

THE CHAIRMAN: Before the Chairman answers that question, let me state simply so that the official transcript will show it, that the Supreme Court of the United States this morning handed down its opinion in the case of *Whitehill v. Elkins*, No. 25, October Term, 1967. The majority opinion delivered by Mr. Justice Douglas and the minority opinion delivered by Mr. Justice Harlan, with whom Mr. Justice Stewart and Mr. Justice White concurred, have been reproduced, and copies are on the desk of each delegate. The opinion and suit dealt with the requirement that a teacher at the University of Maryland take an oath required by the Maryland statute, commonly referred to as the Ober Act.

Delegate Boyer has had a copy of this opinion for somewhat longer than the remaining delegates, and he may be able to comment more fully about it.

DELEGATE BOYER: I would be very glad to answer Delegate Bennett's question if I could. I received a copy of the opinion about, I guess a half hour ago. We were in the Committee room, and to be perfectly honest, I have not read it myself yet. All I know is what I have heard on the radio, driving down here this morning, that it was a 6 to 3 decision in which the majority said that the Ober Law of Maryland was too vague to reach the constitutional test, and the minority said the only thing they could find in the majority opinion was that they did not like loyalty oaths.

I have not read the opinion to really, truly answer that, sir.

THE CHAIRMAN: Delegate Blair.

DELEGATE BLAIR: Mr. Chairman, I do not think it materially affects the question today regarding the oath, because in the case of *Shub v. Simpson*, in 177 Maryland, the Court of Appeals held that the oath in the Ober case was not an oath. It was alleged to be an oath, but the Court actually found it not to be an oath; so, therefore, it is more in the nature of a declaration or affirmation independent of the concept of being an oath. I think that the question of the Ober Law as far as the voting today on the oath is concerned, is not of material import. I think it would be, however, important for us to read and determine the meaning of the Supreme Court decision in the case insofar as it pertains to the retention of Article XV, Section 11 of the Constitution. I think that that article and section were enacted for the purpose of implementing the Ober Law;

so it may be that when the Committee on General Provisions determines whether to retain in the Constitution Article XV, Section 11, which was the basis for the Ober Law, that at that time we can consider the constitutionality and the decision of the Supreme Court in ruling on the unconstitutionality of the Ober Law.

I think the Ober Law may decide that Article XV, Section 11 may not be necessary, and then again, it may be necessary for other purposes, but I think that will come when we meet it. I think the important question before us right now is the question of whether or not there is a need to consider the Ober Law in connection with the oath, and my conclusion in that respect is, it is not.

DELEGATE BOYER: Further answering Delegate Bennett's question, the General Provisions Committee did consider the theological interpretation of the impact of the oath and also the Ober Law, and it was our considered opinion that we should frame our oath as we have presented it to you so it would be flexible because we knew at the time that the Whitehill case was pending in the Supreme Court and not being able to second-guess which way the Supreme Court would rule, and knowing that that rule, whatever it may be, would be final, we have deliberately reworded the oath section so that it would not affect it.

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

DELEGATE LORD: Mr. President, I would like to further comment, as a member of the subcommittee, on the question raised by Delegate Sickles about the meaning of the term, "office of profit or trust."

In the final report of the Commission, at pages 558 and following, there is a lengthy excerpt from an opinion of Judge Barnes of the Court of Appeals of Maryland in the case of Board of Supervisors of Elections for Anne Arundel County v. the Attorney General. The way this applies to the question by Delegate Sickles is that in the recitation of the case law and opinions of the Attorney General on this subject, Judge Barnes refers to many different examples of "offices of profit or trust". He says that "all officers elected by the people are public officers", and this applies to local as well as statewide elections. He also gives many examples, but the applicable ones to the question would be members of the Howard County Metropolitan Commission, members of the Court Development Com-