

AN ANALYSIS OF MARYLAND'S OATH OF OFFICE AS IT RELATES TO THE SUBVERSIVE ACTIVITIES ACT (OBER LAW)¹

HISTORICAL ANTECEDENT

Article VI of the United States Constitution requires that members of the three branches of the state governments affirm their support of the federal constitution, although provision for such an oath need not appear in state constitutions.

More than forty state constitutions require an oath such as Maryland's which is contained in Article I, Section 6 of the Constitution:

"Every person elected, or appointed, to any office of profit or trust, under this Constitution, or under the Laws, made pursuant thereto, shall, before he enters upon the duties of such office, take and subscribe the following oath, or affirmation: I, ———, do swear, (or affirm, as the case may be), that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of ———, according to the Constitution and Laws of this State (and, if a Governor, Senator, Member of the House of Delegates, or Judge), that I

will not directly or indirectly, receive the profits or any part of the profits of any other office during the term of my acting as———."

Among the states requiring an oath are those with recent constitutions—Hawaii, Alaska, Michigan, Connecticut, and Kentucky (proposed).² The Model State Constitution also endorses an oath.³

The Maryland enacting statute is Article 70, Sections 1-7, which sets out the procedural aspects of the oath for public officers. In Maryland, this is the only oath allowed because Article 37 of the Maryland Declaration of Rights states, in part:

" . . . nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution."

Ten other state constitutions have a similar prohibition, including, most recently, that of Michigan. The Connecticut and Kentucky (proposed) constitutions are silent in this regard while the constitutions of Hawaii and Alaska are unique in affirmatively providing that "the legislature may prescribe further oaths or affirmations."

The following history of the Maryland provision appears in A. NILES, MARYLAND CONSTITUTIONAL LAW:

"In none of the constitutions of Maryland previous to 1867 was there

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² The articles and sections where the oaths are found in these constitutions: HAWAII CONST. art. XIV, § 4; ALAS. CONST. art. XII, § 5; MICH. CONST. art. XI, § 1; CONN. CONST. art. XI, § 1; and KY. CONST. (proposed) art. XIII, § 3.

³ NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION § 1.07 (6th ed. 1963).