

Governor of Maryland
State House
Annapolis, MD 21401-1991

Re: House Bill 952
Senate Bill 857

Dear Governor Hughes:

This is to advise you that we have reviewed for constitutionality and legal sufficiency Senate Bill 857 and House Bill 952, identical bills which establish a State Donations Oversight Committee to certify, in accordance with certain criteria, State projects for which private donations may be solicited in the State income tax information booklets. As this 10 member committee includes 6 legislators and exercises what is an essential executive power, the bill violates the separation of powers clause. Accordingly, we are unable to approve these bills.

Article 8 of the Declaration of Rights provides as follows:

"That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."

In interpreting this article, this office has said that it means that

"...one branch may not usurp the essential functions and powers of another branch, may not act to destroy the essential functions and powers of another branch, and may not delegate its essential functions and powers to another branch."

(citations omitted).

63 Opinions of the Attorney General 305, 310 (1978). However, this office has recognized that the authority of each branch is absolute only with respect to its core powers. Beyond these core areas, there is a twilight in which the branches have concurrent power. Ibid. The issue here is whether the certification of State projects for the solicitation of private donations in accordance with certain criteria is an essential executive function which can not be usurped by the legislative branch.

In a prior bill review letter, it was noted that

"While the cases define 'Executive Power' only in quite general terms, it is clear that the essential attribute of this power is the power to carry out, implement and administer laws. It is this essential core power which the separation of powers