

DELEGATE GALLAGHER: Mr. Chairman, it has just been completed. I am going over it now, and I am sending it back for printing in just a few minutes.

THE CHAIRMAN: Then we will still hold that amendment. Unless there are amendments of which the Chair is not aware, the next item on the agenda is presentation of Minority Report LB-2 (B) by Delegate Scanlan. This arises under consideration of section 3.18. The Chair recognizes Delegate Scanlan and requests him to come forward to the reading desk to present the minority report.

DELEGATE SCANLAN: Mr. President and fellow delegates: In the interest of time, I want to advise Chairman Gallagher and the Convention that I will waive the ten minutes of controlled time allotted to the minority and will rest with the presentation of the Committee's report plus hopefully recognition during the period of any uncontrolled debate that follows. I believe the report, if you have it before you, speaks for itself. As one of my waggish friends said, I have come to make another long-winded speech in favor of brief language in the constitution.

As you know, the majority proposes that the General Assembly shall provide by law for a code of ethics and for the regulation of conflicts of interest for all elected officials of the State of Maryland. In my opinion and our opinion this provision should not be made of constitutional dimension and inserted in the constitution.

In the first place, it is unnecessary. No sound lawyer in this room can dispute the fact that the legislature has ample power to adopt the code of ethics for itself and to enact conflict of interest legislation, not only for all elected officials of this State as proposed by the majority, but indeed for all officials. Indeed, as a matter of fact the argument can be made that if this provision is put in, vesting power to enact conflict of interest legislation for the elected officials of the State, then perhaps somehow the otherwise plenary power of the legislature to enact conflict of interest legislation for all officials would be impaired and they would be restricted to legislation implementing the particular provision that the majority proposes. I do not mean to suggest that we of the minority are happy with the failure on the part of the General Assembly to go very far in the conflict of interest field, however one must be fair and recognize the fact that this is a very difficult field in which to legislate. I think the representative from California

who appeared before our Committee who has been associated as the administrative assistant to Mr. Unruh, the speaker of the California house for many years, made the telling point when he pointed out to the extent that you increase the prestige of the legislature, to the extent that you make them more of a full-time body, to the extent that you pay them better, then to that extent can you also expect more of them by way of effective and comprehensive conflict of interest legislation. I think we are moving in the direction of that type of legislature and as we move in that direction, I think the possibilities are greater that comprehensive conflict of interest legislation will be enacted. But in any event the power to do so is ample. What is suggested by the minority adds not one whit to the power, indeed, and if the argument I have made before it may have any validity in the long run perhaps subtract from that power. Secondly, the provision is completely unenforceable to the extent that anyone could rely on it to obtain particular relief or to require somehow that the legislature enact law. I notice that there have been a lot of loose statements made on this floor during the course of debates on previous sections regarding conservation and consumer protection, that perhaps some right of action was created for the court to act if the legislature did not act. I think the law is completely, firmly and everywhere settled, including this State, at least in all American jurisdictions that the courts cannot compel the performance of a legislative act, cannot mandamus the legislature to do a legislative act and there is no authority to the contrary. I think the Chairman of the Committee accepts that proposition.

Thirdly, assuming what cannot really be assumed, that the provision could be judicially enforceable, the legislature could very easily comply with it. It could adopt an innocuous code of ethics for itself and empty limited conflict of interest legislation for other elected officials and then take the position it had carried out its constitutional duty.

Fourth, like so many of the suggestions that have come before this Convention the proposal demeans the legislative power. We do not write into the constitution the suggestion or admonition or an exhortation that the governor execute the laws of this State wisely and fairly, or that the courts interpret them justly and equitably, why then must we urge and prod the legislature to perform a particular act in a field however compelling that field may be.