

NOTES CONCERNING ARTICLE 35 OF THE DECLARATION OF RIGHTS, "OFFICE OF PROFIT"¹

THE TEXT OF THE ARTICLE

"That no person shall hold, at the same time, more than one office of profit created by the Constitution or Laws of this State;

nor shall any person in public trust receive any present from any foreign Prince or State, or from the United States, or any of them, without the approbation of this State.

The position of Notary Public shall not be considered an office of profit within the meaning of this Article."

THE TWO PARTS OF THE ARTICLE

1. The prohibition of a public officer's receiving a "present" from another government without State approval.

2. The prohibition of an individual's simultaneously holding more than one public office in the State and the declaration that Notary Public is not a public office.

THE TWO PARTS ANALYZED

1. THE CONSTITUTIONAL HISTORY OF THE PROHIBITION OF RECEIVING PRESENTS:

The substance of Article 35 was added in 1851. There is no recorded debate on the provision except for a change of "ought to" to "shall" in 1867 to achieve a mandatory effect.

Article I, Section 9 of the United States Constitution provides:

"No person holding any office of

¹ This article was prepared for the Commission by Frank T. Ralabate, research assistant to the Constitutional Convention Commission; B.S., 1964, Canisius College; LL.B., 1967, Eastern College, Mount Vernon School of Law.

Profit or Trust under (the United States) shall, without the consent of Congress, accept of any present, emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State."

The Maryland provision differs from the federal statement in that the latter (a) prohibits not only presents but also "Office", "Title", and "emolument" (b) specifies that permission must come from the legislature, and (c) prohibits gifts, etc., only from foreign powers.

The Court of Appeals has not passed upon this provision of Article 35.

Maryland is unique in having so broad a provision. THE INDEX DIGEST OF STATE CONSTITUTIONS, groups the Maryland provision with those of fourteen other states which prohibit public officers only from accepting transportation, communication and franking privileges.²

2. THE CONSTITUTIONAL HISTORY OF THE PROHIBITION OF DUAL OFFICE HOLDING AND THE EXCEPTION OF NOTARY PUBLIC:

The Notary Public provision was added in 1964, one year after the Court of Appeals had ruled that the Notary Public was a public office.³

Article 37 of the Constitution of 1776 prohibited state senators, delegates, the governor and his council from occupying "any office of profit". Article 32 of the 1851 Constitution introduced the all-inclusive language which we have today.

² LEGISLATIVE DRAFTING RESEARCH FUND OF COLUMBIA UNIVERSITY, INDEX DIGEST OF STATE CONSTITUTIONS 823-24 (1959).

³ Moser v. Howard County Bd., 235 Md. 279 (1963).