

*State Constitution*)<sup>7</sup> and that the problem can be adequately handled by statutory regulations.

- D. Finally, if for some reason deletion of the limitation becomes a source of abuse, the constitution can be amended.

**Re: That part of Section 48 which provides that all corporate charters are alterable and revocable:**

This part is no longer necessary since the provision is contained in Article 23,

The exceptions to the limitation in the present Constitution are no longer necessary since municipal corporations are provided for under Article XI-E of the Constitution and banks are governed by the general banking laws (Article 11 of the Code).

Section 1g of the Code.

**Re: The "Grandfather Clause":**

The effect of not retaining this clause would be to deny the State's one possibility of ever revoking an irrevocable tax exemption granted prior to the Constitution of 1851, i.e., the possibility that a corporation with such an exemption would avail itself of rights under the general law and thereby be presumed to have surrendered its exemption. The only such exemption which still exists and about which concern has been expressed is that of the Baltimore and Ohio Railroad (B. & O. R.R.). This concern may be questionable today, but if the profits of the railroad increase, it may become a fertile source of revenue for the State; but if Section 48 is deleted, there would not be even a possibility that the State could avail itself of the revenue. In *State v. B. & O. R.R. Co.*,<sup>8</sup> the Court of Appeals said that the railroad's "immunity from taxation arose from the Act of 1826 (their charter) which was beyond the power of the legislature to alter, amend or repeal, except by the assent of the B. & O. R.R. Co.," which could be presumed by their accept-

ance of rights under the general laws, according to the Constitution of 1851.

**CONCLUSION**

For the reasons stated above, it appears that the first two parts of Section 48 could be deleted without causing any problem. However, as for the "Grandfather Clause," a decision must be made as to which is more desirable:

- A. Deletion and a "clean" constitution thus perpetuating the tax-exempt status; or
- B. Retention and the possibility of revoking the tax exemption if the railroad accepts rights under the general law.

If it is decided to delete Section 48, it may be desirable to have a provision declaring that corporations not affected expressly by the new constitution shall remain as if the constitution had not been altered.<sup>9</sup> However, this also would probably be an unnecessary provision since Article 23, Section 1c, of the Code provides that the provisions of a special act of the legislature shall prevail over inconsistent provisions of Article 23.

<sup>7</sup> NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION (6th ed., 1963).

<sup>8</sup> *State v. B. & O. R.R.* 127 Md. 434 (1916).

<sup>9</sup> This was done in N. Y. CONST. art. 1, § 15; DEL CONST. art. IX, § 4; MISS. CONST. Sched. 279.