

SELECTION OF DELEGATES TO A CONSTITUTIONAL CONVENTION¹

The question has been raised as to whether delegates to a constitutional convention which might be held in Maryland prior to 1970 must be elected or whether some of them (perhaps eight out of a total membership of 150) could be appointed either by the governor or by the legislature, or by one with the concurrence of the other.

It appears that even though no direct or conclusive Maryland authority has been found, the selection of delegates by means other than election by some or all of the qualified voters of the State, would be improper.

At the outset it should be stated that there is very little direct authority, either decisional or through text writers, on this question. The reason for this is that the question which arises concerning the selection of delegates is not whether or not all delegates are to be elected—this is assumed—but how the delegates are to be elected to produce a representative convention. An illustrative example of this is seen in the comprehensive opinion of the attorney general to Governor J. Millard Tawes, dated February 9, 1965. In that opinion Attorney General Thomas B. Finan ruled that the General Assembly can legally call a constitutional convention prior to the vote to be taken at the general election in 1970 pursuant to Article XIV, Section 2 of the Maryland Constitution. In setting forth the steps which must be followed in calling such a convention, the Attorney General ruled that the General

Assembly “may, but need not, submit the question [of holding a Constitutional Convention] to a vote of the people. . . .” In this connection the opinion recites:

“The next question . . . is whether the General Assembly can call a constitutional convention *and the election of delegates thereto* without first submitting the question . . . to a vote of the people.”² (Emphasis supplied.)

The opinion also recites in connection with the question of when the election of delegates can be held:

“If a vote is called for on [the question of holding a constitutional convention], *the election of delegates* to the convention can be held at the same time or at a separate election.”³ (Emphasis supplied.)

It certainly appears from the quoted language that the Attorney General contemplated a Constitutional Convention to which the delegates were elected.

While the proposed constitutional convention is not to be held pursuant to Article XIV, Section 2, it should be noted that this section specifically provides “for the election of delegates thereto,” and the apportioning of such delegates. In the same opinion of the Attorney General above referred to it is stated, with respect to the question of apportioning of delegates to the convention:

“[W]e do feel that delegates to a convention should be apportioned on the basis set forth in [Article XIV, Section 2].”⁴

¹ This article was prepared for the Commission by Lewis A. Noonberg, Commission reporter to the Committee on Miscellaneous Provisions; Assistant Attorney General; A.B., 1959, Dartmouth College; LL.B., 1962, University of Maryland; member of the Maryland Bar.

² 50 OP. ATT’Y GEN. 54 (1965).

³ *Id.* 55.

⁴ *Ibid.*