

The effectiveness of House Bill 363 is contingent upon the ratification by the qualified voters of the State of an amendment to the Maryland Constitution embodied in Senate Bill 213 (1972) authorizing State lotteries. House Bill 128 (1972) creates a State lottery system and the State Lottery Agency and its effectiveness is also contingent upon the ratification of the constitutional amendment contained in Senate Bill 213. Senate Bill 213 and House Bill 128 were signed into Law on Friday, May 26, 1972.

House Bill 363 provides that the proceeds from the sale of the above-described certificates is to be deposited in a special account to be used for the purpose of reducing the amount of "the public debt of the State." Twenty-five percent of such proceeds is proposed to be allocated to the Department of Economic and Community Development (15% for low cost housing loans and 10% for low cost industrial development loans). The bill also provides that 40% of such proceeds shall be retained at all times for the purpose of redeeming outstanding certificates. Since it is a condition to the sale of such certificates that they be payable on demand at face value, without interest, at any time after purchase, there is created a potential liability of the State, in the form of a redemption call by the holders of the remaining 60% of the outstanding certificates, for which the bill makes no provision.

Article III, Section 34 of the Maryland Constitution provides, in part, that "No debt shall be hereafter contracted by the General Assembly unless such debt shall be authorized by a law providing for the collection of an annual tax or taxes sufficient to pay the interest on such debt as it falls due, and also to discharge the principal thereof within fifteen years from the time of contracting the same. . .". Senate Bill 3 (1972), if ratified by the qualified voters of the State, will amend Article III, Section 34 to provide that the required annual tax will not be collected in the event sufficient funds are appropriated for that purpose in a given year. However, the amendment would not eliminate the requirement for an annual tax.

It is our opinion that House Bill 363 creates a State debt, and that since there is no provision in the bill for the levy or collection of an annual tax to repay the debt created, it is our further opinion that the debt created is unconstitutional under the provisions of Article III, Section 34. Unfortunately, this constitutional defect may not be cured by subsequent legislation authorizing the collection of an annual tax since the annual tax must be levied in the same bill which creates the debt. In *Balenson v. Maryland Airport Authority*, 253 Md. 490 (1968) the Court of Appeals of Maryland held that a bill providing for the collection of a tax sufficient to repay a debt created by a separate bill did not cure the constitutional defect of the bill creating the debt, the latter making no provision for the collection of an annual tax. The Court said that "the tax must be provided for in the bill which authorizes the debt."

If you should be inclined to sign House Bill 363 into law regardless of the constitutional defect pointed out above we would suggest that the Comptroller and Treasurer be notified that no certificates are to be issued until new Section 27 of Article 19 is repealed and re-enacted with amendments to provide for the necessary annual tax. In our opinion the difficulty presented by the *Balenson*