

Furthermore, since these legislatures will be apportioned on a "one man, one vote" basis, they will not be hostile to calling a

convention when overall revision is necessary.

THE ROLE OF THE GOVERNOR IN REAPPORTIONING THE LEGISLATURE

Representation in the Senate was fixed by the Constitution of 1867 on a more or less geographical basis, and representation in the House of Delegates was to be determined according to an apportionment formula, with the governor charged with the duty of reshuffling delegates after each national census. This system remained intact, except for some changes in the formula, until 1950³ In 1950 a constitutional amendment was adopted freezing the House of Delegates in size and apportionment as established under the 1940 Census.⁴

In *Maryland Committee v. Tawes*, the Supreme Court of the United States held that neither house of the Maryland legislature was apportioned sufficiently on a population basis to be constitutionally sustainable.⁵ The Court gave the legislature until the 1966 election to reapportion according to constitutional standards.

Although the General Assembly subsequently passed legislation creating a new system of apportionment that apparently meets constitutional standards, a problem remains. After each national census the problem of apportionment and legislative districting will come up again. Legislators will be politically ill-equipped to make constitutionally required decisions because of the subjective interest they will have in them.

³ See Michener, *History of Legislative Apportionment in Maryland* 25 MD. L. REV. 15-19 (1965). See p. 131 *supra*.

⁴ Md. Laws of 1949, ch. 226, ratified Nov. 7, 1950, MD. CONST. art. III, § 5.

⁵ 377 U.S. at 674 (holding unconstitutional art. III, §§ 2, 5 of MD. CONST.).

It is therefore suggested that the apportionment function should be removed from the legislature. Several non-legislative offices or bodies could be given the power—the governor, an independent nonpartisan board, or the State's highest court. The MODEL STATE CONSTITUTION proposes a system which makes use of all three:

"Section 4.04. *Legislative Districts.*

"(a) For the purpose of electing members of the legislature, the state shall be divided into as many districts as there shall be members of the legislature. Each district shall consist of compact and contiguous territory. All districts shall be so nearly equal in population that the population of the largest district shall not exceed that of the smallest district by more than ___ per cent. In determining the population of each district, inmates of such public or private institutions as prisons or other places of correction, hospitals for the insane or other institutions housing persons who are disqualified from voting by law shall not be counted.

"(b) Immediately following each decennial census, the governor shall appoint a board of ___ qualified voters to make recommendations within ninety days of their appointment concerning the redistricting of the state. The governor shall publish the recommendations of the board when received. The governor shall promulgate a redistricting plan within ninety to one hundred and twenty days after the appointment of the board, whether or not it has made its recommenda-