

Sachs issues ruling

Mandel can keep his back pay

By The Associated Press

Former Governor Marvin Mandel is entitled to keep back pay he received when his conviction on federal racketeering charges was temporarily reversed on appeal, according to a Maryland attorney general's opinion released yesterday.

Attorney General Stephen Sachs said the opinion cited provisions of the state Constitution requiring that an official leave office on conviction and sentencing—and that an official “automatically” re-take office and receive back pay if the conviction is overturned.

An administrator in the state's executive department requested an opinion on whether the state could demand return of back pay if, as in Mr. Mandel's case, the conviction ultimately was upheld.

“The law doesn't permit it,” Mr. Sachs said.

Mr. Mandel was convicted in August, 1977, on charges of mail fraud and racketeering. In October of that year, he was sentenced by a Baltimore U.S. District Court judge, and ultimately served about 19 months at Eglin Air Force Base prison in Florida.

However, before entering prison Mr. Mandel appealed the conviction, and it was reversed in January, 1979, on a 2-1 vote of a panel of judges of the 4th U.S. Circuit Court of Appeals.

That ruling allowed Mr. Mandel to resume his

office just six days before Harry Hughes was sworn in as his successor.

But after a rehearing before the full appeals court, the conviction was reinstated in July, 1980. And Mr. Mandel later was ordered to prison.

Under state Constitution provisions, Mr. Mandel received back pay on a governor's salary of \$25,000 a year. He was out of office for about a year and a half. An exact figure for the amount Mr. Mandel received was not available, but Mr. Sachs said he understood it was more than \$30,000.

Irvin Feinstein, an administrative officer in the state executive department, requested an opinion from the attorney general's office on whether the state should try to collect the pay from Mr. Mandel. Yesterday's opinion in effect says no.

Calling the Mandel case unique, Mr. Sachs said the Constitution makes no provision for retrieving back pay if an overturned conviction is upheld later.

His office's opinion said there was a “strong public interest” in a strict interpretation of the Constitution.

The principle at stake, he said, was that “the Constitution gives power to the people to elect their representatives.”

It is true, he added, that later the reversal became moot when Mr. Mandel's conviction was upheld, but “later was later.”