

could decide not to award either Hagerstown or Marlboro its maximum of 18 days. See, *Southern Maryland Agricultural Association v. Magruder*, 198 Md. 274, 279, 280.

Consequently, it cannot be predicted what the Racing Commission in each of the next nine years may determine as to the number of days to be awarded to any track owner. Yet House Bill 1128 directs Marlboro to pay to the State Comptroller not less than \$6,000 per racing day transferred. It is obvious that the amount to be paid in any year could range from nothing to \$108,000 (\$6000 x 18 days) or even more, since the bill fixes only the minimum payment. At the same time even though the amount to be paid by Marlboro is uncertain, the Comptroller is directed "from these payments" to pay \$85,000 for each of ten years to Hagerstown if it operates a fair. The bill, as amended, is silent as to the procedure to be followed if the payments received by the Comptroller from Marlboro total less than \$85,000. However, if these payments exceed \$85,000, the bill, as amended, directs that the remainder shall be credited to the General Funds of the State Treasury.

The problems raised by the payment provision of House Bill 1128 can be illustrated by the following hypothetical. If, for example, in its discretion the Racing Commission in any year determined to award not 18 days but only 7 days, the minimum payment to the Comptroller would produce only \$42,000. Yet he is directed to pay Hagerstown \$85,000, "from the payments". If he pays over only the \$42,000, what is to be done about the deficit of \$43,000? Is it the intent of the bill as amended that Hagerstown is bound by the joint venture, even if it does not receive the full \$85,000? This could lead to litigation between Hagerstown and Marlboro which is not in the best interest of either these associations or the State of Maryland. Or is it the intent of the bill, as amended, that if the payments are less than \$85,000, the difference is to be made up from the surplus of payments in prior years or from the General Treasury? In either event this would be unconstitutional. The Amendment clearly directs that the excess over \$85,000 in each year is to be credited to the General Funds of the State Treasury. So whether that excess or other treasury funds are to be used is not decisive. Under Article III, Section 52, of the Maryland Constitution, the Legislature cannot appropriate any money out of the Treasury except by a Budget Bill or a Supplementary Appropriation Bill. Obviously, this bill is neither. See *Baltimore v. O'Connor*, 147 Md. 639. If the bill, as amended, is an attempt to appropriate money from the State Treasury for any part of the payments to Hagerstown, it contravenes the provisions of Article III and is unconstitutional.

In light of the serious questions raised by House Bill 1128, I believe that the measure must be vetoed.

Sincerely,

/s/ MARVIN MANDEL,
Governor.

House Bill No. 1157—Grants in Aid at State Colleges

AN ACT to repeal and re-enact, with amendments, Section 12(g) of Article 77A of the Annotated Code of Maryland (1965 Replac-