

Letter from State Law Department on House Bill No. 1162

April 23, 1965.

The Honorable J. Millard Tawes
Governor of Maryland
State House
Annapolis, Maryland 21404

Re: House Bill No. 1162

Dear Governor Tawes:

As requested, I have reviewed House Bill No. 1162 as to form and legal sufficiency.

House Bill 1162 provides that open seasons for the hunting of doe shall be prohibited in Allegany, Garrett and Howard Counties, unless authorization of such seasons by the Game and Inland Fish Commission is concurred in by the Legislative Delegation for each of those counties. Existing legislation authorizes the Commission to prescribe antlerless deer seasons in each county throughout the State. Section 132 (a), Code, Article 66C.

In my opinion this Bill is unconstitutional for several reasons.

In the first place, to require the concurrence of a county delegation to an administrative action by the Game and Inland Fish Commission violates Article 8 of the Maryland Declaration of Rights, which Article provides:

"That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."

House Bill 1162 requires the exercise by legislators in the aforesaid county delegations of judgment and discretion in *executing* a law enacted by the Legislature, *i.e.*, Section 132 (a), Article 66C of the Code. The Legislature may enact, but it cannot execute laws. That is the duty of the Executive Branch of the State government. *Book v. Commission*, (Ind.) 149 N.E. 2d 273; *Stockman v. Leddy*, (Colo.) 129 P. 220; *Springer v. Government of the Philippine Islands*, 277 U.S. 189, 72 L. Ed. 845; 16 C.J.S. *Constitutional Law*, Section 130; 11 Am. Jur., *Constitutional Law*, Section 187. The case of *State v. State Office Building Commission*, (Kan.) 345 P.2d 674 held that if the creation of a committee of legislators to perform duties that are entirely within the executive department is not invalid, "then the principle of separation of powers between the three departments of the State Government does not exist under our Constitution" (P. 683).

In a case directly in point, *Bramlett v. Stringer*, 195 S.E. 257, the Supreme Court of South Carolina held that a County Legislative Delegation, which belongs to the Legislative Department of the Government, cannot be appointed an executive body to carry out and carry into effect laws passed by the Legislature, in the light of separation of powers guaranteed by Section 14, Article I of the South Carolina Constitution. Section 14, Article I of the South Carolina Constitution contains language identical to that in Article 8 of the Maryland Declaration of Rights. See also 16 Corpus Juris Secundum, *Constitutional Law*, Section 130, page 547.