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THE MARYLAND STATE CONSTITUTION

A Reference Guide

Dan Friedman

Foreword by
Judge Robert L. Karwacki

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REFERENCE GUIDES TO THE STATE CONSTITUTIONS
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G. Alan Tarr, *Series Editor*

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This provision provides that a vacancy in a civil office that occurs within the final ten days of the final adjournment of the legislative session is treated as if it had occurred during the recess, and the rules under §11 apply.

SECTION 15

Suspension and removal of officers. The Governor may suspend or arrest any military officer of the State for disobedience of orders, or other military offense; and may remove him in pursuance of the sentence of a Court-Martial; and may remove for incompetency, or misconduct, all civil officers who received appointment from the Executive for a term of years.

Judge Niles, in his classic 1915 treatise on the Maryland Constitution, explained this provision by dividing state employees into four classes.⁵² The first class of employees is comprised of those state employees who are not “civil officers” under Art. II, §§10, 11, and 13. Such employees cannot be removed under the provisions of §15.⁵³ The second class, according to Judge Niles, is made up of judicial officers, “as to whom the governor has no power of removal whatever.”⁵⁴ The third class is made up of military officers. Pursuant to this provision the Governor may arrest or suspend a military officer “for disobedience of orders, or other military offense.” Permanent discharge of a military officer, however, may *only* be made by a court martial. The last class of employees is comprised of civil officers “who received appointment from the Executive for a term of years.”⁵⁵ Under classic Maryland law, such officers may not be suspended from office,⁵⁶ but can be removed after notice and a hearing⁵⁷ for incompetence or misconduct. In fact, however, over time most executive branch officers’ terms of office have been converted from terms of years to service at the pleasure of the governor, thus minimizing the importance of this provision.

There is also a fifth category, omitted by Judge Niles, comprised of elected officials. Such officials are not subject to removal under §15, but may generally be removed by impeachment pursuant to Art. III, §26. There are special removal rules for the State Treasurer and State Comptroller found in Art. VI, §6, for the Attorney General, found in Art. V, §1, for state’s attorneys, found in Art. V, §7, and for members of the General Assembly, found in Art. III, §19.

SECTION 16

Governor to convene legislature on extraordinary occasions; change of place for meeting of legislature. The Governor shall convene the Legislature, or the Senate alone, on extraordinary occasions; and whenever from the presence of an enemy, or from any other cause, the seat of Government shall become an unsafe place for the meeting of the Legislature, he may direct their sessions to be held at some other convenient place.

issues, or it might be attributable to willingness by Maryland Governors to abide by these stable and well-settled constitutional rules.

40. *Buchholtz v. Hill*, 178 Md. 280, 287, 13 A.2d 348, 352 (1940).

41. *Buchholtz v. Hill*, 178 Md. 280, 283–84, 13 A.2d 348, 350 (1940). A similar test is used to analyze the Governor's powers of appointment under Art. II, §§10–15. The same test is used to analyze whether members of the General Assembly may accept subsequent appointment to offices about which they voted under Art. III, §17.

42. *County Comm'rs v. Monnett*, 164 Md. 101, 164 A. 155 (1933) (county treasurer is civil officer); *Nesbitt v. Fallon*, 203 Md. 534, 102 A.2d 284 (1954) (members of board of license commissioners are civil officers); *Riggin v. Lankford*, 134 Md. 146, 105 A. 172 (1919) (supervisor of elections is civil officer); *Buchholtz v. Hill*, 178 Md. 280, 283–84, 13 A.2d 348, 350 (1940) (clerk to the county commissioners is not civil officer); *Board of Sch. Comm'rs v. Goldsborough*, 90 Md. 193, 44 A. 1055 (1899) (members of a county school board are not civil officers).

43. Acts of 1995, ch. 114 (ratified November 5, 1996).

44. Dan Friedman, *Magnificent Failure Revisited: Modern Maryland Constitutional Law from 1967 to 1998*, 58 MD. L. REV. 528, 565 (1999).

45. *Cull v. Whelittle*, 114 Md. 58, 78 A. 820 (1910); *Ash v. McVey*, 85 Md. 119, 36 A. 440 (1897); *Smoot v. Somerville*, 59 Md. 84 (1882); *Watkins v. Watkins*, 2 Md. 341 (1852).

46. *Ash v. McVey*, 85 Md. 119, 36 A. 440 (1897).

47. 72 OP. ATT'Y GEN. 274 (April 2, 1987) (footnotes omitted).

48. Previously, the nomination was to be made "within thirty days after the next meeting of the Legislature," but the provision was amended in 1956 to require nomination "on the first day of the next regular meeting of the Senate." Acts of 1955, ch. 626 (ratified November 6, 1956).

49. *Dyer v. Bayne*, 54 Md. 87 (1880).

50. See <http://www.mdarchives.state.md.us/msa/refserv/bulldog/bull04/bull18-02/bull18-02.html> (visited July 29, 2005).

51. 64 OP. ATT'Y GEN. 246 (February 5, 1979).

52. ALFRED S. NILES, MARYLAND CONSTITUTIONAL LAW 117 (1915).

53. *Board of Sch. Comm'rs v. Goldsborough*, 90 Md. 193, 44 A. 1055 (1899).

54. *Cantwell v. Owens*, 14 Md. 215 (1859). See also MD. CONST., Decl. of Rts., Art. 33; Art. IV, §4.

55. *Harmon v. Harwood*, 58 Md. 1 (1881) ("appointment from the Executive" includes both officers appointed by the Governor alone, and those appointed by the Governor with the advice and consent of the Senate).

56. *Cull v. Whelittle*, 114 Md. 58, 78 A. 820 (1910).

57. MD. ANN CODE, Art. 41, §2-501, *et seq.*

58. *Richards Furniture Corp. v. Board of County Comm'rs of Anne Arundel County*, 233 Md. 249, 257–58, 196 A.2d 621, 625–26 (1964).

59. MD. CONST., Decl. of Rts, Art. 11.

60. Dan Friedman, *The History, Development, and Interpretation of the Maryland Declaration of Rights*, 71 TEMPLE L. REV. 637, 690 n.229 (1998) (citing George L. Radcliffe, *Governor Thomas H. Hicks of Maryland and the Civil War*, JOHNS HOPKINS U. STUD., SERIES XIX, Nos. 11–12, at 572–73 (Nov.-Dec., 1901)).

61. For a history of the Governor's veto power in Maryland, see Dan Friedman, *Magnificent Failure Revisited: Modern Maryland Constitutional Law from 1967 to 1998*, 58