

stitution, except State's Attorneys, shall be certified, and the returns made by the Clerks of the Circuit Courts of the Counties, and the Clerk of the Superior Court of Baltimore City, respectively, to the Governor, who shall issue commissions to the different persons for the offices to which they shall have been, respectively, elected; and in all such elections the person having the greatest number of votes shall be declared elected.

The attorney-general, although not expressly named, is clearly embraced within the terms of this section. Construing this section in connection with art. 5, sec. 2, it is clear that the Governor should issue commissions as soon as the result of the election is ascertained from the official returns, and the newly elected officers should at once take the oath and enter upon their duties; the commission should not be withheld when the elections are contested. See notes to art. 5, sec. 2. *Groome v. Gwinn*, 43 Md. 622 (See also concurring opinion in this case.) *Brooke v. Widdecombe*, 39 Md. 401 (cf. dissenting opinion) And see *Wells v. Munroe*, 86 Md. 449.

It is the duty of the Governor under this section to issue his commission to the person regularly and duly returned as elected, although such election may be contested, and the Governor by sec. 12 is required to send the returns to the house of delegates. *Ijams v. Duvall*, 85 Md. 261. And see *Wells v. Munroe*, 86 Md. 448.

This section referred to in deciding that the words "of the county" and "for the county" as applied to the circuit courts and the clerks thereof, are used interchangeably. *Slymer v. State*, 62 Md. 242.

See notes to secs. 12, 25 and 40.

Sec. 12. If in any case of election for Judges, Clerks of the Courts of Law and Register of Wills, the opposing candidates shall have an equal number of votes, it shall be the duty of the Governor to order a new election; and in case of any contested election the Governor shall send the returns to the House of Delegates, which shall judge of the election and qualification of the candidates at such election, and if the judgment shall be against the one who has been returned elected, or the one who has been commissioned by the Governor, the House of Delegates shall order a new election within thirty days.

The "contested" election spoken of in this section means a contest between candidates at such election, not a dispute about the office of judge in which one party claims by appointment of the executive and the other by election of the people. The duties of the Governor are not all found in art. 2 of the Constitution, as is shown by art. 4, secs. 11, 12 and 13, where ministerial duties are imposed on the Governor, no discretion being imposed in him as to them. In the discharge of ministerial duties, the Governor is subject to mandamus. The commission to an office is *prima facie* proof of title to the office. See notes to art. 4, sec. 5, and art. 9, sec. 2. *Magruder v. Swann*, 25 Md. 204; *Groome v. Gwinn*, 43 Md. 625; *Brooke v. Widdecombe*, 39 Md. 401 (cf. dissenting opinion). And see *Wells v. Munroe*, 86 Md. 449.

The resolution of the house of delegates relative to a contested election cannot name a successor; all that it can do if it finds against an incumbent, is to give judgment against him and order a new election. *Ijams v. Duvall*, 85 Md. 262. And see *Wells v. Munroe*, 86 Md. 448.

Contest heard under this section; new election ordered; such order is not self-executing, but requires affirmative legislation. *Munroe v. Wells*, 83 Md. 510; *Warfield v. Vandiver*, 101 Md. 137 (dissenting opinion)

This section referred to in construing art. 4, sec. 11, and art. 5, sec. 2—see notes thereto. *Groome v. Gwinn*, 43 Md. 635 (concurring opinion).

See notes to secs. 11, 25 and 40 (this article), and to art. 33, sec. 130. An. Code.

Sec. 13. All Public Commissions and Grants shall run thus: "The State of Maryland, &c.," and shall be signed by the Governor, with the seal of the State annexed; all writs and process shall run in the same style, and be tested, sealed and signed as heretofore, or as may hereafter be provided by law; and all indictments shall conclude, "against the peace, government and dignity of the State."

The last clause of this section is mandatory and will be enforced. *State v. Dycer*, 85 Md. 252.

See notes to sec. 12.