

Re: House Bill 146

Dear Governor Mandel:

House Bill 146 provides for the election of members of the Board of Education of Washington County for terms of *six* years. On November 7, 1968, we rendered an opinion that Article XVII, Section 3 of the Constitution of Maryland requires that elected members of a county school board "may hold office only for terms of four years". A copy of that opinion is enclosed.

Therefore, we are of the opinion that House Bill 146 is unconstitutional.

Very truly yours,

/s/ FRANCIS B. BURCH,
Attorney General.

Second Letter from State Law Department on House Bill 146

November 7, 1968.

Honorable Leonard S. Blondes
Maryland National Bank Building
Silver Spring, Maryland 20900

Dear Delegate Blondes:

You have asked our advice as to whether Article 77, Section 12 of the Maryland Code can be properly amended to allow for six-year elected terms for the members of the Montgomery County School Board. The present law provides for elected four-year terms.

Article XVII, Section 3 of the State Constitution provides as follows:

"All State and county officers elected by the qualified voters shall hold office for terms of four years."

If elected school board members are deemed to be "county officers", then any legislation establishing terms longer than four years would violate this constitutional provision. In *School Comrs. v. Goldsborough*, 90 Md. 193 (1899), it was held that an appointed school commissioner of Worcester County was not a "civil officer" subject to removal by the Governor under Article II, Section 15 of the State Constitution. The basis of the Court's conclusion was as follows (90 Md. at 207, 209-210):

"Civil officers, therefore, are governmental agents—they are natural persons—in whom a part of the State's sovereignty is vested or reposed, to be exercised by the individuals so entrusted with it for the public good. The power to act for the State is confided to the person appointed to act. It belongs to him upon assuming the office. He is clothed with the authority which he exerts, and the official acts done by him are done as his acts and not as the acts of a body corporate. . . ."

* * *

"It was manifestly not the purpose of the Legislature to confer upon the school commissioners, as individuals, the powers, or to impose upon them, personally, the duties which in explicit