



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett  
County Executive

Marc P. Hansen  
Acting County Attorney

**MEMORANDUM**

TO: Nancy Floreen, President  
County Council

FROM: Marc P. Hansen *Marc Hansen*  
Acting County Attorney

DATE: July 26, 2010

RE: Ballot Language for Referendum on Bill 13-10, Emergency Medical Services  
Transport Fee – Established

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The Council is scheduled to take action on a resolution setting the ballot language for a referendum on Bill 13-10, Emergency Medical Services Transport Fee – Established.<sup>1</sup> The proposed ballot language states, “Shall the Act to impose an emergency medical services transport fee become law?” Although this language is certainly concise, I do not believe it conveys sufficient information “to permit an average voter, in a meaningful manner, to exercise an intelligent choice.”<sup>2</sup>

The State Election Code provides that each ballot question must include a “condensed” statement of the purpose of the question.<sup>3</sup> The County Code requires that the ballot question include a “brief informative description of [the] Act.”<sup>4</sup>

In 1992, the Court of Appeals was faced with determining the adequacy of a ballot question prepared by the Maryland Secretary of State summarizing the provisions of state legislation concerning abortion that had been petitioned to referendum. In upholding the Secretary’s draft ballot language, the Court observed that “the standard by which the question’s validity will be judged . . . is whether the question posed, accurately and in a non-misleading

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<sup>1</sup> The resolution is contingent on the Board of Elections certifying that the petition to place Bill 13-10 before the voters for approval or disapproval contains a sufficient number of signatures.

<sup>2</sup> *Kelly v. Vote Know Coalition*, 331 Md. 164, 172 (quoting *Anne Arundel County v. McDonough*, 277 Md. 271, 300) (1993).

<sup>3</sup> Md. Election Code Ann., § 7-103(b).

<sup>4</sup> Montgomery County Code § 16-9 (2004).

manner, appries the voters of the true nature of the legislation upon which they are voting.”<sup>5</sup> The Court went on to conclude that “The Secretary of State must certify language with the clarity and objectivity required to permit an average voter, in a meaningful manner, to exercise an intelligent choice.”<sup>6</sup> Finally the Court noted,

We are not concerned with the question of whether this Court, the trial court, or any of the numerous advocates on either side of this issue, are capable of drafting better ballot language. It is not the function of this Court to rephrase the language of the summary and title to achieve the best possible statement of the intent of the amendment. If the chosen language fairly summarizes the intent and the meaning of the proposed amendment, without arguing for or against its adoption, it is sufficient.<sup>7</sup>

To apply these requirements to the issue pending before the Council, it is necessary to review the components of bill 13-10. Bill 13-10:

1. imposes an emergency medical services transport (ambulance) fee on residents to the extent of the resident’s insurance coverage;
2. imposes an emergency medical services transport fee on non-residents subject to a hardship waiver;
3. provides that the amount of the fee will be set by Executive Regulation;
4. requires that revenue from the fee be used to enhance emergency medical services beginning in fy-12; and
5. requires the Montgomery County Fire Rescue Service to transport individuals without regard to the individual’s ability to pay.

Out of these components, I believe the essential information for the voter to understand in order to make an “intelligent choice” concerning Bill 13-10 is who must pay the fee; what obligation the County has with respect to transporting individuals by ambulance; and how the revenue form the fee would be used. Therefore, keeping in mind the requirement that a ballot question should be “condensed” and “brief”, I recommend the following ballot language:

**Shall the Act to: (A) authorize the collection of an emergency medical services transport (ambulance) fee from (1) County residents to the extent of**

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<sup>5</sup> Id., 172

<sup>6</sup> Id., 172 (internal quotations and citation omitted).

<sup>7</sup> Id., 174-175 (internal quotations and citations omitted). The ballot language approved by the Court read, “Revises Maryland’s abortion law to prohibit state interference with woman’s decision before fetus is viable, or, under certain conditions at any time and to provide certain exceptions to the requirement that a physician notify an unmarried minor’s parent or guardian prior to minor’s abortion; repeals pre-abortion information requirements about abortion alternatives; repeals some, and clarifies other, provisions related to abortion referrals; requires that abortions be performed by licensed physicians; provides good faith immunity under certain conditions to physicians performing abortions; authorizes state to adopt regulations; repeals certain penalty and disciplinary provisions related to the performance of abortions.”

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**the resident's insurance coverage, and (2) non-County residents subject to a hardship waiver; (B) require the County to provide ambulance transport to individuals without regard to the ability to pay the ambulance fee; and (C) require the revenue from the ambulance fee be used to enhance fire and emergency medical services beginning the next fiscal year become law?**<sup>8</sup>

I understand that both proponents and opponents of the ambulance fee could identify policy arguments they believe to be crucial for the voter to understand in order to make an intelligent choice. But this type of information is beyond the scope of what may be included in a ballot question. The information to be included on the ballot question must, I believe, be limited to what appears in the legislation itself. Otherwise, the ballot question risks losing its objectivity.

Please let me know if the Council would like to discuss this matter.

CC: Isiah Leggett, County Executive  
Timothy Firestine, Chief Administrative Officer  
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Michael Faden, Senior Legislative Attorney  
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<sup>8</sup> An even more condensed ballot question that still provided crucial information about Bill 13-10 would be "Shall the Act to authorize the collection of an emergency medical services transport (ambulance) fee from: (1) County residents to the extent of the resident's insurance coverage; and (2) non-County residents subject to a hardship waiver become law?"

**1988**

**Referendum - Silver Spring Parking**

Shall the Act to authorize the design, land acquisition, construction, and site improvements of Silver Spring Parking Facility 60, Ellsworth Garage, in the Silver Spring central business district area, in accordance with the funding and other provisions of Project No. 893108, become law?

**For 158,024**

**Against 134,307**

**Referendum Question**

**1994**

**Referendum - Solid Waste Financing**

Shall the Act to amend the solid waste laws of Montgomery County to establish a solid waste disposal district; establish a systems benefit charge and provide for variable rate charges to promote waste reduction; provide more specifically and equitably for the collection of solid waste disposal charges; and generally amend the law regulating solid waste collection and disposal become law?

**For 133,854**

**Against 78,781**

**Referendum**