

Letter from State Law Department on H. B. 523

May 1, 1967.

The Honorable Spiro T. Agnew
Governor of Maryland
State House
Annapolis, Maryland 21404

Dear Governor Agnew:

At your request, I have examined House Bill 523 in order to determine whether it meets minimum constitutional requirements as to form and legal sufficiency.

This bill purports to repeal Section 2, and Sections 30 through 43 of Article 96A of the Code, and to enact new Sections 2, and 30 through 43 of said Article.

The bill presents a number of technical problems, of which you should be apprised:

1. The title to this bill is constitutionally defective, as the title fails to state that new Section 43A is added to the law by the body of this bill. This section would appear to be of paramount importance, as it states that the provisions of the subtitle shall apply to certain classifications of well drillers within this State, but not to other classifications of well drillers. In considering similar defects in other bills, the Court of Appeals of Maryland has said:

"... the title of the Act here in question was ... misleading ... in indicating that nothing was to be done except what was mentioned in the title, and then embracing in the body of the Act matter from which attention had thus been diverted; and as to which there had been not only no notice but in effect a concealment. We feel constrained to pronounce the section ... void. The Act otherwise will stand with the same effect as if this section ... had not been incorporated in it ..." *Kafka v. Wilkinson*, 99 Md. 238-243.

See also, *Stiefel v. Maryland Institution for the Blind*, 61 Md. 144; *Steenken v. State*, 88 Md. 708.

It would appear, therefore, that new Section 43A must be eliminated from this bill. The bill would thereby be made applicable to all well drillers throughout the State, doing violence to the obvious legislative intent that only certain well drillers be regulated.

2. The bill does not repeal Sections 44 through 49 of Article 96A. This, in our opinion, will create major conflicts with the new matter in this bill, especially since there will be duplicate definition and penalty provisions, wherein existing Sections 48 and 49 of the indicated Article clash with Sections 2 and 43 of the bill.

While Section 3 of the bill repeals inconsistent public general or public local laws, we cannot say this automatically voids existing Sections 44 through 48. This would in our view, be a matter for court interpretation.

3. There may be serious question as to whether the definitions of Section 2 on page 2 of the bill should be made applicable to the Article, rather than the subtitle alone.