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THE GOVERNOR OF MARYLAND

A CONSTITUTIONAL STUDY

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gate the conduct of the various departments and to bring to light any irregularities that may arise.[120] But what if these official reports are insufficient for the governor's purposes, or if they conceal or gloss over the essential facts which might be necessary in order that the powers of the governor may be carried out, or in order to complete any of his official acts? It is supposed that the chief executive could have recourse to court action through the writ of mandamus;[121] but this action is likely to be slow, and therefore, not very conducive to administrative efficiency.[122] As one authority has said:

> The governor cannot exercise a real control over the state administrative officers through a mere legal power of direction, capable of being enforced only through appeal to the courts. Such control by the governor cannot be fully introduced except by granting to him the power of . . . suspension or removal.[123]

The power to suspend from office is not granted to the governor of Maryland by the constitution or the laws,[124] but the power of removal is expressly conferred upon him by the constitution in very decisive terms; namely, "The Governor may . . . remove for incompetency or misconduct, all civil officers who received appointment from the Executive for a term of years."[125]

In the Constitution of 1776, as has been shown, the governor received a considerable power of suspension and removal over certain classes of administrative officers; and, in the Constitution of 1851, this power was continued and extended.[126] In the Convention of 1851, however, fear was

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[120] Mathews, Principles of American State Administration, pp. 96-97.

[121] The courts may compel an executive officer to perform a ministerial act. Magruder v. Swann, 25 Md. 173.

[122] Mathews, op. cit., p. 97.

[123] Ibid., p. 155.

[124] Cull v. Wheltle, 114 Md. 58 (1910).

[125] Constitution of 1867, art. II, sec. 15.

[126] The power of suspension from office was not continued, except in the case of military officers; namely, "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." Constitution of 1851, art. II, sec. 15; 1864, art. II, sec. 17; and 1867, art. II, sec. 15.

expressed that it might be used for partisan purposes, and thus introduce the spoils system. One member of the Convention declared that he was unwilling to make the tenure of officers dependent upon the whim of the governor, saying: [127]

> A power to cut short the political existence of a meritorious officer in the midst of his term for which he was appointed, by the mere *ipse dixit* of a party governor, was a dangerous incentive to maladministration.

Nevertheless, the proponents of the removal power marshalled enough votes in the Convention to pass the removal section in the precise words of the present constitution.[128] It seemed as if there were many far-sighted observers who firmly believed that the governor's power of removal must be extended if he was to be properly held responsible for the conduct of the administration.[129]

The removal power of the Maryland governor, although not so complete or widespread as that of the President of the United States, is quite extensive and, generally speaking, is not greatly surpassed in any other state of the Union. In recent years, along with the concomitant power of appointment to office, the removal power has been extended and applied to the newer agencies of administration by the various statutes creating the offices.

Under the authorization of the general removal clause of the Constitution, the governor is given power to remove all civil officers appointed by him for a term of years. In construing this clause, the highest court of the state has held that not only may the governor remove all those civil officers appointed by him alone, but also all civil officers appointed by him with the coöperation and approval of the Senate.[130] In some of the states it has been held that, where the governor makes appointments subject to the ratification of the

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[127] Debates I, 471.

[128] Constitution of 1851, art. II, sec. 15. The Constitution of 1864 modified and restricted the removal power by the words: " . . . for a term not exceeding two years." Art. II, sec. 17.

[129] Debates, I, pp. 471 ff.

[130] Harman v. Harwood, 58 Md. 1.

Senate, he can remove only with the concurrence of that boly.[131] Furthermore, in some other states the governor is not permitted to remove any official without the consent of the upper house whether appointed by him alone or by and with the advice and consent of the Senate.[132]

In none of the states has the governor been given the power in all cases to remove at pleasure and Maryland does not differ from the general practice. In fact, there are less than a half dozen officers who are subject to summary removal.[133] The constitutional provision, quoted above, stipulates that the governor may remove for incompetency or misconduct, and almost all of the statutes of the legislature lay down the same, or similar, restrictions. A typical provision for removal is quoted from the law establishing one of the administrative offices, as follows:[134]

> The Governor may remove the Parole Commissioner for inefficiency, neglect of duty or misconduct in office, giving to him a copy of the charges preferred against him, and the opportunity of being publicly heard in person or by counsel in his own defense, on not less than ten days' notice. In case of removal, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such commissioner and his finding thereon, together with a complete record of the proceeding.

These restrictions, it is felt, are wise since they prohibit any governor who may be inclined to do so from exercising the removal power in an arbitrary manner or for partisan purposes. Even so, the causes for removal are liberal enough so that the governor may legitimately remove any officer who may be impairing the efficiency of the administration. As Professor Mathews says:[135]

> The principal object . . . appears to be to bring the light of publicity to bear upon the reasons which the governor assigns for his actions, to place him under a greater sense of responsibility, and to enable the people to judge as to the sufficiency of such reasons.

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[131] Finley and Sanderson, The American Executive and Executive Methods, p. 94.

[132] Constitution of Florida, art. IV, sec. 15; State v. Johnson, 30 Fla. 499 (1892).

[133] See An. Code, art. 23, sec. 349; art. 41, sec. 59; and, art. 48, sec. 9.

[134] Ibid., art. 41, sec. 47.

[135] Principles of American State Administration, p. 110.

It is to be noted that the method provided for removal appears to resemble a judicial procedure; however, in conducting such a hearing, and, as a result, removing from office such official against whom charges have been brought, the chief executive performs not a judicial, but an *executive act as the result of a quasi-judicial proceeding.* Were it not so, the governor would be prevented from performing the act as in violation of the principle of the separation of powers.[136] As it is, the governor is the sole judge of the sufficiency of the charges and his action is not subject to review by the courts.[137] It is to be regretted that, during the removal proceedings, the officer so charged may not be suspended from office; but the legislature has never granted the power of suspension, nor have the courts seen fit to regard suspension as incidental to the power of removal.[138]

In conclusion, then, the governor of Maryland has been granted quite sweeping powers of removal over the various officers of the administration, including those whom he appoints originally and those whom he does not appoint in the first instance. As has been mentioned in preceding pages, the governor has the constitutional power to remove, under certain circumstances, the Comptroller and the Treasurer, two officers who are not appointed by him, but are elected by the people and by the legislature respectively. Nevertheless, the popularly-elected Attorney-General may not be removed by him, nor may he remove certain other officers engaged in the execution and enforcement of state law. Some of these he appoints in the first instance, such as the County Boards of Education[139] and the Justices of the Peace;[140] and some are not appointed by him but are elected locally, such as the

[136] Ibid., p. 108.

[137] "When the power of removal from office is placed in the discretion of any person or body of persons, or depends upon the exercise of their personal judgment as to whether the cause for removal be sufficient, mandamus will not lie to revise their action." State v. Register, 59 Md. 283.

[138] Cull v. Wheltle, 114 Md. 58.

[139] School Commissioners of Worcester Co. v. Goldsborough, 90 Md. 193.

[140] Constitution, art. IV, sec. 42.

State's Attorneys[141] and the Sheriffs.[142] The governor has been given comparatively little power of removing local officials, chiefly because of the general feeling that this would be a violation of the principle of home-rule. Professor Mathews, speaking generally, says:

> Local officers are more frequently elective than appointive, and it is thought by many persons that, since they are closer to the people than are state officers, the people can the better judge of their conduct in office without state interference.[143]

Nevertheless, he also states:[144]

> Since the states depend, to a large extent, for the enforcement of their laws upon local officers, the activity or inaction of such officers in enforcing the law is a matter of direct concern to the state, and, in case of neglect of duty on their part, the governor should have the power to remove them.

Undoubtedly, quite a bit of the sentiment expressed in Professor Mathews' statements is applicable to Maryland, in that there is plenty of room for improvement in the administrative machinery, but the disintegration of administrative control is an heritage from the past and is not likely to be abolished easily, although in late years there has been, and still is, a strong tendency in that direction. The governor has been granted highly increased powers of appointment, supervision or direction, and removal of officers, especially of those who are denominated *civil* as distinguished from those primarily *judicial,* and those officers who are denominated *state* as distinguished from those primarily *local.*

ADMINISTRATIVE REORGANIZATION

Improvement in the machinery of the Maryland government has been brought about within the last fifteen years or more by the incorporation into the Constitution and the laws of five new institutions; namely, the executive budget, departmental or administrative reorganization, the merit system,

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[141] Ibid., art. V, secs. 7-12.
[142] Ibid., art. IV, sec. 44.
[143] Principles of American State Administration, p. 106.
[144] Ibid., p. 105.