

General Assembly to these positions. As a person holding an office of trust cannot serve as a legislator, as legislators are barred from serving in offices created during their term and as the separation of powers clause of the Constitution forbids persons to exercise the functions of more than one branch of government, we do not approve the bill.

The question of providing for the appointment of legislators to commissions in the Executive Branch was thoroughly considered in an Opinion issued in 1976 to Delegate Robertson concerning the appointment of legislators to the Washington Suburban Transit Commission. 61 Opinions of the Attorney General 152 (1976). In that Opinion, it was pointed out that Article 35 of the Declaration of Rights forbids a person to hold at the same time more than one office of profit created by the Constitution or laws of the state. In determining whether a position is an office, the courts have generally applied a five part test involving consideration of whether the position (1) is created by law and involves continuing and not occasional duties; (2) involves the performance of an important public duty; (3) involves an exercise of a portion of the state's sovereignty; (4) has a definite term for which a commission is issued, an oath is required and a bond is given; and (5) is one of dignity and importance. It has been recognized that the most important of these factors is whether the position involves an exercise of the state's sovereignty. For an office to be one of profit, the holder must be entitled to receive a fee, salary or other compensation.

In our 1976 Opinion, we noted that members of the General Assembly clearly hold offices of profit, and concluded that members of the Washington Suburban Transit Commission hold offices of profit. Accordingly, we determined that the appointment of legislators to that Commission would violate the ban in Article 35 of the Declaration of Rights on holding more than one office of profit. Moreover, as new positions were being created by the General Assembly for its members, no Senator or Delegate could, under Article III, Section 17, be appointed to those new positions on the Commission during the term in which they were created. Additionally, as Article III, Section 11 bars a person who holds an office of profit or trust from being a Senator or Delegate, we concluded that service on the Commission, being an office of trust, would bar service in the Legislature. Finally, we found that, as the Commission was an Executive agency, members of the Legislative Branch were precluded from serving as commissioners under the separation of powers clause of Article 8 of the Declaration of Rights which forbids persons exercising the functions of one Branch to exercise the functions of any other.

As established by Section 70C of Article 41, the Commission on Correctional Standards is an agency of the