

DELEGATE WILLONER: Section 4 is going to be covered by someone else. I covered sections 8, 7, 10, and 12.

DELEGATE J. CLARK (presiding): Are there any questions on the sections covered by Delegate Willoner?

The Chair recognizes Delegate Bamberger.

DELEGATE BAMBERGER: Delegate Willoner, my question is with respect to section 7. Does this mean that the General Assembly may waive the defense of immunity for a county or municipality or any other political subdivision?

DELEGATE WILLONER: I think it does apply to all. The state is used in the broad sense to apply to all municipalities. It is not used in a restrictive sense in the State of Maryland.

DELEGATE BAMBERGER: But it specifically says that neither the State nor any political subdivision, which, I take it, includes all of the counties and municipalities, regional governments, and the other things which we were discussing in the local government article.

DELEGATE WILLONER: Yes.

DELEGATE BAMBERGER: My question particularly concerns the last phrase, the power to make these local units of government subject to suit lies not in their governing body, but in the General Assembly. Is that correct?

DELEGATE WILLONER: I would not know the answer to that. The intent is to eliminate this plea of governmental immunity except that the legislature can, if it sees fit, take this right away.

DELEGATE J. CLARK (presiding): Delegate Bamberger.

DELEGATE BAMBERGER: Well, this says that there is no longer a constitutional right of sovereign immunity or at least it says that by the constitution, the doctrine of sovereign immunity is revoked, except that the General Assembly may limit that revocation.

DELEGATE WILLONER: That is correct.

DELEGATE J. CLARK (presiding): Delegate Henderson.

DELEGATE HENDERSON: I do not want to get into debate on this subject. I was thinking of this same section 7. Is it not true, though, that the legislature has

already repealed to some extent any doctrine of sovereign immunity by providing that the defense should not be depleted to the extent it is covered at present.

DELEGATE WILLONER: That is right.

DELEGATE HENDERSON: The legislature has recognized this problem and dealt with it in its own rather peculiar fashion. Does this constitutional provision prevent the continuance of that relief?

DELEGATE WILLONER: Prevent?

DELEGATE HENDERSON: Yes.

DELEGATE WILLONER: This constitutional provision is broader. The present rule is if you have insurance, you cannot plead governmental immunity. This question would be irrelevant now. You cannot plead governmental immunity whether you have insurance or not. Is that what you are asking?

DELEGATE J. CLARK (presiding): Delegate Henderson.

DELEGATE HENDERSON: My question was whether this constitutional provision would prevent the legislature from dealing with this problem exactly as it has at the present time.

DELEGATE WILLONER: No. It would not prevent it from dealing with the problem as it has because it could put such limitations on.

DELEGATE HENDERSON: Since the legislature has recognized and dealt with this problem, why do you want this provision in the constitution? You are simply saying the legislature may deal with it as it sees fit and the legislature has seen fit.

DELEGATE WILLONER: We are trying to switch the burden essentially, Judge Henderson, so that the plea of governmental immunity no longer exists except that in the future the legislature may limit that plea, and the extent is clear.

Frankly, I suppose, at least some members of the Committee feel that it should not exist at all anymore, but to obviate those objections of the people who feel that this would possibly open the floodgates, we should give the legislature a right to regulate this elimination of governmental immunity.

DELEGATE J. CLARK (presiding): The Chair recognizes Delegate Storm.

DELEGATE STORM: Mr. Willoner, was it your assignment to cover most of the controversial items in this R&P-2?