

In addition, the General Assembly can deny a power or function by preempting the field with a state law. The county could still pass a law on the subject, but county laws could not be inconsistent with the general law. This would be a matter of statutory construction.

For instance, I think it is perfectly clear that when the General Assembly passes the Uniform Commercial Code it means to preempt the field. This would accomplish this purpose.

As a general statement and I state this for the record, we can say that a county law which does not prohibit what the general law permits nor allow what the general law prohibits would not be inconsistent. I do not know whether this lends much clarity here, but it may give some clarity for posterity.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: Section 7.05 does grant to the counties power to tax. Section 7.11 refers to collection of taxes by the popularly elected representative local government.

Under what authority, if any, in this section in front of us does the popularly elected representative local government get the authority to tax?

DELEGATE MOSER: Are you talking about a county, or are you talking about any type of popularly elected government?

DELEGATE MARION: The latter.

DELEGATE MOSER: It would have to get the power to tax by express grant from the General Assembly. In fact, this would apply both to counties and other governments.

The interplay of these two sections means simply that you need a popularly elected board before that board can itself enact a tax law.

However, it can collect a tax which the General Assembly would impose or the county might impose, and then in effect assign the collection to it.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: In other words, the powers granted to the popularly elected representative regional government would have to be expressed powers, and thereby they would come directly from the General Assembly?

DELEGATE MOSER: Yes.

DELEGATE MARION: There is nothing to prohibit the General Assembly from granting the power to impose taxes to such unit or regional government.

DELEGATE MOSER: That is correct.

THE CHAIRMAN: Delegate Schloeder.

DELEGATE SCHLOEDER: In relation to Delegate Case's series of questions earlier, could you have a multi-county, popularly elected school board that would actually not be an elected representative regional government? Could you have that?

DELEGATE MOSER: I suppose you could have it. I would say it would fit within the definition of a regional government under this provision, it covered more than a single county.

THE CHAIRMAN: Delegate Schloeder.

DELEGATE SCHLOEDER: I am a little confused now about the term "government".

DELEGATE MOSER: I think that what the Committee intends by the term "unit of local government", is really any unit, any agency which is below the State level and performs a service. You have to explain this almost by example. It would exclude, for instance, an election district. I would say that within this definition the example you have given, a regional school board, would in a sense be a regional government, and it would fit within this definition if it were popularly elected.

THE CHAIRMAN: Delegate Schloeder.

DELEGATE SCHLOEDER: In section 7.10, lines 42 through 45, "The General Assembly may provide", would you foresee any problem in the General Assembly's having this original power to set up a regional government without any express check on the part of the voters or people involved in those counties or that region? Let us assume the General Assembly wanted to set up a regional government in Southern Maryland. As I understand from section 7.10, the General Assembly could do this. It may provide a referendum establishing a popularly elected representative regional government, but it may not. If it does not, but does set up a regional government in Southern Maryland, the people in the counties affected might not be ready for or willing to accept regional government at that time.

Would you foresee any problem in allowing the General Assembly to set up this regional government from the top?