

used in the presentation oath. It historically was used for the benefit of those people who actually believed in the Divinity and the theistic concept of philosophy, but who did not choose to take an oath because of religious qualms of conscience about swearing, and therefore it was approved and put into the Constitution of the United States. However, it has continued under the same concept and—and to reply to your question as to whether or not there was actually a belief in Divinity—would be substituted for and would be considered as a part of the oath, without the belief in a Divine Being.

THE CHAIRMAN: Are there any further questions? Delegate Henderson?

DELEGATE HENDERSON: Along that same line, it is my understanding that the affirmation was substituted for the oath, not for the benefit of the non-believer, but for those who were so conscientiously scrupulous that they declined, or they thought it was wrong to mention the name of the Maker.

Now, if it is the Committee's opinion that a non-believer would be eligible to office under this phrase, as you have drawn it, I suggest that should be stated in the comment at least. I do not find anywhere a clear statement to that effect, because it may be of the utmost importance when this case, as it undoubtedly will, comes before the court and particularly the Supreme Court for interpretation.

THE CHAIRMAN: So that the transcript may be clear on this point, I would like to ask Delegate Boyer as Chairman of the Committee to state unequivocally if he can whether the opinion of the Committee was, as Judge Henderson just indicated, that the oath or affirmation could be taken by the person who did not believe in a Supreme Being, and that belief in a Supreme Being was therefore not under this section at least, a qualification for office.

DELEGATE BOYER: There are no discriminations in the section as we present it that would allow special privileges to any particular class, and it would have to be taken, in our opinion, by everyone.

THE CHAIRMAN: I am not sure that that is an answer to the question of the Chair. The question is, did the Committee on General Provisions intend by this proposal that a person who did not believe in a Supreme Being could nevertheless take the oath or affirmation required by this section and could nevertheless hold an

elected or appointive office under the constitution and laws of this State.

DELEGATE BOYER: Yes, they did consider it, and yes, they can hold office. There are two questions there.

THE CHAIRMAN: Are there any further questions for purposes of clarification? Delegate Blair?

DELEGATE BLAIR: Mr. Chairman, I would like to call the attention of the Committee of the Whole to the very well written opinion of the attorney general's office, which was dated November 2, 1965. The opinion was written by Morton Sachs, an assistant attorney general, following the Schowgurow case, and it is an excellent piece of work, which covers the whole philosophy of what is under discussion, that is, the background of the oath and the transition from the belief in God to the present concept, as defined in Schowgurow and Torcaso. It would be my belief, after you read this particular opinion—and it can be obtained from the Attorney General's Office, and I will be pleased to furnish every member here who will ask for a copy with a copy of it—that it will completely answer all the questions that have been requested of the Chairman, Mr. Boyer, with relation to the applicability of the affirmation, and whether or not it is a substitute for the belief in a Divine Being. It is covered in this particular article, and the answer is in the affirmative.

THE CHAIRMAN: I think for purposes of clarification of the record, Delegate Blair, it might be desirable if you would indicate what you meant by your last statement, that the answer is in the affirmative.

DELEGATE BLAIR: That the affirmation would encompass an oath taken by an atheist.

THE CHAIRMAN: In other words, that the oath, or the taking of the oath, did not impose a condition that the person elected or appointed to office believed in the Supreme Being?

DELEGATE BLAIR: That is correct, sir.

THE CHAIRMAN: Delegate Bennett?

DELEGATE BENNETT: Would the Chairman of the Committee be good enough to explain the significance of the decision of the Supreme Court today, *Whitehill v. Elkins*, upon this situation? Does the majority opinion forever lay to rest the Ober oath?