

general election embrace in addition to the elections held in even numbered years such an election, which might be held in odd numbered years?

DELEGATE GALLAGHER: No, that is not my understanding. What we meant was that every time there was a congressional election, those offices for which there had been a vacancy to which someone has been appointed would then be filled, not the countywide election.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: If I might turn to section 3.10 now, dealing with immunity of legislators, you are smiling, and you know that I raised privately with you a question which I have with respect to that section.

It is my understanding that the language of the Supreme Court in the recent decision in the case of the United States v. Johnson says in effect that this provision, or the equivalent provision in the Constitution of the United States immunizes the legislator against criminal prosecution for a speech for which he is bribed or bribery to make a speech in the Congress of the United States.

I wonder if it is the Committee's intention to so immunize a Maryland legislator in the future?

DELEGATE GALLAGHER: No, Delegate Marion, it is not, and I thank you for your courtesy yesterday in raising the point with me because it was a nice legal point.

THE CHAIRMAN: Delegate Marion.

DELEGATE GALLAGHER: I will explain further, Mr. Chairman.

THE CHAIRMAN: I am sorry.

DELEGATE GALLAGHER: When the Maryland Constitution of 1867 provided for immunity of legislators, it also provided that it shall be the duty of the General Assembly at its first session held after the adoption of this Constitution to provide by law for the punishment, by fine, or imprisonment in the penitentiary, or both, in the discretion of the court, of any person, who shall bribe, or attempt to bribe, any executive, or judicial officer of the State of Maryland, or any member, or officer, of the General Assembly of the State of Maryland, or of any municipal corporation in the State of Maryland, or any executive officer of such corporation, in order to influence him in the performance of any of his official duties; and, also,

to provide by law for the punishment, by fine, or imprisonment in the penitentiary, or both, in the discretion of the court, of any of said officers, or members, who shall demand, or receive any bribe, fee, reward, or testimonial.

In 1868 the General Assembly did pass an act providing for fine and imprisonment, or both, of members of the General Assembly who accepted bribes. This act is now contained in Article 27, section 23, of the Annotated Code of Maryland, so that therefore it appears that insofar as the immunity granted to legislators in Maryland is concerned, both the Constitutional Convention and the General Assemblies which met following them, at least the 1867 one, did not intend that the immunity granted should include prosecution of a member of the General Assembly for bribery.

Hopefully, Article 27, section 23, will still be in effect after the passage of this Constitution, and I would state that it would be the intention of the Committee which drafted this language that the immunity for legislators would not extend to provide protection for them if they received a bribe.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: I suspect without knowing as a matter of certainty, that the question has never been raised in Maryland in a bribery prosecution, if there has ever been one, as to whether or not the constitutional language prevented it.

DELEGATE GALLAGHER: You are correct. Judge Thompson, in the district court opinion in the Johnson case, listed Maryland as one of the states which had a comparable section to Article I, section 6 of the federal Constitution, which is the Federal counterpart of the immunity section, and indicated that there were no cases.

But then Maryland, I think, is probably one of the few states that saw this problem and provided by mandate in a comparable section of the Constitution that legislators were to be responsible for accepting bribes, so that the problem was anticipated and remedied by the Constitutional Convention of 1867 and the General Assembly which met in 1868.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: I raise the question because essentially the same argument was made by the Solicitor General of the United States in the Supreme Court because there is a federal law enacted by the