

The 1864 Constitution, as shown by the slim margin by which it was adopted, was not very popular. Its most approbrious feature was the disenfranchisement in all future elections of a large number of former Confederate sympathizers, unless excused by act of the General Assembly or subsequent service in the United States military forces. When an attempt to excise that provision by judicial means failed,³ the movement to repeal it through constitutional revision grew. By 1866 the Democrats had regained enough strength, even with the test oath, to capture control of the legislature. The new General Assembly, meeting in January 1867, quickly enacted the necessary enabling legislation to call a new constitutional convention. The vote, taken in April, was favorable; the delegates were elected, and the convention opened in May.

Unlike the procedure used in 1864, the Constitutional Convention of 1867 created a standing Committee on Public Works and delegated the entire matter to it. The sections formerly spread between articles 3 and 7 were therefore brought together in a separate proposed article entitled Public Works.

There appears in this convention to have been no real question about either the continuation or the composition of the Board of Public Works. Furthermore, aside from clarifying what were perceived to be some ambiguities in the language of the 1864 Constitution, there was no substantial disagreement about what the board's function should be. Most of the changes pertaining directly to the board were of style only. Sections 1 and 2 of article 7 were adopted with minor changes as corresponding sections of the new article 12.

Most of the argument over internal improvements in the 1867 convention concerned the C & O Canal Company. Indeed, in terms of the length and intensity of the debate, that was one of the most contentious issues before the convention. What sparked it was an act passed by the 1867 General Assembly—chapter 359. In a preamble to the act the legislature noted that there were preferred bonds of the C & O outstanding, upon which no interest had been paid since 1852. In order to accommodate the bondholders, the legislature directed the board, in its selection of the president and four of the six C & O directors, to vote the state stock for those persons nominated by a majority of the trustees for the bondholders. The effect of this, of course, was to give effective control of the canal company to the bondholders.

The Committee on Public Works recommended that a provision similar to chapter 359 be included in the Constitution of 1867, and that touched off a long and acrimonious debate. Considering the state's investment in the company, opponents viewed the proposal as an unholy giveaway, not much different than if the State House itself were involved. Proponents, such as Alfred Spates of Allegany County, a longtime president of the C & O, responded that all the bondholders wanted to do was "to rescue this canal from political control, and if it was done the people of the whole state would have cause for rejoicing."⁴

3. *Anderson v. Baker*, 23 Md. 531 (1865).

4. Philip B. Perlman, comp., *Debates of the Maryland Constitutional Convention of 1867* (Baltimore, 1923), p. 447 (hereafter *1867 Debates*). There were legitimate arguments to be made on both sides of the issue. In response to one of the company's periodic requests for state aid during the construction phase, the General Assembly decided that, rather than put additional state funds into the project, it would encourage private investment by waiving the state's lien priorities. Thus, by Acts of 1844, ch. 281, the legislature authorized the company to issue \$1,700,000 in preferred bonds and declared those bonds to constitute a preferred lien on the revenues and tolls received from that part of the canal between Georgetown and Cumberland. The problem was, of course, that whether as the result of state control or otherwise, there were insufficient revenues to pay even the interest on the bonds. By 1867 the accrued interest arrearage amounted to \$4 million—more than twice the principal amount of the bonds. The state's investment, of course, was much greater, not only in terms of dollars invested but in terms of the canal's value and contribution to the state's economy. See Sanderlin, *Great National Project*, pp. 203-25; *1867 Debates*, pp. 450-58; *Brown et al. v. Chesapeake and Ohio Canal Co.*, 73 Md. 567 (1890).