

purposes of Article III, Section 35 of the Maryland Constitution (56 Opinions of the Attorney General 329 (1971)). Even were we to conclude that Senate Bill 1096 were not unconstitutional in its entirety, the addition of a per diem allowance by Senate Bill 1096 for these supervisors constitutes an impermissible increase in compensation during their term of office which would be prohibited by Article III, Section 35. More importantly, however, because supervisors who are compensated for their services are officers of profit and because supervisor-members of the Soil Conservation Committee are also officers, Senate Bill 1096's addition of the per diem allowance makes supervisor-membership on the Committee a second office of profit in violation of Article 35 of the Declaration of Rights. Nor can these supervisors be considered as serving in an ex officio capacity on the Committee (and thus arguable considered holders of a single office of profit). Cf. 60 Opinions of the Attorney General 121 (1975), supra. While the President of the Maryland Association of Soil Conservation Districts serves ex officio on the Committee, this does not cure the conflict with Article 35 by virtue of his holding two offices of profit, viz: a supervisor and member of the Committee. Moreover, Section 8-201 does not establish true ex officio service with regard to the four supervisor members since the four are selected by the Secretary of the Department of Agriculture from among those recommended by the district supervisors of each area represented. See 61 Opinions of the Attorney General 152, 163 (1976) ("[T]he ex-officio position must arise directly from holding the first office."); see also State v. Williams, 132 S.E.2d 329, 332 (N.C. 1963) ("The authority of [the person] as a member of the Welfare Board did not result from the fact that he was a County Commissioner but from the fact that the Board of Commissioners had appointed him to serve as a member of the Welfare Board...."). Thus, since, under Section 8-201, a supervisor would not serve in a true ex officio capacity as a compensated member of the Soil Conservation Committee and the section requires the selection of a supervisor and, by Senate Bill 1096, requires his compensation in the second post, the situation would appear to be controlled by the case of Howard County Comm. v. Westphal, supra. In that case the Court of Appeals struck down as facially unconstitutional a law which directed a single County Commissioner selected by other commissioners to serve as a member of the County Metropolitan Commission with compensation. The Court held that service in the two posts violated Article 35's ban against holding two offices of profit. On the authority of the Westphal case, and because the compensation for the Committee provided by Senate Bill 1096 is not divisible among its members, we must conclude that the bill in its entirety is unconstitutional and thus we cannot approve it.

Very truly yours,  
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