

Delegate Gleason asked you unless I misunderstood it.

I understood his question was whether or not the provisions of the very last sentence of this proposed recommendation, that is that the attorney general shall upon request give his opinion to any house of the General Assembly or to any other officer, agency or department of state, was in the present Constitution and I understood your answer to be that it was.

DELEGATE MORGAN: It is.

THE CHAIRMAN: Are you referring to the last sentence of the second section, Delegate Bamberger?

DELEGATE BAMBERGER: Yes, I will read what is in the existing Constitution: "And he shall give his opinion in writing whenever required by the General Assembly or either branch thereof, the governor, comptroller, or any state's attorney on any legal matter pending before them or either of them."

Then there is some other language in here which I could not find at the present time, but this is generally the language of the present Constitution.

Now, this does authorize the presiding officer of either house of the General Assembly to ask the attorney general for his opinion which is not in the present Constitution.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: Is it not true that this does make at least one essential change. Under the present Constitution and law, the requirement that the attorney general shall give opinions to the various departments of the state is a matter of statutory law, made by the General Assembly, in which they have provided that the attorney general shall be the legal advisor for some but not all departments of the State. What the Committee now proposes is that the attorney general as a matter of constitutional law shall give his advice to all departments of the State.

The provision of the Constitution which you just read says: "The attorney general shall give his opinion to the General Assembly, the governor, the comptroller, the state's attorney," but it is the statute, specifically section 2, of Article 32-A, and sections 5 and 12 in which the General Assembly has said which departments of the State shall look to the attorney general for advice.

THE CHAIRMAN: Delegate Morgan.

DELEGATE MORGAN: I think you are correct.

THE CHAIRMAN: Are there any further questions, Delegate Bamberger?

DELEGATE BAMBERGER: Section 3 of Article V of the present Constitution gives both the governor and the General Assembly the right to direct the attorney general to assist any state's attorney in a criminal case or to commence the prosecution of a criminal case.

In other words, as I understand that provision, the General Assembly or the governor can, in effect, move the attorney general into the place of the state's attorney in a prosecuting and criminal action at the trial level.

Is that power provided for or the right of the General Assembly to establish that power, in the Committee's draft?

THE CHAIRMAN: Delegate Morgan.

DELEGATE MORGAN: There is no question about it.

Then the language "shall have such other powers and duties with respect to civil and criminal cases or proceedings, and with respect to other matters, as may be prescribed by law."

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: Then to button that up, the statement on the second page of Committee Recommendation EB-2 beginning on lines 2 which says that the attorney general has functions in criminal cases at the appellate level and in courts of the United States is not meant to be exclusive?

THE CHAIRMAN: Delegate Morgan.

DELEGATE MORGAN: It is not.

THE CHAIRMAN: Do you have a further question, Delegate Bamberger?

DELEGATE BAMBERGER: One more. Under the present Constitution, the General Assembly may provide different counsel for some agencies of the State, specifically now the Public Service Commission, which is an agency of the State and has its own general counsel and does not look to the attorney general for advice.

Does the Committee's draft prohibit the General Assembly from making the same provision for any particular department in the future?

THE CHAIRMAN: Delegate Morgan.