

Processing Policy Board of which one non-voting member may be appointed by the Chief Judge of the Court of Appeals. Providing for appointment powers by a judicial officer raises two constitutional questions: (1) Does the bill contravene Article II, Sec. 10 of the Constitution which vests the appointment power in the Chief Executive? (2) Does it contravene the separation of powers mandated by Article 8 of the Maryland Declaration of Rights? Article II, Sec. 10 of the Constitution provides:

"[The Governor] ... shall nominate, and, by and with the advice and consent of the Senate, appoint all civil and military officers of the State, whose appointment, or election, is not otherwise herein provided for, unless a different mode of appointment be prescribed by the law creating the office."

In Davis v. State, 7 Md. 151 (1854), the Court construed a precursor of Article II, Sec. 10, and said:

"[W]e think the provision means, simply, that the Governor shall have the power to fill all offices in the State, whether created by the Constitution or by Act of Assembly, unless otherwise provided by the one or the other. When, therefore, the legislature has created an office by Act of Assembly, the legislature can designate by whom and in what manner the person who is to fill the office shall be appointed"

Id. at 161. In two later cases the Court applied the same rationale in upholding an act by which the Legislature, itself, appointed commissioners to the Board of Police, Baltimore v. State, 15 Md. 376 (1860); and (2) an act by which the Legislature authorized the Medical and Chirurgical Faculty of Maryland to appoint a board of medical examiners, Scholle v. State, 90 Md. 729 (1900). Thus, the appointments power which Section 10 vests in the Executive does not prohibit the General Assembly from enacting legislation providing for appointments by others.

However, that which is not prohibited by the appointments clause might be prohibited by the separation of powers mandated by Article 8. Indeed, the Court of Appeals has held that legislative enactments providing for appointment powers in a judicial office violate the doctrine of Separation of Powers when they impose upon the judiciary "non-judicial functions." In Beasley v. Ridout, 94 Md. 641 (1902), the Court struck down a 1902 law which imposed upon the judiciary the responsibility of appointing a board of visitors of the county jail. In ruling that judges cannot be compelled to perform services not of a judicial nature, the Court stated, "[n]o argument is needed to show that the duty thus sought to be imposed is not judicial, and that in