

appropriate district, county or Baltimore City, to the extent not inconsistent with this Constitution.

- (d) No member of the General Assembly at which these amendments were proposed, or at which the number of or salary of any such judges may have been increased or decreased by the General Assembly from time to time, if otherwise qualified, is ineligible for appointment or election as a judge of the District Court by reason of his membership in the General Assembly.

Section 411(a) and (b) provided the transition rules from the former system of trial magistrates, justices of the peace, and the like, to the uniform District Court system. 58 *OP. ATTY GEN.* 393 (May 29, 1973). These transitional provisions no longer have any potential applicability and, were it not for the fact that they predate *MD. CONST.*, Art. XIV, §1A, they would have been perfect candidates for adoption as provisions of limited duration and subsequent deletion. Similarly, the problem addressed by §411(c), outdated statutory references to the old system, has been corrected by the process of statutory revision, and is no longer needed in the constitution. Section 411(d) is the only subsection with continuing vitality. It provides an exception to the general rule found in *MD. CONST.*, Art. III, §17—that a member of the General Assembly may not be eligible for appointment to an office created or whose salary is increased by the legislature during the legislator's term. *See also MD. CONST.*, Art. IV, §5A(g), §14B, §21(f). Given that the number of judges of the District Court, and their salary, has been increased by the General Assembly over time, it is fair to guess that they will continue to increase.

SECTIONS 42-43

These provisions, dealing with justices of the peace, were deleted from the constitution at the same time the district court system was adopted and the numbers remain unassigned.¹¹⁴

PART VII. SHERIFFS

SECTION 44

Sheriffs. There shall be elected in each county and in Baltimore City one person, resident in said county or City, above the age of twenty-five years, and for at least five years preceding his election a citizen of the State, to the office of Sheriff. He shall hold office for four years, until his successor is duly elected and qualified, give such bond, exercise such powers and perform such duties as now are or may hereafter be fixed by law.

In case of vacancy by death, resignation, refusal to serve, or neglect to qualify or give bond, or by disqualification or removal from the County or City, the Governor shall appoint a person to be Sheriff for the remainder of the official term.

The Sheriff in each county and in Baltimore City shall receive such salary or compensation and such expenses necessary to the conduct of his office as may be fixed by law. All fees collected by the Sheriff shall be accounted for and paid to the Treasury of the several counties and of Baltimore City, respectively.

The office of sheriff has long been a part of the common law tradition and it was brought from England to Maryland as early as 1636. Originally, the royal governor appointed sheriffs, but despite these aristocratic roots, the office was retained, albeit in a democratically-elected form, after the American Revolution.¹¹⁵ The office of sheriff has been recognized in each of Maryland's Constitutions, although there have been significant changes and modernizations in the eligibility for election and suffrage, method of election, term of office, and manner for filling vacancies in the office of sheriff.¹¹⁶ Today, the constitution requires that sheriffs be at least twenty-five years old, reside in the county from which they are elected, and have been a citizen of Maryland for at least five years.¹¹⁷ The term of office for sheriffs is four years and they are elected on the same cycle as other state officials pursuant to MD. CONST., Art. XVII, the quadrennial elections amendment. If there is a vacancy in the office of sheriff, the Governor appoints a replacement to complete the term.¹¹⁸

The duties of the sheriff have never been specified in the Maryland Constitution but generally the traditional common law duties of the sheriff are (1) service of process; (2) enforcement of judgments; and (3) conservation of the peace.¹¹⁹ Since at least 1864, the Maryland General Assembly has had the power to enlarge or contract the responsibilities of sheriffs in Maryland.¹²⁰ Today, the duties of the sheriff are codified at MD. CTS. & JUD. PROC. CODE ANN., §2-301, *et seq.* and MD. CODE ANN., Art. 87. Most notably, sheriffs in rural counties continue to perform common law policing functions; in the urban and suburban jurisdictions, that role has been assumed by modern police departments.¹²¹

While the office of sheriff was historically fee-dependent, a constitutional amendment adopted in 1946 provided that the sheriff would be paid a set salary, while the proceeds from the fees collected by the sheriff would be paid into the treasury of the local government.¹²²

SECTION 45

Notaries public. Notaries Public may be appointed for each county, and the city of Baltimore, in the manner, for the purpose, and with the powers now fixed, or which may hereafter be prescribed by Law.

The predecessor of Article IV, §45 first appeared in the Maryland Constitution of 1851 and applied not only to notaries public but also to coroners and elisors. Judge Alfred S. Niles, commenting on this provision in 1915, noted that the provision is of little constitutional importance because it grants the full power of

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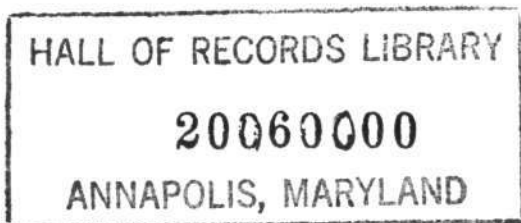
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THE MARYLAND STATE CONSTITUTION

A Reference Guide

Dan Friedman

Foreword by
Judge Robert L. Karwacki



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