

be removed despite a definite term, so if it is provided in the constitution that the appointing officer can remove the officer at pleasure, as is done in this constitution for the heads of the executive departments, then he does have the power to remove.

Now, there is nothing in any of the county charters providing for either impeachment or removal except in one or two isolated instances.

Removal from public office deals in very definite terms. The memorandum which I circulated included the definition of two of those terms.

"Misconduct in office includes wilful malfeasance, misfeasance, nonfeasance, and any act involving moral turpitude or contrary to justice, honesty, principles or good morals, if performed by virtue of or under the authority of the office."

"Incompetency is any physical, moral or intellectual quality which incapacitates an officer to perform his duties. The incompetency must be one which has arisen since and did not exist prior to the election of the officer sought to be removed."

So if a particular person was elected and he had those defects when he was elected, it is assumed that the people had full knowledge of those defects, and they are willing to be governed by the person as such. They elected him.

Now, my amendment deals in very broad terms. First of all, it gives to the General Assembly the power which the people have got to give to somebody to set up a system for the removal of officers. It provides for an investigation. It does not say how this investigation has to be conducted. As indicated in the old constitution, sometimes the governor conducted it. It could be conducted by a grand jury or a commission. I would leave that strictly up to the General Assembly. After the investigation is conducted, it would be subject to a judicial review. This also falls in the same lines as the old Constitution. It would insure that there is some type of judicial review to prevent this being used as a political shillelagh.

The other thing is for the appointment then of somebody to take the office after you have had the man removed, and in this case it provides that the General Assembly shall provide it. Generally it is provided by given the power to the governor. However, there may be some reason

why the General Assembly would want to deal with it in another manner.

The only provision which is put in which is not part of the old Constitution is that the man should be of the same political party. This would obviate this being used for political purposes, and the man would simply fill out the remainder of the unexpired term. It is not tantamount to a new election. At the next occasion then, a new successor would be appointed in accordance with the usual processes, as if the former incumbent had remained in office.

THE CHAIRMAN: Are there any questions of the sponsor of the amendment?

Delegate Bamberger.

DELEGATE BAMBERGER: Delegate Grant, do you intend that this would apply to only elected state officers?

THE CHAIRMAN: Delegate Grant.

DELEGATE GRANT: I do not. I have in there, "any officer."

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: Does that include appointed state officers and, if so, does it not run contrary to some of the provisions of the executive article?

THE CHAIRMAN: Delegate Grant.

DELEGATE GRANT: First of all, the amendment starts out, "except as otherwise provided in this constitution". If there is some constitutional means provided either by the implied power of appointment included in the power to dismiss, that would override this.

If there is no means provided, then the General Assembly may provide a means. As I point out to you, there are already three officials in the constitution for whom there is no means provided.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: I am bothered then by how it would apply to any appointed officer because my recollection of the executive article is that the governor has the right to remove all of those appointed officials. If that is so, then I just think we might be more specific and really pin this where we want to pin this, which is on elected state officials.

THE CHAIRMAN: Delegate Grant.

DELEGATE GRANT: It does apply to appointed officers. Remember there is a dichotomy. The power of appointment car-