

A BRIEF NOTE ON THE LEGISLATIVE POWER TO  
CREATE AN ELECTIVE OFFICE<sup>1</sup>

The legislature is wholly within its power in creating an elective office and may prescribe how it will be filled.<sup>2</sup> More specifically, ". . . the legislature may create a public office, other than one created by the Constitution, provide for election or appointment of its incumbent, establish and modify from time to time its tenure, compensation, and duties, and abolish the office as the public interest may require."<sup>3</sup>

The Maryland Court of Appeals implies that the state legislature can create an elective office. Dealing with the question of whether a constitutional provision prohibiting the legislature from increasing or diminishing a public officer's salary, the court held that this prohibition of the officer's salary after his election or appointment was not limited to constitutional officers.<sup>4</sup>

THE CHARTERING OF NEW CORPORATIONS  
THROUGH ACTS OF THE GENERAL ASSEMBLY<sup>5</sup>

*Re: That part of Section 48 of the Maryland Constitution which requires corporations to be formed under the provisions of the general corporation laws and not through special acts of the legislature:*

Such a limitation on the legislature may be necessary, but the necessity of having the limitation in the constitution is questionable in light of the following considerations:

A. If the present Article III, Section 33 (or one to the same effect) is retained, providing that there shall be no special law for cases provided for by general law, then a retention of the above limitation would be superfluous.

B. While it is true that the legislature could change the law, Article 23, Section 1a of the Code, which subjects all corporations (with the exception of banks, etc.) to the provisions of Article 23, would probably provide the necessary "brake" to any action of the legislature intended to provide for the formation of a corporation by special act.

C. Only 3 other states have such a limitation, in one form or another, in their constitutions.<sup>6</sup> Apparently the other 46 states feel such a limitation is unnecessary (as well as the framers of the *Model*

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<sup>2</sup> *Groves v. Bd. of Educ.*, 367 Ill. 91, 10 N.E. 2d 403, *appeal dismissed*, 303 U.S. 622, 58 Sup. Ct. 746, 82 L. Ed. 1085 (1937); *Dunkel v. Rogers*, 279 App. Div. 44, 108 N.Y.S.2d 32 (1951); *Higginbotham v. City of Baton Rouge*, 306 U.S. 535, 59 Sup. Ct. 705, 86 L. Ed. 45 (1939).

<sup>3</sup> *Cullen v. Mayor of City of Newton*, 308 Mass. 578 32 N.E. 2d 201 (1941).

<sup>4</sup> *Calvert County Comm'rs v. Monnett*, 164 Md. 101, 164 Atl. 155, 86 A.L.R. 1258 (1933).

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<sup>6</sup> ARIZ. CONST. art. XV, § 5; N.M. CONST. art. XI § 6; VA. CONST. art. XII, § 156a.