council of the County. The chief executive officer or County Executive, if any such charter shall provide for the election of such executive officer or County Executive, or the presiding officer of said legislative body, if such charter shall not provide for the election of a chief executive officer or County Executive, shall be known in the City of Baltimore as Mayor of Baltimore, and in any County as the President or Chairman of the County Council of the County, and all references in the Constitution and laws of this State to the Mayor of Baltimore and City Council of the City of Baltimore or to the County Commissioners of the Counties, shall be construed to refer to the Mayor of Baltimore and City Council of the City of Baltimore and to the President or Chairman and County Council herein provided for whenever such construction would be reasonable. From and after the adoption of a charter by the City of Baltimore, or any County of this State, as hereinbefore provided, the Mayor of Baltimore and City Council of the City of Baltimore or the County Council of said County, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said City or County including the power to repeal or amend local laws of said City or County enacted by the General Assembly, upon all matters covered by the express powers granted as above provided, and, as expressly authorized by statute, to provide for the filling of a vacancy in the County Council or in the chief executive officer or County Executive by special election; provided that nothing herein contained shall be construed to authorize or empower the County Council of any County in this State to enact laws or regulations for any incorporated town, village, or municipality in said County, on any matter covered by the

powers granted to said town, village, or municipality by the Act incorporating it, or any subsequent Act or Acts amendatory thereto. Provided, however, that the charters for the various Counties shall specify the number of days, not to exceed forty-five, which may but need not be consecutive, that the County Council of the Counties may sit in each year for the purpose of enacting legislation for such Counties, and all legislation shall be enacted at the times so designated for that purpose in the charter, and the title or a summary of all laws and ordinances proposed shall be published once a week for two successive weeks prior to enactment followed by publication once after enactment in at least one newspaper of general circulation in the county, so that the taxpayers and citizens may have notice thereof. The validity of emergency legislation shall not be affected if enacted prior to the completion of advertising thereof. These provisions concerning publication shall not apply to Baltimore City. All such local laws enacted by the Mayor of Baltimore and City Council of the City of Baltimore or the Council of the Counties as hereinbefore provided, shall be subject to the same rules of interpretation as those now applicable to the Public Local Laws of this State, except that in case of any conflict between said local law and any Public General Law now or hereafter enacted the Public General Law shall control.

Md. Const. art. XI-E, §2

Current through legislation effective March 24, 2021, from the 2021 Regular Session of the General Assembly.

MD - Maryland Constitution

CONSTITUTION OF MARYLANDARTICLE XI-E. MUNICIPAL CORPORATIONS

Section 2. Classes of municipal corporations

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.

Md. LOCAL GOVERNMENT Code Ann. §4-102

Current through legislation effective March 24, 2021, from the 2021 Regular Session of the General Assembly.

§4-102. Classification of municipalities

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

Md. Dec. of R. art. 15

Current through legislation effective March 24, 2021, from the 2021 Regular Session of the General Assembly.

MD - Maryland Constitution

CONSTITUTION OF MARYLANDDECLARATION OF RIGHTS

Article 15. Poll taxes prohibited; paupers not to be assessed; uniformity of taxation

That the levying of taxes by the poll is grievous and oppressive and ought to be prohibited; that paupers ought not to be assessed for the support of the government; that the General Assembly shall, by uniform rules, provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the Counties and by the City of Baltimore for their respective purposes, shall be uniform within each class or sub-class of land, improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy; yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community.

Md. TAX-PROPERTY Code Ann. §6-305.1

Current through legislation effective March 24, 2021, from the 2021 Regular Session of the General Assembly.

MD - Annotated Code of Maryland
TAX – PROPERTY
TITLE 6. TAXABLE PROPERTY; IMPOSITION OF TAX; SETTING TAX RATES
SUBTITLE 3. SETTING PROPERTY TAX RATES

§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.

Md. TAX-PROPERTY Code Ann. § 9-325

Current through legislation effective March 24, 2021, from the 2021 Regular Session of the General Assembly.

MD - Annotated Code of Maryland
TAX - PROPERTY
TITLE 9. PROPERTY TAX CREDITS AND PROPERTY TAX RELIEF
SUBTITLE 3. COUNTIES TO WHICH GENERAL PROVISIONS ARE APPLICABLE

§9-325. Worcester County

(a) County tax -- Optional. --
(1) The governing body of Worcester County may grant, by law, a property tax credit under this section against the county property tax imposed on:
(i) property that is:
1. owned by the Berlin Community Improvement Association, Incorporated, of Worcester County; and
2. used only for the nonprofit activities of the organization;
(ii) property that is:
1. owned by the Marlin Park Association, Incorporated; and
2. used for nonprofit purposes;
(iii) property that is owned or leased by the Greater Ocean City Health Service Corporation; and
(iv) property that is owned by the Ocean City, Maryland Chamber of Commerce.
(2) The governing body of Worcester County may provide, by law, for:
(i) the amount and duration of a property tax credit under this section; and
(ii) any other provision necessary to carry out this section.
(b) County or municipal corporation tax -- Optional. --
(1) The governing body of Worcester County or the governing body of a municipal corporation in Worcester County may grant, by law, a property tax credit against the county or municipal corporation property tax imposed on:
(i) property that is owned by the Pocomoke City Chamber of Commerce;
(ii) real property that is:
1. owned by the Mayor and City Council of Ocean City;
2. leased to the Sinepuxent Pier and Improvement Company, Incorporated; and
3. known as the Ocean City Amusement and Fishing Pier; and
(iii) real property that:
1. is located in Ocean City on or west of Route 528;
2. consists of at least 30 acres; and
3. is actually used exclusively for the operation of an amusement park.
(2) The governing body of Worcester County or of a municipal corporation in Worcester County may provide, by law, for:

(i) the amount and duration of a property tax credit under this subsection;
(ii) additional eligibility criteria for a property tax credit under this subsection;
(iii) regulations and procedures for the application and uniform processing of requests for the tax credit; and
(iv) any other provision necessary to carry out this subsection.
(c) Historically operated amusement park. --
(1) In this subsection, "historically operated amusement park" means real property that is used for mechanical amusement rides, games, and concessions that:
(i) have been continuously owned by members of the same family or by entities of which members of the same family own a controlling interest;
(ii) have been operated at the same general location for a period of more than 100 years and continue to be operated at the same general location; and
(iii) have created a tourist destination at a boardwalk.
(2) The governing body of Worcester County or of a municipal corporation in Worcester County may grant, by law, a property tax credit against the county or municipal corporation property tax imposed on real property that is actually used as a historically operated amusement park.
(3) The governing body of Worcester County or of a municipal corporation in Worcester County may provide, by law, for:
(i) the amount and duration of the property tax credit under this subsection;
(ii) additional eligibility criteria for the tax credit under this subsection;
(iii) regulations and procedures for the application and uniform processing of requests for the tax credit; and
(iv) any other provision necessary to carry out the credit under this subsection.

Md. TRANSPORTATION Code Ann. § 21-803

Current through legislation effective March 24, 2021, from the 2021 Regular Session of the General Assembly.

MD - Annotated Code of Maryland
TRANSPORTATION
TITLE 21. VEHICLE LAWS -- RULES OF THE ROAD
SUBTITLE 8. SPEED RESTRICTIONS

§21-803. Alteration of maximum speed limit by local authorities

(a) When local authority may alter specified limits. --
(1) Except as provided in paragraph (3) of this subsection, if, on the basis of an engineering and traffic investigation, a local authority determines that any maximum speed limit specified in this subtitle is greater or less than reasonable or safe under

existing conditions on any part of a highway in its jurisdiction, it may establish a reasonable and safe maximum speed limit for that part of the highway, which may:
(i) Decrease the limit at an intersection;
(ii) Increase the limit in an urban district to not more than 50 miles per hour;
(iii) Decrease the limit in an urban district; or
(iv) Decrease the limit outside an urban district to not less than 25 miles per hour.
(2) An engineering and traffic investigation is not required to conform a posted maximum speed limit in effect on December 31, 1974, to a different limit specified in § 21-801.1(b) of this subtitle.
(3) Calvert County may decrease the maximum speed limit to not less than 15 miles per hour on Lore Road and, except for Solomons Island Road, each highway south of Lore Road without performing an engineering and traffic investigation, regardless of whether the highway is inside an urban district.
(b) Decreasing speed limit in school zones. -- In school zones designated and posted by the local authorities of any county:
(1) The county may decrease the maximum speed limit to 15 miles per hour during school hours, provided the county pays the cost of placing and maintaining the necessary signs; and
(2) Any municipality within each county may decrease the maximum speed limit in a school zone within the municipality to 15 miles per hour during school hours, provided the municipality pays the cost of placing and maintaining the necessary signs.
(c) When altered limits effective. -- An altered maximum speed limit established under this section is effective when posted on appropriate signs giving notice of the limit.
(d) Approval by State Highway Administration required. -- Except in Baltimore City, any alteration by a local authority of a maximum speed limit on a part or extension of a State highway is not effective until it is approved by the State Highway Administration.
(e) Decreasing speed limit in alleys. --
(1) If a local authority determines that any maximum speed limit specified in this subtitle is greater than reasonable or safe in an alley in its jurisdiction, the local authority may establish a reasonable and safe maximum speed limit for the alley.
(2) The local authority shall post a speed limit established under this subsection on appropriate signs giving notice of the speed limit.

Town of Ocean City Code

Sec. 90-102. - Speed limit.

No motor vehicle shall be operated upon any public highway, street, roadway or alley of Ocean City at a speed exceeding 30 miles per hour, unless the speed limit is otherwise posted. (Code 1972, § 99-42)

State Law reference— Speed generally, Ann. Code of Md., Transportation article, § 21-801 et seq.; local regulation of speed, Ann. Code of Md., Transportation article, § 21-803.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April 2021, the foregoing Brief of Respondents was electronically filed with notice sent via MDEC and two copies of this Brief were sent by first class mail, postage prepaid to:

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