MEMORANDUM

To: Charles W. Ehart

From: Gerald Langbaum

Re: “A Touch of Clove” Cigarettes

You have requested my advice on whether a product described as “a touch of clove” cigarettes may lawfully be sold in Maryland. Article 27 §40A(a) provides that a person may not sell or offer for sale “a clove cigarette in this State.” The term “clove cigarette” is not defined. Section 40A(b) provides that a person who violates subsection (a) is guilty of a misdemeanor and on conviction is subject to a fine of $500.

Counsel for the manufacturer of the cigarette known as “a touch of clove” has suggested that there is a distinction between a “clove cigarette” and “a touch of clove” cigarette. He asserts that many states, including Maryland, prohibit the sale of clove cigarettes, but there is no similar prohibition against the sale of “a touch of clove” cigarette. He has described “a touch of clove” cigarette as one in which the cigarette’s filter contains porous granules which are sprayed with a clove aroma mixture that remains in the filter and provides the clove taste. He advises that clove is not burned (as is the case with a clove cigarette) and thus equates “a touch of clove” cigarette to any other flavored cigarettes such as mint or menthol wherein the flavoring is contained in the filter, rather than in the tobacco.
My research has discovered no court decision or Attorney General's opinion defining the term "clove cigarette." Thus, the answer to your question must be ascertained from the language of the statute and the rules of statutory construction that aid in interpreting words of a statute.

The cardinal rule of statutory construction is to ascertain and give affect to the intention of the legislature. I find myself unable to accept the argument that the legislature, in prohibiting the sale of a "clove cigarette," intended to draw a distinction based where the clove was located. The rationale offered by counsel for the manufacturer is that such a distinction is determinative: if the clove is in the filter, the cigarette is not a clove cigarette and may be sold in Maryland, but if the clove is in the tobacco, the cigarette is a clove cigarette and may not be sold in Maryland. Yet, the filter is as much a part of the cigarette as the tobacco, and it should make no difference whether the clove is in the filter or the tobacco. Moreover, it seems to me that had that distinction been determinative (or even mildly significant), the legislature would have drawn it. As the legislature did not draw such a distinction, I am not willing to do so. In my opinion, the presence of clove within a cigarette creates the clove cigarette, sale of which in Maryland is prohibited by Article 27 §40A.

I trust this is responsive to your inquiry.

GL/cgs

ADVICE OF COUNSEL, NOT AN OPINION OF THE ATTORNEY GENERAL.

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1One of the few reported decisions I found that refers to "clove cigarettes" is Cislaw v. Southland Corporation, 6 Cal. Rptr.2d 386 (1992). An unsuccessful wrongful death action brought against a cigarette retailer by the family of a 17 year old whose parents alleged that his death of respiratory failure resulted from his consumption of clove cigarettes.