

like to quarrel just a trifle with Judge Henderson on the interpretation of the word emergency. My recollection is that when the use of the word "emergency" legislation was used, when we had limited sessions, the Court of Appeals went behind the term "emergency" in the case of a local bond issue which was passed during a limited session, and said that it could inquire behind the emergency to find, as a matter of fact, whether an actual emergency existed, and it declared a local bond issue to be invalid because there was no emergency, in spite of the legislative declaration. Would it not, therefore, be possible to couch the thing in constitutional terms so that it would be clear that the legislative declaration of emergency, or whatever term you used, would not be judicially reviewable so that the term "emergency legislation" which everybody understands could be utilized?

Did you consider that approach?

DELEGATE KOSS: Delegate James, I suppose that to some extent we thought this would be a prerogative of the Committee on the Legislative branch. We agreed to the point that the General Assembly should have this authority, but that the language for the form of bills, or what kind of bills would more naturally fall into the Committee on Legislative Branch. I do not think that anybody in our Committee would have any objection to their so defining them so that they would not be subject to judicial review.

THE CHAIRMAN: Delegate Koger?

DELEGATE KOGER: Madam Chairman, would any federal law be subject to state referendum? I do not know if that was asked or not. I did not quite get the answer.

Would a federal law be subject to state referendum?

THE CHAIRMAN: You mean a public general law, Delegate Koger?

DELEGATE KOGER: No. a federal law.

DELEGATE KOSS: No, Delegate Koger, it would not.

DELEGATE KOGER: Is there a difference between a law relating to Congressional districting?

DELEGATE KOSS: Yes, because the Congress assigns to the states the responsibility for setting up the Congressional districts, but this is a function of the states, although it is a districting of the Congressional seats within the State of Maryland.

THE CHAIRMAN: In other words, Delegate Koss is saying, Delegate Koger, that the establishment of Congressional districts is accomplished by state law.

Delegate Case.

DELEGATE CASE: Delegate Koss, those of us who have had to deal with these things from time to time throughout the years have come to understand that state bond issues which are serviced by the full faith and credit of the state, which is now, of course, the property tax, are one of the types of laws which are not subject to referendum under the existing Article XVI. Was there any intention of your Committee to change that?

THE CHAIRMAN: Delegate Koss.

DELEGATE KOSS: At the time that we considered this provision, it was understood that the legislation providing for bonds, as in the past, was required to include a tax for general obligation bonds, and on that basis we assumed that they were subject to referendum. Now I understand the Committee on State Finance will recommend that there be an elimination of the requirement for special tax to support general obligation bonds.

In the absence of such a requirement, whether a bond issue could be referred or not seems to depend upon its purpose. If the purpose of the bond could be construed as maintaining the state government, or aiding or maintaining a public institution, then I would assume it would not be referable. Otherwise, I would also assume it would be referable, if it were not tied to a tax.

THE CHAIRMAN: Delegate Case.

DELEGATE CASE: I am not quite sure that the answers to my questions must be that your Committee intended to make no change, because those are the kinds of bonds I was talking about, full faith and credit bonds.

DELEGATE KOSS: That is right.

THE CHAIRMAN: Delegate Scanlan.

DELEGATE SCANLAN: The Commission draft dealt with the referendum problem in three fairly succinct sections.

The model state constitution deals with it in one section. One of the criticisms of the present Constitution made by the Commission was the large complication and prolixity of the present provisions of section 2 of Article XVI of the present Constitution, dealing with the referendum.