

ment for non-elective or non-appointive offices (e.g., employees such as school teachers) found in Section 13 of the Ober Law. Application of Article 37 is to all other offices, whether created by the Constitution or by act of the legislature.⁷ Thus, Article XV, Section 11 of the Constitution is not needed to sustain the validity of Section 13 of the Ober Law when it applies to employees (as distinct from officers).

Section 15 of the Ober Law, however, concerns only elected officials. Those who are appointed, if they are to be included (as we might assume they are) within the scope of the anti-subversive act, would necessarily come under the purview of Section 13 (as do employees). Since they are holders of offices of trust or profit, even though not elected, they would also be covered by Article 37 of the Declaration of Rights. Therefore both elective and appointive officers must be treated as the same when determining if the Ober Law can stand without Article XV, Section 11.

In *Shub v. Simpson*,⁸ Section 15 of the Ober Law was attacked primarily on the ground that it required an oath of office additional to the one provided by the Maryland Constitution and was, therefore, invalid under the Article 37 prohibition. The Court of Appeals did not share that view. It held that Section 15 of the Ober Law required *not* an oath but merely an *affidavit of qualification*⁹

⁷ *Davidson v. Brice*, 91 Md. 681, 690 (1900).

⁸ 196 Md. 177, 76 A.2d 332 (1950), *appeal dismissed*, 340 U.S. 881 (1951).

⁹ An "affidavit," as defined in BLACK'S LAW DICTIONARY, is "a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such an oath. *Cox v. Stern*, 170 Ill. 442, 48 N.E. 906, 62 Am.

for office which would implement Article XV, Section 11 of the Constitution.¹⁰ Appellants in *Shub*, however, further contended that the affidavit required under Section 15 of the Act (for candidates) went far beyond the scope of Article XV, Section 11 of the Constitution; the Ober oath, it was argued, encompassed committing, attempting to commit, advocating, abetting, advising, etc., the alteration of the government by *peaceful* revolution and, moreover, membership in foreign organizations dedicated to peaceful revolution. The court dismissed this contention, stating:

"It is quite clear from the connotation that 'revolution' as used in Section 15 does not mean a peaceful revolution, but means a revolution accomplished by force or violence. These words are to be construed together."¹¹

It was held that the purposes of Article XV, Section 11 of the Constitution, and the Ober Law, are identical and thus are to be taken together to effect that purpose.¹²

St. Rep. 385; *Hays v. Loomis*, 84 Ill. 18. A statement or declaration reduced to writing, and sworn to or affirmed before some officer who has authority to administer an oath or affirmation. *Shelton v. Berry*, 19 Tex. 154, 70 Am. Dec. 326"

¹⁰ 196 Md. 177, at 189 (1950).

¹¹ 196 Md. 177, at 191 (1950).

¹² 196 Md. 177, at 192 (1950). The court did not come to grips with the argument that, by virtue of a provision unique among American constitutions, the people of Maryland are called upon to reform the old or establish a new government when "the ends of Government are perverted." Article 6 of the Declaration of Rights reads:

"That all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct. Wherefore, whenever the ends of Government are perverted, and public liberty manifestly endangered, and all other