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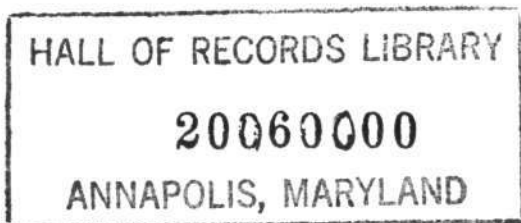
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THE MARYLAND STATE CONSTITUTION

A Reference Guide

Dan Friedman

Foreword by
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MARYLAND STATE ARCHIVES

Article II

Executive Department

The history of executive power in Maryland has been one of continual and unimpeded growth and expansion. Under the 1776 Maryland Constitution, the Governor, who was subordinate to and elected by the legislative branch, made appointments subject to the legislature's approval, lacked even a qualified veto and effective means to control state administration. Over time, a series of constitutional amendments, primarily to Article II, but also to Art. III, §52 (the executive budget system) and other parts of the constitution, have strengthened the office of Governor of Maryland to that of a true chief executive and one of the strongest governorships in the nation.¹

SECTION 1

Executive power vested in Governor; term of office; when ineligible to succeed himself. The executive power of the State shall be vested in a Governor, whose term of office shall commence on the third Wednesday of January next ensuing his election, and continue for four years, and until his successor shall have qualified; and a person who has served two consecutive popular elective terms of office as Governor shall be ineligible to succeed himself as Governor for the term immediately following the second of said two consecutive popular elective terms.

Article II, §1 declares that the "executive power of the State" is vested in the Governor but fails to define that executive power. The Court of Appeals of Maryland has not explained the nature of executive power other than to equate it to the Governor's duty as stated under Md. CONST., Art. II, §9, to "take care that

the Laws are faithfully executed."² The Court has also analogized the Governor's executive power to that wielded by the President: "The Chief Magistrate or Governor of the State, bears the same relation to the State that the President does to the United States, and in the discharge of his political duties is entitled to the same immunities, privileges and exemptions."³

As a general matter of state constitutional theory, governors possess only those powers delegated to them by constitution or by statute.⁴ This is in contrast to the power of state legislatures, which is plenary and subject only to the limitations found or implied by the state constitution.⁵ Maryland courts, however, have not had the opportunity to consider the question directly.⁶

To prevent a period of vacancy in the office, Maryland governors serve a four-year term, which begins on the third Wednesday in January following election and continues until the qualification of a successor. *See also* MD. CONST., Art. XVII, §3.

Article II, §1 was amended in 1948 to create a two-term limit for Maryland governors.⁷ The imposition of this term limit appears to have been a reaction to national, not local, events. In fact, then-incumbent Maryland Governor William Preston Lane was serving his first term in office. The only Maryland Governor to serve more than two terms was Governor Albert C. Ritchie who served four elected terms (1920-1935). The timing suggests that this amendment was much too late to have been intended as a repudiation of Ritchie. On the national scene, however, the issue of executive term limits was of great significance at the time. President Franklin D. Roosevelt ignored the precedent set by Presidents Washington, Jefferson, and Madison and sought and won third and fourth terms of office. After his death, congressional Republicans proposed and succeeded in passing the 22nd Amendment to the U.S. Constitution.⁸

SECTION 1A

Office of Lieutenant Governor created; duties; qualifications. There shall be a Lieutenant Governor, who shall have only the duties delegated to him by the Governor and shall have such compensation as the General Assembly shall provide by law, except that beginning in the year 1978 the salary of the Lieutenant Governor shall be as provided under Section 21A of this Article. No person who is ineligible under this Constitution to be elected Governor shall be eligible to hold the office of Lieutenant Governor.

Although the Maryland Constitution of 1864 provided for a Lieutenant Governor, there was no requirement that the Governor and the Lieutenant Governor be from the same political party. In fact, for the one term under the 1864 constitution, the incumbents were from different parties. This created a difficult and embarrassing political situation and the office of Lieutenant Governor was abolished in the 1867 Maryland Constitution.⁹ The proposed Maryland Constitution of 1967 would have created the office of Lieutenant Governor but was

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defeated by the voters. Ironically, the need for a Lieutenant Governor quickly became apparent after the defeat of the proposed constitution when Republican Governor Spiro T. Agnew resigned to become Vice President of the United States. The General Assembly chose Democrat Marvin Mandel, the Speaker of the House of Delegates, to fill Agnew's unexpired term.¹⁰

The Maryland Constitution was amended in 1970 to create the office of Lieutenant Governor.¹¹ The need for such a position was reinforced shortly thereafter when Governor Mandel, under investigation by the U.S. Attorney's Office for alleged corruption, elevated his Lieutenant Governor, Blair Lee III, to serve as acting Governor. Lee served in that capacity from June 4, 1977, until January 15, 1979, and again briefly on January 16, 1979.¹²

The duties of the Lieutenant Governor are not defined constitutionally or by statute because, as this section provides, the Lieutenant Governor's duties are those delegated by the Governor.¹³ This delegation of duties may change at the Governor's whim as it did, most notably, during the governorship of William Donald Schaefer. Because of real or imagined insults, Schaefer withdrew all duties from his Lieutenant Governor, Melvin Steinberg.

This section, in redundant fashion, provides that the qualifications for the office of Lieutenant Governor are the same as those for the Governor, *see* MD. CONST., Art. II, §5, and provides that the Governor's Salary Commission sets the salary for the Lieutenant Governor. *See* MD. CONST., Art. II, §21A.

SECTION 1B

Candidate for Governor to designate candidate for Lieutenant Governor; joint listing of names on ballot. Each candidate who shall seek a nomination for Governor, under any method provided by law for such nomination, including primary elections, shall at the time of filing for said office designate a candidate for Lieutenant Governor, and the names of the said candidate for Governor and Lieutenant Governor shall be listed on the primary election ballot, or otherwise considered for nomination jointly with each other. No candidate for Governor may designate a candidate for Lieutenant Governor to contest for the said offices jointly with him without the consent of the said candidate for Lieutenant Governor, and no candidate for Lieutenant Governor may designate a candidate for Governor, to contest jointly for said offices with him without the consent of the said candidate for Governor, said consent to be in writing on a form provided for such purpose and filed at the time the said candidates shall file their certificates of candidacy, or other documents by which they seek nomination. In any election, including a primary election, candidates for Governor and Lieutenant Governor shall be listed jointly on the ballot, and a vote cast for the candidate for Governor shall also be cast for Lieutenant Governor jointly listed on the ballot with him, and the election of Governor, or the nomination of a candidate for Governor, also shall constitute the election for the same term, or the nomination, of the Lieutenant Governor who was listed on the ballot or was being considered jointly with him.

Section 1B provides the mechanics for designation of candidates for Lieutenant Governor. To avoid the unpleasant possibility of a Governor and Lieutenant Governor from different political parties—as occurred under the short-lived 1864 Maryland Constitution—§1B requires that candidates for the two offices must run jointly. The withdrawal of a candidate for one of these offices, by necessity, terminates the candidacy of that candidate's running mate.¹⁴

SECTION 2

Time, place and manner of holding election for Governor and Lieutenant Governor; qualifications of voters. An election for Governor and Lieutenant Governor, under this Constitution, shall be held on the Tuesday next after the first Monday of November, in the year nineteen hundred and seventy-four, and on the same day and month in every fourth year thereafter, at the places of voting for Delegates to the General Assembly; and every person qualified to vote for Delegate, shall be qualified and entitled to vote for Governor and Lieutenant Governor; the election to be held in the same manner as the election of Delegates, and the returns thereof, under seal, to be addressed to the Speaker of the House of Delegates, and enclosed and transmitted to the Secretary of State, and delivered to said Speaker, at the commencement of the session of the General Assembly, next ensuing said election.

SECTION 3

Ascertainment of result of election; when Governor and Lieutenant Governor to qualify. The Speaker of the House of Delegates shall then open the said Returns, in the presence of both Houses; and the persons having the highest number of votes for these offices, and being Constitutionally eligible, shall be the Governor and Lieutenant Governor, and shall qualify, in the manner herein prescribed, on the third Wednesday of January next ensuing his election, or as soon thereafter as may be practicable.

SECTION 4

How tie elections decided; questions relating to election determined by House of Delegates. If two or more sets of persons shall have the highest and equal number of votes for Governor and Lieutenant Governor, one set of them shall be chosen Governor and Lieutenant Governor, by the Senate and House of Delegates; and all questions in relation to the eligibility of Governor and Lieutenant Governor, and to the Returns of said election, and to the number and legality of votes therein given, shall be determined by the House of Delegates; and if the person having the highest number of votes for Governor or for Lieutenant Governor or both of them, be ineligible, a person or persons shall be chosen by the Senate and House of Delegates in place of the ineligible person or persons. Every election of Governor or of Lieutenant

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Governor, or both, by the General Assembly shall be determined by a joint majority of the Senate and House of Delegates; and the vote shall be taken viva voce. But if two or more sets of persons shall have the highest and an equal number of votes, then, a second vote shall be taken, which shall be confined to the sets of persons having an equal number; and if the vote should again be equal, then the election of Governor and Lieutenant Governor shall be determined by lot between those sets, who shall have the highest and an equal number on the first vote.

Article II, §§2, 3, and 4 provide the election procedures for Governor and Lieutenant Governor of Maryland. Between 1776 and 1837, Maryland Governors were selected by joint ballot of the General Assembly.¹⁵ Beginning in 1837, Maryland Governors were popularly elected, but on a rotating basis, from each of three gubernatorial districts, thus ensuring that each portion of the state would be able to elect a Governor every third three-year term.¹⁶

The basic format of §§2, 3, and 4 remains unchanged since 1851. The gubernatorial election is held in the same cycle as the state legislative elections and thus comports with the quadrennial elections amendment. MD. CONST., Art. XVII, §2. Voters qualified to vote for members of the House of Delegates are qualified to vote for governor and no statute can deprive such a qualified voter of the right to vote for governor.¹⁷

The official election returns are sealed, addressed to the Speaker of the House of Delegates, and transmitted to the Secretary of State who then delivers them to the Speaker of the House at the beginning of the next legislative session. Thus, the election is held on the first Tuesday after the first Monday in November and the returns are delivered to the House of Delegates on the second Wednesday in January¹⁸ approximately two months later.

The Speaker of the House of Delegates is given the honor of opening the official gubernatorial election returns during a joint session of the two houses of the Maryland General Assembly. If the candidates having the highest vote count are constitutionally eligible under MD. CONST., Art. II, §5 they shall qualify and take the oaths of office as described in MD. CONST., Art. I, §§9, 10, one week later on the third Wednesday in January.

If there is a dispute, however, as to which slate of candidates for Governor and Lieutenant Governor have been legally elected, the General Assembly, operating pursuant to §4, is empowered to serve as the election judge. The House of Delegates, acting alone, is the judge of (1) the constitutional eligibility of the Governor and Lieutenant Governor; (2) the election returns; and (3) the "number and legality of votes." Once the House of Delegates resolves these questions, the matter is turned over to a joint session of both houses of the General Assembly. The joint session replaces constitutionally ineligible candidates and resolves tie elections. The provision finally provides that should the joint session be unable to resolve a tie election, the Governor and Lieutenant Governor are to be selected by lot, which Judge Alfred Niles dryly asserted "would seem sufficient to prevent a deadlock under any circumstances."¹⁹

SECTION 5

Qualifications of Governor and Lieutenant Governor. A person to be eligible for the office of Governor or Lieutenant Governor must have attained the age of thirty years, and must have been a resident and registered voter of the State for five years next immediately preceding his election.

There are three eligibility requirements to serve as either Governor or Lieutenant Governor of Maryland. The candidate must be: (1) thirty years old or older; (2) a resident of Maryland for the five years immediately preceding the election; and (3) a registered voter for the five years immediately preceding the election.

The requirement that the Governor and Lieutenant Governor be registered voters comports with and extends the requirement that all elected officials be registered voters at the time of election. MD. CONST., ART. I, §12. The Court of Appeals of Maryland has observed that the requirement of voter registration, by necessary implication, requires that the Governor and Lieutenant Governor of Maryland must be citizens of the United States.²⁰

SECTION 6

Article II, §6 provides the rules governing executive succession in Maryland. Section 6 was adopted essentially as a new provision in 1970,²¹ and as the Attorney General has commented, its "provisions are patterned generally after those contained in the voter-rejected constitution of 1968."²²

Vacancy in office of Governor or Lieutenant Governor; disability.

- (a) If the Governor-elect is disqualified, resigns, or dies, the Lieutenant Governor-elect shall become Governor for the full term. If the Governor-elect fails to assume office for any other reason, the newly elected Lieutenant Governor shall become Lieutenant Governor and shall serve as acting Governor until the Governor-elect assumes office or until the office becomes vacant.

Section 6(a) describes the rules of succession should a Governor-elect become unable to assume the office. If the Governor-elect is permanently unable to assume the office because of disqualification, resignation, or death, the Lieutenant Governor-elect becomes Governor. If the Governor-elect is unable to assume the office for any other reason,²³ the Lieutenant Governor-elect serves as *acting* Governor until the Governor-elect assumes office or until the disability becomes permanent and the office becomes vacant. At such time as the office becomes vacant, the Lieutenant Governor (who has been serving as acting Governor) becomes Governor pursuant to §6(d). The distinction between assuming the office of Governor and serving as an acting Governor is described in §6(f).

- (b) The Lieutenant Governor shall serve as acting Governor when notified in writing by the Governor that the Governor will be temporarily unable to

perform the duties of his office. The Lieutenant Governor also shall serve as acting Governor when the Governor is disabled but is unable to communicate to the Lieutenant Governor the fact of his inability to perform the duties of his office. In either event the Lieutenant Governor shall serve as acting Governor until notified in writing by the Governor that he is able to resume the duties of his office or until the office becomes vacant.

Section 6(b) allows the Lieutenant Governor to serve as acting Governor during a period when the Governor is under a temporary disability or otherwise unable to perform the duties of office. There are two circumstances when the Lieutenant Governor may assume the Governor's duties pursuant to §6(b): (1) when notified in writing by the Governor; and (2) when the Governor is unable to communicate the fact of the disability. The Governor may resume the duties of office upon written notification to the Lieutenant Governor that the temporary disability has concluded. Alternatively, if the temporary disability becomes permanent and the office of Governor becomes vacant the Lieutenant Governor (who has been serving as acting Governor) becomes Governor pursuant to §6(d).

Although §6(b) appears to be patterned on U.S. CONST., Amend. XXV, §3, there is a significant difference between the two provisions. The federal constitutional provision only permits the Vice President to assume the duties of the Presidency when notified in writing to do so by the President.²⁴ If the President is unable to communicate the existence of a temporary disability, the only method of temporary succession is by a written declaration of the President's disability that is signed by the Vice President and a majority of the cabinet and transmitted to the legislative leadership. U.S. CONST., Amend. XXV, §4.²⁵ Thus, when the executive is temporarily disabled and unable to communicate, it is theoretically easier for a Maryland Lieutenant Governor to assume the duties of Governor than it would be for the Vice President of the United States to assume the duties of the Presidency. This makes sense because of the minimal national security and *coup d'etat* risks in the Maryland state house.

The only gubernatorial disability that has arisen since the adoption of §6 in 1970 came as a result of the federal indictment of Governor Marvin Mandel. On June 4, 1977, Mandel, citing ill health, notified Lieutenant Governor Blair Lee that Lee would serve as acting Governor until further notice pursuant to Art. II, §6(b).²⁶ When Mandel was subsequently convicted and sentenced, the legal authority for Lee's service as acting Governor was changed and it was thereafter predicated on MD. CONST., Art. XV, §2. The Attorney General of Maryland harmonized the two constitutional provisions, opining that, during the period of Mandel's suspension from office pursuant to Art. XV, §2, Lee served as acting Governor, pursuant to §6(b), but with the "somewhat special mandate" that Mandel could not resume the office of the Governor simply by sending written notification.²⁷ In the end, Mandel's conviction was overturned, he rescinded the June 4, 1977, notification and he resumed his duties on January 15, 1979, days before the completion of his second term.²⁸

Interestingly, Governor Mandel also designated Lieutenant Governor Lee to serve as acting Governor for a brief period on January 16, 1979, "to preside at the installation of Rita C. Davidson to the Court of Appeals."²⁹ It is difficult to imagine the constitutional basis under §6(b) for Mandel to have done so.

- (c) The General Assembly, by the affirmative vote of three-fifths of all its members in joint session, may adopt a resolution declaring that the Governor or Lieutenant Governor is unable by reason of physical or mental disability to perform the duties of his office. When action is undertaken pursuant to this subsection of the Constitution, the officer who concludes that the other officer is unable, by reason of disability to perform the duties of his office shall have the power to call the General Assembly into Joint Session. The resolution, if adopted, shall be delivered to the Court of Appeals, which then shall have exclusive jurisdiction to determine whether that officer is unable by reason of the disability to perform the duties of his office. If the Court of Appeals determines that such officer is unable to discharge the duties of his office by reason of a permanent disability, the office shall be vacant. If the Court of Appeals determines that such officer is unable to discharge the duties of his office by reason of a temporary disability, it shall declare the office to be vacant during the time of the disability and the Court shall have continuing jurisdiction to determine when the disability has terminated. If the General Assembly and the Court of Appeals, acting in the same manner as described above, determine that the Governor-elect or Lieutenant Governor-elect is unable by reason of physical or mental disability to perform the duties of the office to which he has been elected, he shall be disqualified to assume office.

Section 6(c) creates a two-step process for the involuntary determination that the Governor or Lieutenant Governor (or Governor-elect or Lieutenant Governor-elect) is unable, by reason of disability, to perform the duties of office. The first step is for the General Assembly to consider a resolution of disability. If the General Assembly is not in session, it may be called into special session by the Governor to consider the Lieutenant Governor's alleged disability or by the Lieutenant Governor to consider the Governor's alleged disability. If the resolution is adopted by three-fifths of all members in joint session (113 votes), it is transmitted to the Court of Appeals. Pursuant to the language of §6(c), it appears that the Court of Appeals may revisit the question of disability. If the Court of Appeals determines that the officer is disabled, the Court then determines if the disability is permanent or temporary. If the disability is determined to be permanent, the office is declared to be vacant. If the disability is determined to be temporary, the Court of Appeals retains jurisdiction to determine when the disability is concluded and the officer may resume the exercise of the duties of office.

- (d) When a vacancy occurs in the office of Governor, the Lieutenant Governor shall succeed to that office for the remainder of the term. When a vacancy occurs in the office of Lieutenant Governor, the Governor shall nominate a person who shall succeed to that office upon confirmation by the affirmative vote of a majority of all members of the General Assembly in joint session.

The first sentence of §6(d) provides the core concept: When there is a vacancy in the office of Governor, the Lieutenant Governor "succeed[s] to that office for the remainder of the term." When this is coupled with §6(f), it is clear that a Lieutenant Governor thus succeeding to the governorship is not a mere acting Governor, but is entitled to the full gubernatorial powers and privilege, including "the title, powers, duties, and emoluments of that office."

When there is a vacancy in the office of Lieutenant Governor (but not simultaneously a vacancy in the office of Governor), the Governor nominates a person for the position, subject to confirmation by a majority of the members of both houses of the General Assembly (95 votes). This provision nearly mirrors the manner in which a replacement Vice President is selected under the U.S. Constitution. U.S. CONST., Amend. XXV, §2.

- (e) If vacancies in the offices of Governor and Lieutenant Governor exist at the same time, the General Assembly shall convene forthwith, and the office of Governor shall be filled for the remainder of the term by the affirmative vote of a majority of all members of the General Assembly in joint session. The person so chosen as Governor by the General Assembly shall then nominate a person to succeed to the office of Lieutenant Governor, upon confirmation by the affirmative vote of a majority of all members of the General Assembly in the same joint session. The President of the Senate shall serve as acting Governor until the newly elected Governor has qualified. If a vacancy exists in the office of Lieutenant Governor, at a time when the Lieutenant Governor is authorized to serve as acting Governor, the President of the Senate shall serve as acting Governor. If there is a vacancy in the office of the President of the Senate at a time when he is authorized to serve as acting Governor, the Senate shall forthwith convene and fill the vacancy.

Section 6(e) describes executive succession in the worst possible circumstances, when the offices of both the Governor and the Lieutenant Governor are vacant. If the vacancies occur simultaneously, the President of the State Senate becomes the acting Governor. As soon as possible, the General Assembly convenes and a new Governor is selected by a joint vote of both houses of the General Assembly. The new Governor, at the same meeting of the General Assembly, selects a new Lieutenant Governor following the same procedure as in §6(d).

The provision also envisions the possibility that the vacancies will occur sequentially. Thus, if, while the Lieutenant Governor is serving as acting Governor (meaning that the Governor is under a temporary disability pursuant to §6(a), (b), or (c)), the Lieutenant Governor also becomes disabled, then the President of the State Senate becomes the acting Governor.

Finally, if things have really gone badly, and all three offices are vacant at the same time, the State Senate must convene immediately to select a new President who then functions as acting Governor until the preceding provisions of §6(e) can be employed to select a new Governor and Lieutenant Governor.

- (f) When the Lieutenant Governor or a person elected by the General Assembly succeeds to the office of Governor, he shall have the title, powers, duties, and

emoluments of that office; but when the Lieutenant Governor or the President of the Senate serves as acting Governor, he shall have only the powers and duties of that office. When the President of the Senate serves as acting Governor, he shall continue to be President of the Senate, but his duties as president shall be performed by such other person as the Senate shall select.

The differences between succeeding to the office of Governor and serving as acting Governor are explained in §6(f). When a person succeeds to the office of Governor, that person becomes the Governor and receives "the title, powers, duties, and emoluments of that office." Upon assuming the office of Governor, Marvin Mandel correctly made it clear that he was not serving as an acting Governor or as a limited, caretaker executive: "Let there be no mistake in an anyone's mind. . . I shall govern."³⁰

By contrast, an acting Governor under §6(f) only receives the powers and duties of the Governor not the title or emoluments (including salary). Instead, the salary associated with his or her regular office is retained. An acting Governor may, however, use Government House (the gubernatorial residence), the executive yacht, the Governor's expense account, and the staff to the Governor.³¹

(g) The Court of Appeals shall have original and exclusive jurisdiction to adjudicate disputes or questions arising from the failure of the Governor-elect to take office, or the service of the Lieutenant Governor or President of the Senate as acting Governor, or the creation of a vacancy in the office of Governor or Lieutenant Governor by reason of disability, or the succession to the office of Governor or Lieutenant Governor, or the exercise of the powers and duties of a successor to the office of Governor.

Section 6(g) grants "original and exclusive jurisdiction" to the Court of Appeals to adjudicate all "disputes or questions" arising under Art. II, §6. Although it has never been raised, the language of §6(g) suggests that the Court of Appeals should resolve "questions" under this section that it would otherwise dismiss as prohibited "advisory opinions."³²

SECTION 7

Impeachment of Governor or Lieutenant Governor. The Legislature may provide by law, not inconsistent with Section 26 of Article III of this Constitution, for the impeachment of the Governor and Lieutenant Governor.

This provision was lost in the middle of a much longer provision describing temporary succession to the office of Governor during the long recess between legislative sessions.³³ When the office of Lieutenant Governor was recreated by constitutional amendment in 1970, that portion of the provision was no longer needed. The residue of the provision invites the General Assembly to pass laws for impeachment of the Governor and Lieutenant Governor subject to MD. CONST., Art. III, §26. As of 2002, the General Assembly has declined the invitation and

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there is no law directing the method of impeachment of the Governor and Lieutenant Governor.³⁴

SECTION 8

Powers of Governor as commander-in-chief of land and naval forces of State. The Governor shall be the Commander-in-Chief of the land and naval forces of the State; and may call out the militia to repel invasions, suppress insurrections, and enforce the execution of the Laws; but shall not take the command in person, without the consent of the Legislature.

The Governor is the commander-in-chief of the Maryland militia. The governor administers the militia through the Adjutant General pursuant to MD. CONST., Art. IX, §2. This provision establishes three causes under which the Governor may call the militia to active duty: (1) "to repel invasions," (2) to "suppress insurrections," and (3) to "enforce the execution of the Laws." While on active duty, subject to the call of the Governor, members of the militia are invested with police powers so that they may enforce the laws.³⁵ According to the Attorney General, the militia has been called to active duty in support of law enforcement five times: "in 1877, in response to a railroad strike in Baltimore; in 1933, in response to mob violence and for service of arrest warrants in Salisbury; and in 1963, 1967, and 1968, in response to riots."³⁶

SECTION 9

Governor to take care that laws are faithfully executed. He shall take care that the Laws are faithfully executed.

The faithful execution of the laws is the core executive function.³⁷ Surprisingly, there have been few appellate decisions in Maryland history discussing the Governor's power to execute the laws and none with a real analysis of the meaning of the power.³⁸

SECTION 10

Appointment of officers. He shall nominate, and, by and with the advice and consent of the Senate, appoint all civil and military officers of the State, whose appointment, or election, is not otherwise herein provided for, unless a different mode of appointment be prescribed by the Law creating the office.

Article II, §§10 through 15 provide the constitutional rules dealing with the Governor's power to appoint civil officials. A common theme runs throughout these sections—an intention by the constitutional framers (mostly in the 1851