

SELECTION OF DELEGATES TO A CONSTITUTIONAL CONVENTION

If the delegates to a constitutional convention need to be apportioned on the basis of Article XIV, Section 2, it would also seem necessary for these persons to be the only delegates (since they are the only ones authorized in Article XIV, Section 2) and for them to be elected.

Maryland has had three constitutional conventions since 1776. The first was held in 1851;⁵ the second was held in 1864;⁶ and the third was held in 1867.⁷ At each of these conventions all delegates were elected by the qualified voters.⁸

Legal authority outside of Maryland is also sparse, but what does exist indicates clearly the impropriety of selecting delegates by any means other than election by the qualified voters.

In *Re Opinion to the Governor*⁹ decided by the Supreme Court of Rhode Island, is directly on point. In holding that the general officers of the State cannot, by virtue of their offices, be members of the Constitutional Convention, the court said:

"A constitutional convention is an assembly of the people themselves acting through their duly elected delegates. The delegates in such an assembly therefore must come from the people who choose them for this high purpose and this purpose alone. They cannot be imposed upon the convention by any other authority. Neither the Legislature nor any other department of the government has the power to select delegates to such a convention. The delegates elected by and

from the people, and only such delegates, may and of right have either a voice or a vote therein."¹⁰

This position has recently been reaffirmed by the Rhode Island Supreme Court in *Opinion to the House of Representatives*.¹¹ In holding that delegates to a constitutional convention do not have the power and authority to fill a vacancy in their membership by themselves electing a person possessing the same qualifications as the delegate previously elected, the Court stated:

"The convention and the delegates who compose it are the products of the formally expressed will of the people manifested through their duly qualified electors. The delegates are their agents and as such derive their power and authority solely from the people."¹²

The Court then quoted with approval from its earlier opinion the sentences previously quoted herein.

While the Rhode Island decisions are not binding authority in Maryland, the fact that they are the only two cases found directly in point, and the fact that they are recent cases, combined with the other matters discussed herein, appear to give them strong weight in any possible determination by the Maryland Court of Appeals.

See also *Baker v. Moorhead*,¹³ where the Supreme Court of Nebraska held that it was unconstitutional for the governor or the legislature to appoint members when the constitution apparently provided for the method of election of

⁵ Pursuant to chapter 346, Acts of 1849.

⁶ Pursuant to chapter 5, Acts of 1864.

⁷ Pursuant to chapter 327, Acts of 1867.

⁸ Cf. Md. Laws of 1849, c. 346, § 4; Md. Laws of 1864, c. 5, § 1; Md. Laws of 1867, c. 327, § 2.

⁹ 55 R.I. 56, 178 A. 433 (1935).

¹⁰ *In re Opinion to the Governor* 55 R.I. 97, 178 A. 452.

¹¹ *Opinion to the House of Representatives*, 208 A.2d 116 (1965).

¹² *Id.* at 117.

¹³ 103 Neb. 811, 174 N.W. 430 (1919).