

DELEGATE GALLAGHER: Chairman Morgan, I believe I heard you say in reply to an earlier question that the governor might under some circumstances be free to disregard the advice or opinion of the attorney general.

I had always been under the impression that the opinions of the attorney general were binding upon state officers.

To what extent would you agree or disagree with this?

DELEGATE MORGAN: I think if the governor were to ask the attorney general for informal advice, the governor could disregard the advice if he wants to.

THE CHAIRMAN: Delegate Gallagher.

DELEGATE GALLAGHER: Do you distinguish between advice of a strictly legal nature given by the attorney general and advice with respect to perhaps a matter of policy or personal preference that may have legal overtones to it?

THE CHAIRMAN: Delegate Morgan.

DELEGATE MORGAN: If the governor asked for a formal opinion from the attorney general on a policy question?

THE CHAIRMAN: Delegate Gallagher.

DELEGATE GALLAGHER: No, I would not try to do that. I am trying to distinguish.

Let me ask you this: Do you believe that the attorney general, under the powers which the Committee seeks to give him here, actually has a policy-making role?

THE CHAIRMAN: Delegate Morgan.

DELEGATE MORGAN: It is the Committee's view the attorney general should have a strictly legal role and not a policy-making role.

THE CHAIRMAN: Delegate Gallagher.

DELEGATE GALLAGHER: May I ask you this question: Would it be possible under what we have thus far approved in the Convention for the governor or the General Assembly to create the department of law as a principal department of the State?

THE CHAIRMAN: Delegate Morgan.

DELEGATE MORGAN: No, because under our executive article the head of a principal department is appointed by the governor with the advise and consent of the Senate.

THE CHAIRMAN: That would be a principal department of the executive branch. I think Delegate Gallagher said of the State—did you mean of the executive branch, Mr. Gallagher?

DELEGATE GALLAGHER: That was the next question. Would it not be possible for the governor or the General Assembly to create an executive department known as the department of law, and vest in the governor the power to appoint the head of that department so that we might have in effect two legal officers of the State, one an attorney general, and the other the head of the department of law?

THE CHAIRMAN: Delegate Morgan.

DELEGATE MORGAN: I suppose it would be possible, but I do not know exactly what functions the department of law would have.

THE CHAIRMAN: Delegate Gallagher, the Chair believes the premise for your question is not only incorrect, but is contrary to the statements made on the floor of the Committee of the Whole at the time that the Committee report with respect to the office of attorney general was considered.

It is the Chair's distinct recollection that during that debate Delegate Henderson stated that in Maryland, at least, the opinions of the attorney general, although entitled to great weight, were not regarded as binding on any officer of the State.

So that there will be no confusion on the record, Delegate Henderson, could you advise what the situation is on that?

DELEGATE HENDERSON: I gave it as my opinion based on a good many years' experience, that no official is bound by the opinion of the attorney general, and I have known of his decisions which have been disregarded. Of course, the official that does that does it at his peril, so to speak, and I do not believe it has been a frequent happening.

There is a provision in the Code—or used to be—which made it an offense, a misdemeanor, I believe, for any state official to employ anyone other than the attorney general. That was there for some years which was another, you might say, roadblock to disregarding the attorney general's opinion, but I think it has always been recognized that his opinion is not absolutely binding.

In other words, it does not have the force of law, it is merely a legal opinion, which of course the client can disregard.