

THE PRESIDENT: Delegate Boyer, Delegate Case has a question with respect to section 9.10.

DELEGATE CASE: Delegate Boyer, this sentence says, and I read it so that you and the members of the Convention can have its full context, "A person tried upon impeachment whether or not convicted shall be liable to criminal prosecution and punishment," look at now for deletion, "shall be liable to criminal prosecution and punishment whether or not convicted."

I am not sure what it does mean, but conceivably it could mean that a man who was tried upon impeachment, found not guilty, nevertheless would be liable to punishment. What bothers me is the word "shall" in here, and it indicates that perhaps the state's attorney would be required, even though the case was the flimsiest of cases, to file some kind of criminal information against this person, bring him into court, and punishment might follow.

I cannot believe this is what you meant, but it could really be read that way.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: You are absolutely right, sir, and to relieve any question about the case of this matter, the intent is that the person tried upon impeachment, whether or not convicted, will still be liable for criminal prosecution and will not be given any immunity because of the fact he had not been convicted of impeachment, immunity that is, from any criminal prosecution.

THE PRESIDENT: Is it intended that the phrase "shall be liable" would mean may nevertheless be subject to criminal prosecution and punishment? Is that the intent, Delegate Boyer?

DELEGATE BOYER: Yes, that is. The intent is not to grant any immunity for criminal prosecution in the future for anybody who may have been not convicted of impeachment proceedings.

THE PRESIDENT: Not suggesting that precise language as desirable language to use, but would that meet the point you raised, something like that?

Delegate Case.

DELEGATE CASE: Yes, sir, if you would strike out the words "shall be liable" and say "may nevertheless be subject to criminal prosecution and punishment," then I think you would certainly have it.

THE PRESIDENT: Delegate Penniman, would you have any comment as to that suggestion?

DELEGATE PENNIMAN: I have no objection to it.

THE PRESIDENT: Delegate Mason.

DELEGATE MASON: I would like to ask Chairman Boyer a question.

THE PRESIDENT: As to this same matter?

DELEGATE MASON: Yes, sir.

THE PRESIDENT: Very well.

DELEGATE MASON: Chairman Boyer, are you suggesting that you would not be criminally liable if you were not convicted of impeachment? Is it necessary to put the sentence in there?

THE PRESIDENT: I think that is exactly the reverse of what he said, Delegate Mason.

DELEGATE MASON: My question is, is the sentence necessary?

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: Delegate Mason, we think it is. A person conceivably could be tried for impeachment and under the procedure here enumerated, found not guilty of impeachment, reinstated in his former position of trust and profit. However, that should not negate and circumvent the criminal law of the State, and still would make him liable for criminal prosecution under article 27 or whatever may happen there.

I would go with Chairman Penniman to infer that the word "may" would probably clear up the situation, but I do think this sentence is needed in the constitution.

THE PRESIDENT: As the Chair recalls the earlier discussion, partly before the Committee, on this, Delegate Mason, the sentence was thought desirable to prevent any contention akin to a claim of double jeopardy, for instance, so that one impeached who had been tried upon impeachment and either convicted or not convicted could not be tried for the crime which may have been the basis of the impeachment.

Delegate Henderson.

DELEGATE HENDERSON: Just along that same line I want to call attention to the fact the very anomolous feature in the Maryland law. It is tried by a panel of judges, and it could be considered a kind