Report

of the

Constitutional

Convention

Commission

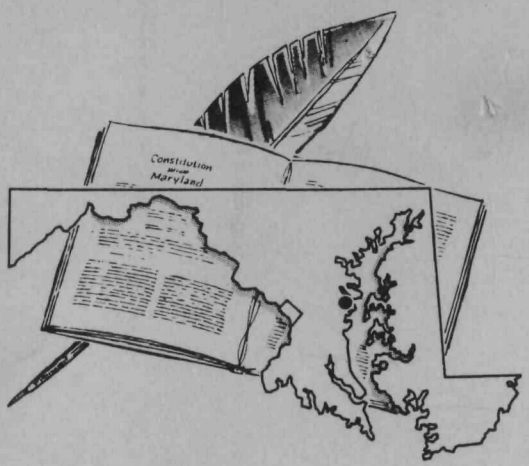
Maryland

1967

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HALL OF RECORDS
ANNAPOLIS, MARYLAND

REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION



MARYLAND-1967

Report

of the

Constitutional Convention Commission

to

HIS EXCELLENCY, SPIRO T. AGNEW

GOVERNOR OF MARYLAND

THE HONORABLE

THE GENERAL ASSEMBLY OF MARYLAND

THE DELEGATES

TO THE CONSTITUTIONAL CONVENTION OF MARYLAND

and to

THE PEOPLE OF MARYLAND

Maryland

August 25, 1967

First Printing:
8,000 Copies

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FOR THE CONSTITUTIONAL CONVENTION COMMISSION**

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State House
Annapolis, Maryland**

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AUGUST 25, 1967

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[4] Appointed July 12, 1966; resigned December 20, 1966 upon appointment as Associate Judge of the Circuit Court for Baltimore County.
[5] Appointed July 12, 1966.
[6] Resigned September 10, 1965 upon appointment as Associate Judge of the Court of Appeals of Maryland.
[7] Appointed September 17, 1965; resigned August 2, 1966 upon appointment as Associate Judge of the Circuit Court for Anne Arundel County.
[8] Appointed September 6, 1966.
[9] Resigned July 12, 1966 upon appointment as Associate Judge of the Supreme Bench of Baltimore City.
[10] Appointed July 12, 1966.

* * * * * *

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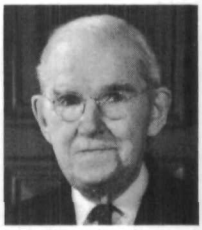
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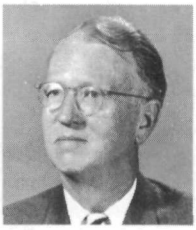
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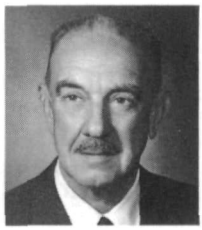
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J. MILLARD TAWES, *Governor,* 1959-1967.

PREFACE

The present Constitution of Maryland was adopted in 1867 and has been amended more than a hundred times. During my eight years as Governor, I found this document very restrictive to the successful operation of an efficient state government and entirely too clumsy and ineffective as a document of basic law. Moreover, many lawyers, judges, legislators and students of political science expressed to me the opinion that our Constitution was too lengthy and too detailed to serve satisfactorily as the basic law of our State.

In view of all this, I appointed a Constitutional Convention Commission on Wednesday, June 16, 1965, and instructed it "to conduct an inquiry into the necessity for, and extent and nature of any amendment, modification or revision of the Constitution of Maryland, with particular respect to whether a Constitutional Convention should be held, the procedures for calling such a convention, the basis for representation at the Convention and the procedures for the election of the delegates thereto."

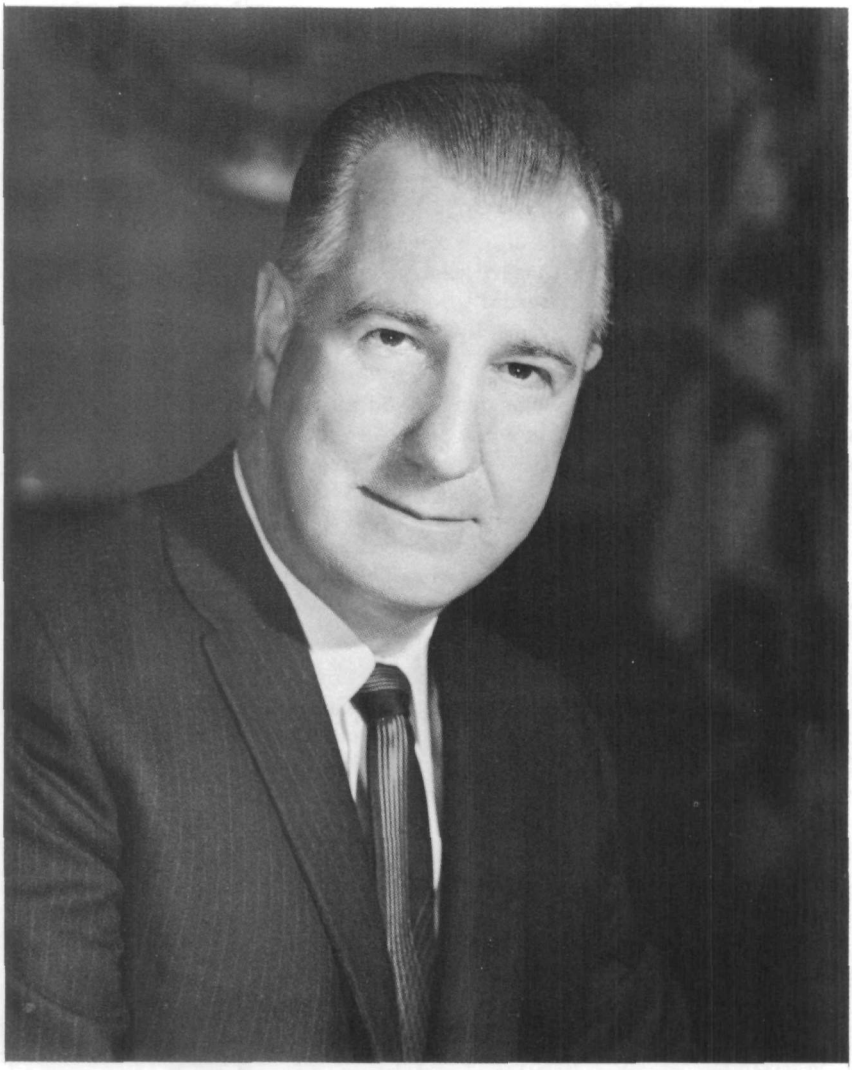
The General Assembly of 1966 enacted two bills, House Bill 44 and Senate Bill 594, which together provided that the sense of the people be taken on September 13, 1966, as to whether they desired a Constitutional Convention, and that in the event there was a favorable vote cast in that referendum for a Convention, then such a Convention would be convened on September 12, 1967. The vote on September 13 was overwhelming for the convening of a Convention. I was deeply pleased that the General Assembly approved a Constitutional Convention for 1967, subject to the September 13 referendum. I regard this act as one of the outstanding achievements of my administration.

With the publication of this report and the election of delegates to the Constitutional Convention, the work of the Constitutional Convention Commission comes to a most fruitful conclusion. I thank the Commission members who gave voluntarily of their time to study our state government and to formulate the Commission's recommendations. I thank both the staff and the Commission for the diligence with which they have proceeded with their work leading toward the convening of the Convention.

I know that the recommendations and research of this Commission will be helpful to the delegates to the Convention and will facilitate their early engagement in fruitful debate and decision-making. It is gratifying to me to see the Constitutional Convention become a reality under these circumstances.

J. MILLARD TAWES

Crisfield, Maryland
1967



SPIRO T. AGNEW, *Governor,* 1967-

FOREWORD

This year, the centennial of the present Constitution of Maryland, finds the people of the State commemorating an outdated and restrictive document. After 100 years of patchwork amendment, the governmental machinery has clearly become outmoded. To rectify this situation, a Constitutional Convention will assemble in Annapolis on September 12, 1967.

It is interesting to note that we are now on a schedule that parallels that of a century ago. The last Constitutional Convention assembled May 8, 1867, and produced a document that was ratified on September 18, 1867, and became effective October 5, 1867. Let us resolve, a century later, to replace the work of our predecessors with an instrument that will provide a viable government for today and still be flexible enough to serve future generations as well as our own, without the need for the extensive amendment that brought about the overwhelming public demand for this revision.

It is vital that we continue the spirit of bipartisanship in which the Convention legislation was conceived and enacted. Governor Tawes set the proper tone for this Convention on June 16, 1965, when he named an outstanding nonpartisan commission of citizens to study the need for the Convention and to prepare necessary recommendations. This Commission has given unstintingly of its time and talents and I thank its members on behalf of the people of Maryland.

It is regretted by all of us that former Governor William Preston Lane, Jr., who was honorary chairman of the Commission and who was so vitally interested in this project, could not have lived to see it accomplished.

We are participating this year in a significant moment in Maryland's history. The Convention will open new windows to the future. We will have at the Convention as delegates a splendid array of intelligence, wisdom and experience, and with this as a foundation there is every reason for us to feel optimistic about the chances of success. In addition, this report of the Constitutional Convention Commission will provide a beginning point for the delegates to the Convention and will also prove to be a very useful and informative study document for them.

It is my hope that the people of Maryland will give those who serve in the Convention their cooperation and encouragement to fashion a body of law that will serve the best interests of Marylanders of our generation and of many generations to come.

SPIRO T. AGNEW,
Governor

Annapolis, Maryland
1967

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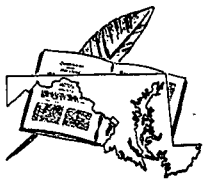
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[1] Resigned September 12, 1966 upon appointment as United States District Judge.



STATE OF MARYLAND
CONSTITUTIONAL CONVENTION COMMISSION
700 MERCANTILE TRUST BUILDING BALTIMORE, MARYLAND 21202
Area Code 301 752-4951

August 25, 1967.

To His Excellency, Spiro T. Agnew, *Governor of Maryland:*
To The Honorable, The General Assembly of Maryland:
To The Delegates to the Constitutional Convention of Maryland:
To The People of Maryland:

The Constitutional Convention Commission of Maryland submits herewith its final report.

On June 16, 1965, Governor J. Millard Tawes established this Commission by executive order and appointed twenty-seven citizens of Maryland to its membership. The Governor charged the Commission with the responsibility for studying the present Constitution to ascertain if modification or revision was necessary, whether a constitutional convention should be held, and to prepare specific recommendations with respect to such revision and the holding of a constitutional convention.

After its initial review of the present Constitution, the Commission advised Governor Tawes in September, 1965, that in its opinion a complete revision of the Constitution was urgently desirable and necessary and that this should be accomplished through the convening of a constitutional convention composed of elected delegates representing every part of the State.

At the request of Governor Tawes, the Commission drafted and submitted to the 1966 session of the General Assembly legislation calling for the taking of "the sense of the people" as to whether there should be a constitutional convention. This legislation, Chapter 501 of the Acts of 1966, and complementing legislation which called for a constitutional convention to convene September 12, 1967, Chapter 500 of the Acts of 1966, were enacted by the General Assembly and were signed into law by Governor Tawes.

In the referendum to take "the sense of the people" held on September 13, 1966, the electorate voted 160,280 to 31,680 for the convening of a convention. Upon this overwhelming endorsement of the call of the convention, the Commission drafted a detailed Convention Enabling Act for introduction in the 1967 session of the General Assembly. This Enabling Act, with some modification, was enacted by the General Assembly on March 20, 1967, and signed into law by Governor Spiro T. Agnew on March 24, 1967. This Enabling Act prescribed the procedures by which 142 delegates were to be elected to the Convention on June 13, 1967, and specified their qualifications. It also prescribed some of the procedures to be followed by the convention.

In the two years since its appointment, the Commission and its Committees have conducted numerous hearings, pursued many studies and held many meetings, all of which have been public. During the course of these hearings and meetings, the Commission has prepared specific proposals for the consideration of the Constitutional Convention which have been embodied in a draft constitution. These specific proposals and recommendations were announced publicly by the Commission and discussed publicly in the press and other news media between October, 1965, when the first committee report was published and December, 1966, when the last formal meeting of the Commission to consider its recommendations was held.

Under date of May 26, 1967, the Commission published its Interim Report which contained the complete text of the draft constitution and the complete text of the commentary on the draft constitution. These two parts of the Interim Report constitute Chapters III and IV of this final report.

The Commission's Interim Report was widely publicized in the press. Major newspapers in Baltimore and Washington published special sections in their editions of Sunday, May 28, 1967, reprinting the complete text of the draft constitution and substantial parts of the commentary. The daily editions of these newspapers continued to publish articles and comments on the Interim Report during the ensuing several weeks.

The report itself was also widely distributed. Five thousand copies were printed, and in addition to a copy being sent to each member of the legislature and to each of the more than 700 candidates seeking election as delegates to the Constitutional Convention, copies of the Interim Report were sent to state officials, public libraries and numerious interested individuals and organizations both within and without the State of Maryland.

This report will constitute the first of four volumes which the Commission will publish. In this volume the Commission outlines its objectives, methods of procedure and basic guiding principles; summarizes its principal recommendations; narrates briefly the history of Maryland's prior constitutions and constitutional conventions; sets forth its draft constitution and the accompanying commentary; compares the draft constitution with the present Constitution; presents a draft of recommended rules for the convention; and, in an appendix reprints a collection of documents relevant to the calling of the 1967 Constitutional Convention. The contents of the three additional volumes which the Commission will publish are described in Chapter I. These additional volumes will be published as soon as the printing can be completed.

Respectfully submitted,

The Constitutional Convention Commission

H. Vernon Eney
Chairman

ACKNOWLEDGMENTS

The work of the Constitutional Convention Commission has had many facets, of which the publication of the Commission's final report is one. The Commission wishes to take this opportunity to thank those who have contributed to the program of the Commission during the past two years. Although it is not possible to recognize every contribution, the Commission thanks the following for their valuable assistance:

Secretarial and administrative assistance: Mrs. Joseph D. Wiegand, whose patience, thoroughness and encouragement were especially appreciated.

Associated secretarial assistance: Mrs. Edward L. Looker, Jr., whose secretarial support throughout the life of the Commission was invaluable.

Secretarial assistance: Mrs. Henry S. Sullivan, Mrs. William J. Thompson, Grace Kachadourian, Mrs. Martha Jo Taylor, Mrs. Roberta Ray Harden, Joyce E. Coleman and Mrs. Michael S. Gotkin.

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Composition analysts: Rosalind N. Conn, David K. E. Wilborn, Mrs. Earl T. Wilborn, Clyde C. Hall, and J. Fred Motz, whose aid in editing and proofreading was exceptional.

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I

General Introduction

FORMATION OF THE COMMISSION

In an extensive formal opinion dated February 9, 1965,[1] the Honorable Thomas B. Finan, the then Attorney General of Maryland, advised Governor J. Millard Tawes that the General Assembly possessed inherent power to call a constitutional convention and could exercise that power prior to 1970, the time prescribed by Article XIV, Section 2 of the present Constitution for the taking of a vote on the question of calling a constitutional convention. The Attorney General said that the General Assembly's power was of sufficient breadth to allow the General Assembly to call a constitutional convention and provide for the election of delegates thereto before taking the sense of the poeple as to whether such a convention should be held, but further stated that the General Assembly could choose to take the sense of the people before calling the convention or could provide for taking the sense of the people and the election of delegates at the same election. Upon receiving this opinion, Governor Tawes recommended to the 1965 session of the General Assembly that it provide for a commission to study the present Constitution, make recommendations for changes therein and prepare for a constitutional convention.

In accordance with the Governor's recommendation a joint resolution creating a Constitutional Convention Commission to accomplish these enumerated purposes was introduced in the General Assembly. However, although this resolution was passed by the House of Delegates it was never reported out of committee in the Senate.[2] Nevertheless, on June 16, 1965, Governor Tawes announced that he had appointed a Constitutional Convention Commission of twenty-seven members.

On July 1, 1965, the Governor designated the Honorable William Preston Lane, Jr., as Honorary Chairman and H. Vernon Eney, Esquire, as Chairman of the Commission. The Commission held its first meeting in the Governor's office in the State Office Building in Baltimore on July 21, 1965. At this meeting the Commission determined to hold a regularly scheduled meeting on the third Monday of each month throughout the remainder of 1965 and all of 1966. Subsequently, this plan was somewhat modified, and the full Commission actually held a total of twenty-

[1] See Appendix, page 443.

[2] See Appendix, page 441.

five meetings, three of which were two-day sessions and two of which were of three days' duration. In addition, the various committees of the Commission held an aggregate total of 143 meetings.[3]

THE OBJECTIVES OF THE COMMISSION

In a statement accompanying the original appointments to the Constitutional Convention Commission, Governor Tawes defined with some particularity the intended scope of the Commission's task by instructing the Commission "to conduct an inquiry into the necessity for, and extent and nature of, any amendment, modification or revisions of the Constitution of Maryland, with particular respect to whether a constitutional convention should be held, the procedures for calling such a convention, the basis for representation at the convention and the procedures for the election of Delegates thereto." The Commission was further requested "to review the most successful governmental practices in the other states of the Union and to study the most modern examples of State governmental machinery," and was directed to "submit its findings, recommendations and specific proposals regarding amendment, modification or revision of the Constitution and the holding of a constitutional convention" to the Governor and to the General Assembly prior to its 1967 session.[4]

Throughout the more than two years of its existence, the function of the Constitutional Convention Commission remained that which was assigned to it by Governor Tawes at the time of its creation: to prepare for a constitutional convention. The Commission was not itself a constitutional convention, nor was it the Commission's purpose to promulgate a constitution to be submitted to the citizens of Maryland for ratification or rejection.

On the other hand, despite the purely preparatory nature of its task, the Commission recognized that the matter with which it had been entrusted was of great public concern, and accordingly the Commission endeavored to involve the public in its work to the greatest possible extent. Thus the Commission strived to provoke public debate of proposals which were presented to it and to encourage continued public discussion of the questions posed by constitutional revision through the newspapers, radio, television, and all other forms of news media. Moreover, the Commission determined at the outset of its work that all the sessions of the Commission and its various committees should be public, and, except for holding one twenty-minute meeting to discuss personnel, the Commission strictly adhered to this principle.

Because Maryland had never before had a commission whose function was solely preparatory, the Commission had no Maryland precedents to guide it in the performance of its duties. However, in recent years certain other states holding constitutional conventions have prepared for such conventions either by means of preparatory commissions or independent study groups which have served a similar function, and the Commission was able to draw on the experience of these states in devising its own procedures. On the other hand, the Commission found no instance in which

[3] See Appendix, page 422.
[4] See Appendix, page 419.

a constitutional convention preparatory commission had been utilized in precisely the manner which the Commission concluded would be best adapted to the problems confronting the State of Maryland in preparing for a constitutional convention. Furthermore, the Commission felt that it was under an obligation to organize its proceedings in a way which assured that the Commission was acting in accord with the specific instructions which had been given to it by Governor Tawes.[5]

At its first meeting the Commission considered carefully its instruction from the Governor "to conduct an inquiry into the necessity for, and extent and nature of, any amendment, modification or revisions of the Constitution of Maryland, with particular respect to whether a constitutional convention should be held." After discussing at length the question of whether the present Constitution of Maryland was in need of substantial revision, the Commission adopted a resolution declaring that the present Constitution was in urgent need of complete revision.

The Commission then directed its Chairman to appoint a committee of members to consider whether the necessary revision could best be accomplished by amendment pursuant to legislative proposal, by the convocation of a constitutional convention or by some other method. This *ad hoc* committee reported at the next meeting of the Commission that it believed that the changes which were needed in the present Maryland Constitution were so extensive that they could be properly effected only by a constitutional convention, and that such a convention should be convened just as soon as necessary preparations therefor could be completed. This recommendation was unanimously adopted by the full Commission and promptly reported to the governor.[6]

[5] Six states have adopted new constitutions since the Second World War: Missouri (1945), Georgia (1945), New Jersey (1947), Hawaii (1950), Alaska (1956) and Michigan (1963). Connecticut, although retaining her old constitution, substantially revised it in 1965. All seven of these documents were drafted by unlimited conventions, and all of the conventions were preceded by some form of preparatory research. This research was conducted by a variety of groups —official commissions, university researchers and *ad hoc* groups without official sanction —in the various states. However, few groups have attempted to prepare a complete draft constitution as this Commission has done. Preparatory research also preceded limited conventions held only for the purpose of proposing amendments in Tennessee in 1953, 1959 and 1965, and a convention held in New Hampshire in 1964, which although not restricted by law, itself limited its function. However, earlier New Hampshire conventions, held in 1956 and 1959, which also limited themselves to proposing amendments, did not have the benefit of the work of a preparatory group. Similarly, limited conventions not preceded by preparatory research groups were held in New Jersey (1947 and 1966), Rhode Island (1951, 1955 and 1958) and Virginia (1956).

[6] At its first meeting on July 21, 1965, the Commission unanimously adopted the following resolution:

> "Resolved, that it is the sense of the Commission that a complete revision of the Constitution of Maryland is urgently desirable and necessary."

At its second meeting on August 9, 1965, the Commission unanimously adopted the following resolution:

> "Resolved, that the July 30, 1965 report of the special committee to make recommendations to the Commission with respect to the necessity for or desirability of holding a Constitutional Convention be approved and be it further resolved that it is the opinion of this Commission that the complete revision of the Constitution of Maryland, which this Commission has heretofore de-

In the light of this recommendation it became necessary for the Commission to interpret its remaining instructions from the governor. These instructions explicitly directed the Commission to prepare for a constitutional convention by conducting thorough studies of the present Constitution, the constitutions of other states and constitutional revision in progress or contemplated by other states. To carry out this program effectively the Commission was organized into various committees which focused on the specific aspects of state government relevant to constitutional revision. In the course of its work each of these committees supplemented the studies referred to above by conducting hearings at which the views of knowledgeable persons experienced in state government were solicited.

The Commission believed that the instructions given to it by the governor also necessarily required it to prepare a draft constitution, and, upon inquiry, Governor Tawes confirmed that such was indeed his intention in directing the Commission to submit specific proposals for revision of the Constitution. In complying with this instruction the Commission recognized the delicacy of its position, and thought that in the light of its preparatory function it should prepare alternate drafts of constitutional provisions on matters as to which there was a substantial divergence of views or debate. Moreover, the Commission further believed that it should support the provisions of its recommended draft by fully documented historical, legal and factual research, the fruits of which would be included in its final report. At the same time the Commission realized that there was very limited time, personnel and money available to carry on this research. Within these limitations of time, personnel and money the Commission organized its work and conducted its proceedings in the manner outlined in this chapter of its report.

ORGANIZATION OF COMMISSION AND STAFF

The Commission initially determined that although it did not need an elaborate set of officers, one of its members should be designated as Secretary. Thereupon, Robert J. Martineau, Esquire, was unanimously elected as Secretary. The next task was to obtain the services of a person who could act as full-time Executive Director for the Commission. This function was delegated to the Chairman of the Commission, and he succeeded in obtaining the very valuable services of John C. Brooks, Esquire, who was elected Executive Director of the Commission on November 15, 1965, and continued to serve in that capacity throughout the existence of the Commission. The only other full-time personnel of the Commission were several secretaries until November 14, 1966, when Kalman R. Hettleman, Esquire, was employed as Assistant to the Executive Director.

As noted above, the Commission originally had twenty-seven members. From time to time various members of the Commission resigned upon their appointment to other official positions, and their successors were appointed by the Governor. However, no successor was appointed in the place of the Honorable Walter R. Haile after his resignation upon his appointment as Associate Judge of the Third Judicial Circuit of Maryland, because this

scribed to be urgently desirable and necessary, can best be accomplished by means of a constitutional convention."

occurred when the Commission's work was nearing an end.

The Honorable William Preston Lane, Jr., former Governor of Maryland, was appointed as Honorary Chairman of the Commission but he was in fact, from the very beginning, a working member of the Commission who attended every Commission meeting and participated fully in the discussions. His valuable suggestions, sage advice and calm and deliberate manner earned him the full respect and devotion of every member of the Commission. His sudden and untimely death on February 7, 1967, deprived the Commission of its most revered member and the State of Maryland of one of its foremost citizens. The Commission regrets deeply that Governor Lane did not live to see this report in its final published form because he did so much to make it possible. The Chairman of the Commission in addition desires to note here his deep sense of personal loss upon the death of Governor Lane. Until a few days before his death Governor Lane was in frequent consultation with the Chairman and the advice, support, encouragement and wise counsel which he gave were beyond measure.

Because no successor was appointed for Judge Haile and because of Governor Lane's death, there were twenty-five members of the Commission when it completed its work.

The total membership of the Commission was divided into ten committees: a Committee on Convention Procedures, a Coordinating Committee, a Committee on Style, and seven other committees, each of which was charged with the responsibility of studying with particularity specific areas of state government and the provisions of the present Constitution affecting them. These latter committees were concerned with Elective Franchise and Declaration of Rights, the Executive Department, the Legislative Department, the Judicial Department, Political Subdivisions and Local Legislation, State Finance and Taxation, and Miscellaneous Provisions. Inevitably, there was an overlap in the work of some of these committees on particular matters, but this did not prove to be an insuperable problem.

The principal task of directing the efforts of each committee was the responsibility of its chairman, but he and the committee were assisted in their work by a part-time staff member designated as a "reporter". The reporters were all lawyers, two of whom were professors at the University of Maryland School of Law and the rest of whom were engaged in active practice. The reporters were not expected to devote full time to the work nor to do all the research necessary to be done for each committee. Rather, they were to carry the burden of preparing drafts for the consideration of each committee, preparing minutes of the committee meetings and preparing the reports of the committee for the full Commission.

The reporters were not paid a salary or a per diem, but at the conclusion of the work, each was paid a fee, the amount of which was certainly not commensurate with the time spent and was more in the nature of an honorarium.

The Commission recruited on a purely volunteer basis a group of young lawyers and senior law students who, without any compensation at all, agreed to undertake specific research projects for various committees and prepare for the consideration of the committee a brief report or monograph on the results of

their research. These research assistants worked under the supervision of the reporters and the Executive Director and did an exceptional job. Unfortunately, there were never enough of them.

The Commission was also able to employ on a full-time but temporary basis six senior law students who worked on various research projects for the Commission during several months of the summer of 1966. These research assistants were compensated from funds made available to the Commission by a grant under Title I of the Federal Higher Education Act of 1965. Since the summer of 1966, the Commission has been able to employ a few law students who have been working on research projects on a part-time but compensated basis.

The Commission was fortunate in being able to add to this staff another distinguished group of persons, designated as consultants. This group was composed principally of political scientists who agreed to be available for consultation on an informal and unpaid basis to the Commission, its committees and its staff on specific problems which arose from time to time. In addition, the consultants were sent a copy of the Commission's recommendations, and their criticisms, comments and suggestions were solicited. The advice and assistance of the consultants has been most helpful to the Commission, but this does not mean that the Commission's recommendations reflect the views or opinions of all or any of the consultants. This report is the full responsibility of the Commission only.

DRAFTING PRINCIPLES

The Commission at the very beginning of its work requested its Committee on Style to submit for the consideration of the Commission recommendations as to the basic principles of form and style to be followed in preparing a draft constitution. This was done and the Commission, in discussing and approving the preliminary report of the Committee on Style, affirmed its belief in the desirability of adhering as far as possible to certain basic principles in preparing a draft constitution. These may be briefly summarized as follows:

1. To the greatest possible extent the language used should be terse, plain and simple, so that its meaning would be easily understood by an informed citizen of average intelligence and literacy.

2. The organization of the draft should be simple and clear and the arrangement logical.

3. The constitution should provide only for the structure of government and should provide no more detail than absolutely necessary.

4. The language should be plain and direct and, where necessary, mandatory and not merely exhortatory.

5. The style and language should be in accord with modern usage and, where change in language was thought desirable to accomplish this purpose even though no change in substance was intended, the change should be made.

6. Where through court decisions language has obtained a special and well-understood constitutional meaning, it should be retained, if possible, where no change in substance is intended; but archaic, obsolete or outmoded language should not be retained merely because its meaning has been the subject of court

decisions, and "words of art," the precise meaning of which is known only to those skilled in the art, should be avoided.

7. The constitution should be divided into articles and sections and, if possible, a numbering system adopted which would facilitate the incorporation in the proper place of any future amendments.

8. The Declaration of Rights should be a part of the constitution and not a separate document.

METHODS AND PROCEDURES OF THE COMMISSION

CONSIDERATION OF BASIC PRINCIPLES

Because the Commission felt that a rigid preconception about the proper nature of state government would preclude the deepening of its insight and hinder effective study, the Commission did not attempt at the outset of its work to formulate a basic philosophy to guide its committees in their work. Rather, the Commission set upon its task with the purpose of soliciting the views of other informed citizens of Maryland through the hearings which it conducted and of examining the thinking of Maryland and non-Maryland scholars through the research in which it engaged. Thus the philosophical strains which are discernible in the draft constitution recommended by the Commission emerged through the Commission's exposure to a wide spectrum of competing ideas.

Although the Commission did not discuss and adopt a philosophy to be incorporated into a draft constitution, the Commission did, at an early meeting, instruct its committees to submit for consideration by the full Commission recommendations as to basic principles to be followed in preparing the various articles of a draft constitution. This procedure was necessary to prevent a wasteful nullification of careful drafting which would result from the Commission's disapproval of the premises from which the draftsman had proceeded. Consequently, before preparing any draft provision, each committee conducted research and hearings with respect to the particular parts of the constitution which had been assigned to it for study, and then presented to the Commission statements of those basic principles which necessarily required resolution before the actual drafting could begin.

Thus, for instance, the Committee on Convention Procedures presented the questions as to the optimum size of a constitutional convention and as to whether delegates thereto should be elected or appointed. The Committee on Elective Franchise and Declaration of Rights presented the question of whether the Declaration of Rights should contain statements of principles which, although they might provide guidance for the agencies of state government, would be impossible of actual enforcement, or whether the Declaration of Rights should be limited to a statement of rights which would be capable of protection by the judicial process. This Committee also presented the question of whether the Declaration of Rights should deal in any way with the rights and duties of person against person as contrasted with the traditional concept of rights reserved by the people against acts of the government.

The Committee on the Executive Department presented the questions of whether there should be a limit on the number of terms the governor may serve, of whether there should be a lieutenant

governor and of whether the article on the executive branch should give the governor greater powers than he has under the present Constitution. The Committee on the Legislative Department presented such questions as whether the legislature should be a unicameral or a bicameral body, whether the referendum should be retained and whether the initiative and recall should be adopted. The Committee on the Judiciary Department presented the questions of whether there should be a unified state system of courts and, if so, whether it should be a three-tier or a four-tier structure, and which of several methods of judicial selection and tenure should be recommended.

The Committee on Political Subdivisions and Local Legislation presented the questions of what political subdivision should be used as the principal vehicle of local government and whether home rule for all counties should be made mandatory. The Committee on State Finance and Taxation presented the question of whether Maryland should retain the executive budget, and the Committee on Miscellaneous Provisions presented a number of policy questions with respect to education and jury trials.

Inevitably, through the process of considering, debating and deciding these fundamental questions which were presented to the Commission by its various committees, a basic philosophy for a constitution gradually emerged within the Commission. The Commission continued to decline to articulate this philosophy—as it had at the outset—and, indeed, even during these later phases of the Commission's proceedings, the conscious formulation of a philosophy might have had a stultifying effect upon the Commission's work. Nevertheless, the philosophy which evolved is very real, and is apparent in the draft constitution which the Commission has prepared. Viewing it in retrospect, it is a philosophy which the Commission believes the majority of the citizens of Maryland share, and want as the foundation of a constitution to be drafted by the Constitutional Convention.

The philosophy which evolved during the Commission's work differs greatly from that which was manifested in the previous constitutions of Maryland. Maryland's early constitutions were drafted in times either of outright revolution or of great social tension which approached revolution. They were adopted by people who either had experienced despotic government or were so close to it in point of time that recollections of an absolute government were an integral part of their education and upbringing. These factors inevitably caused the draftsmen of the constitution to put strict checks upon the power of the government, especially the executive branch. The relative newness of the concept of popular government and the high degree of illiteracy among the great mass of the people had a similar impact, because it was felt, by reason of these considerations, that popular election could not itself assure that the government would remain responsive to the people.

A fear of arbitrary and despotic governmental action is even more clearly reflected in the present Constitution. Until only a few years before its adoption, the people of Maryland had lived through a period when the State was a battleground for the armies of the Union and of the Confederacy, when the guns of federal troops were aimed at the heart of its metropolis, when judges were

forcibly removed from their courts and imprisoned for months by the military without indictments or even charges being brought against them, when the privilege of the writ of habeas corpus was suspended, and when soldiers were stationed at the polls and interfered with the free exercise of the elective franchise. Thus the Constitution of 1867 was born and nurtured against the background of despotic government and in fear of arbitrary governmental action. The people who adopted it were determined that their government should never have the power to commit the excesses to which they had been subjected during the preceding few years. Therefore, they included in the Constitution numerous detailed provisions designed to limit the powers of government and restrict the activities of each of the branches thereof.

These conditions which gave birth to the Constitution of 1867 simply no longer exist today. The most immediate threat to the welfare of the citizens of Maryland in the present age arises not from excessive power in their state government, but from a lack of power which prevents their state government from acting effectively. The hundred years which have intervened since the Civil War have seen the growth of circumstances which could not even have been contemplated at the time the present Constitution was adopted. Immigration followed by an unprecedented birth rate and constantly declining death rate has resulted in a population density and created problems which government—and only government—can solve. Thus, it is to the government that the people must turn for protection against pollution of the air, for highways and transportation services, for the preservation and development of water resources, for sewer systems and garbage collection services, for recreational and educational facilities, and even for cultural benefits.

The Commission believes that it must be recognized that in this context oppression can result as much from governmental inaction, as it can from governmental action. Therefore, it is the recommendation of the Commission that the constitution should, rather than place severe restrictions upon governmental power, grant that plenary power to the state government which is necessary for that government to perform the functions demanded of it. In making this recommendation, the Commission is not suggesting that an all-powerful government be created upon which the people rely completely for their welfare and to which they abdicate their responsibilities. On the contrary, the Commission believes that it is only by the creation of a strong state government that the people will retain the opportunity to shape their own destinies in the way which they see fit; for it has been the default of state governments in recent decades that has caused a void into which the federal government has stepped, and it is this which has most diminished individual responsibility. The Commission believes that this is an undesirable trend and, in accordance with its belief that the people should have the responsibility of solving their own problems, the Commission recommends that within the state system itself, the state government should be concerned only with state problems, and the units of local government should be given the power to solve local problems.

Of course, the Commission further recognizes that the citizens of Maryland will not tolerate arbitrary and despotic governmental action in 1967 any more than they were willing to do so in 1867, and that they are justified in expecting

their constitution to safeguard them from it. Therefore, the Commission believes that the constitution should contain a declaration of rights which states those fundamental and inalienable rights which the people desire to hold inviolable from governmental interference. Moreover, the Commission believes that checks and balances between the executive, legislative and judicial branches is a necessary protection against tyranny, and is essential to good government. On the other hand, the Commission also believes that except for the restrictions inherent in the tripartite system, the constitution should provide a minimum of other restrictive provisions within each branch of the government. For in this age when it is absolutely necessary that the government remain responsive to the needs of the people, the surest protection against oppressive government is a fair elective process which permits all the people to share in the operation of government through their chosen representatives.

In short, the Commission believes that the people of Maryland desire a constitution which will confer upon the three great coordinate branches of our state government and upon our local governments the full sovereign power of the State, subject only to those restrictions necessary to protect the individual citizen from an arbitrary, capricious and unequal exercise of that power. In the Commission's view it is only this type of state government which can solve the many problems of today, which, though they now seem overwhelming, are nevertheless only in embryonic stage. The basic concept and purpose of the draft constitution recommended by the Commission is to create a state government which will remain viable in a changing world.

THE DRAFTING PROCESS

Following the decisions by the Commission on the various proposals submitted for its consideration by the several committees, the committees—while continuing to hold hearings—began to prepare various proposals for a draft constitution. These proposals were made public, and the Commission invited discussion of them at the committee hearings and in the various news media. The Commission itself examined the preliminary drafts at its regular monthly meetings, and referred them back to the respective committees for further study and consideration.

It became apparent that the proposals prepared by the committees would provoke considerable discussion and debate, and would require intensive consideration by the full Commission. Accordingly, beginning in July, 1966, the Commission held a series of meetings devoted to full discussion and debate of these draft proposals. In order to facilitate the kind of intense consideration which was deemed necessary, these meetings were made two and three day continuous sessions, at which the members of the Commission and its staff would stay together at one place overnight for the duration of the meeting. Moreover, these sessions were believed to be of sufficient importance to warrant the making of arrangements to report them stenographically. As a result, nearly 5,000 pages of transcript of the Commission debates on the draft constitution have been accumulated.

In the course of its debates, the Commission voted on every provision included in the draft constitution. No attempt was made to secure unanimity of action by the Commission through the voting process, and in many instances the Commission was divided in

opinion. In fact, on numerous occasions the division was very close, and in some cases only a one-vote margin separated the majority and minority positions. In accordance with its original plan, in these situations where the division was close, the Commission adopted the practice of preparing alternative provisions. The Commission also followed this practice in situations where, although not itself seriously divided, the Commission felt that there was a clear divergence of opinion among interested persons.

Of course, it must be recognized that, although the Commission attempted to reflect all substantial differences in opinion in the various alternative drafts which it prepared, a certain degree of negotiation was inevitably involved in the process of drafting the provisions. Consequently, the draft constitution contained in Chapter III of this report is, in the final analysis, the work of the Commission as a body, and in all probability there is no individual member of the Commission who endorses every detail of the draft constitution as fully representative of his views. However, every effort has been made to reflect the views and opinions of each member of the Commission, at least in general, in the commentary to the draft constitution included in Chapter IV of this report.

STYLISTIC REVISION OF THE DRAFT CONSTITUTION

At the conclusion of this series of debates, held during the last six months of 1966, the Commission had adopted a draft constitution. However, although efforts had been made in the preparation of the draft provisions to have each committee follow the basic guidelines laid down by the Committee on Style, there were inevitably variations in form, language and style in the different articles of the constitution adopted by the Commission. Thus, the draft constitution was not yet in a publishable form in December, 1966. On the contrary, careful editing and revision by the Committee on Style and by the full Commission were still required before the draft constitution could be published as an integrated document.

Before the Committee on Style began its deliberations, the Chairman and Executive Director of the Commission made an intensive section-by-section, word-by-word review of the draft constitution which had been tentatively adopted by the Commission. This work was laborious and time-consuming, and consequently the task of the Committee on Style was necessarily delayed. Moreover, because it was imperative that the Commission's Report on the Convention Enabling Acts be published prior to the convening of the General Assembly on January 18, 1967, the Commission's staff could not immediately focus its attention upon editing the draft constitution at the time of its tentative adoption. Still further delays resulted from the fact that the Chairman and the Executive Director of the Commission worked very closely with the leadership of the two houses of the General Assembly and with the committees of each house considering the convention enabling acts, and were therefore obliged for a period of many weeks to be in almost daily attendance at sessions of the General Assembly and committees thereof.

After the staff completed its preliminary review of the draft constitution, it prepared and circulated to the entire membership of the Commission a marked copy of the draft constitution indicating suggested stylistic changes, additions and deletions. The Committee on Style then began an intensive study of this draft,

and the members and reporters of the various committees were requested to and did submit to the Committee on Style their own separate comments and suggestions. The Committee on Style thereafter prepared three successive revised drafts, each of which was circulated to the full membership of the Commission, and finally a meeting of the full Commission was held to consider the recommendations of the Committee on Style. Some revisions developed problems as to which further studies were deemed necessary. Thus it was not until March 20, 1967, that the last revision in the draft constitution was tentatively approved by the full Commission, and not until the end of April that a complete clean copy of the draft constitution recommended by the Commission was available for final consideration by the Commission's reporters, members and consultants.

It is obvious that what is not contained in the draft constitution is in some instances of at least equal importance to that which is contained in the document. However, it is equally obvious that the absence of a specific provision might be subject to several different interpretations. For example, the draft constitution provides for only two statewide elective executive officers, the governor and lieutenant governor. No reference whatsoever is made to numerous other state officers presently elected by the people, such as the attorney general, the comptroller, state's attorneys, registers of wills and sheriffs. The absence of any provisions regarding these officers might be said to manifest the Commission's intent that they no longer be elected by popular vote. However, this was not the Commission's actual intent. Rather, the Commission believed that the manner in which these officers are selected should be determined by the General Assembly in the exercise of its plenary legislative power, instead of being rigidly prescribed in the constitution.

In order to make the Commission's intent clear in such situations where silence itself is ambiguous, the commentary of the Commission on the draft constitution was equally as important as the draft constitution itself. Indeed, it seemed apparent that publication of the draft constitution without the commentary might only serve to create confusion and misunderstanding as to the recommendations of the Commission. Therefore, although all of the Commission's recommendations were public as early as December, 1966, no attempt was made to publish the draft constitution as an entire document until the commentary was completed and could be published with it.

PUBLIC INFORMATION

As is pointed out above, the Commission endeavored to the extent possible to involve the public in all phases of its work and strove to foster public debate of constitutional revision generally and of the various proposals which were being considered by the Commission.

In addition to its meetings, which were public, and the regular publication of its committee reports, the Commission also sought public discussion by directly informing the public of constitutional issues. To aid in accomplishing this purpose, the Commission joined with the School of Law of the University of Maryland and the University of Maryland Cooperative Extension Service in securing a grant of $63,650.60 under Title I of the United States Higher Education Act of 1965. This

grant was matched by services and facilities supplied by the three participating agencies.

The program made possible by the grant was coordinated by Dr. J. Paxton Marshall, Assistant Director of the Cooperative Extension Service of the University of Maryland, and consisted of the following activities.

A series of community educational seminars was held between August 19, 1966, and August 29, 1966, to discuss community problems to which various provisions of the constitution are addressed and to define ways in which these problems would be affected by proposed constitutional revision. Eighteen sessions were held. A statewide session held in Towson, Baltimore County, opened the series. Thereafter, sessions were held in cities from Cumberland in Allegany County, to Benedict in Charles County, and Salisbury in Wicomico County. Seven hundred forty persons participated in these seminars.

Between August, 1966, and August, 1967, ten flyers on the substantive issues of constitutional revision, the election of delegates and the organization of the Constitutional Convention were published. In all, 934,000 copies of the flyers were mailed to random lists of citizens across the State. These flyers are reproduced in the appendix.[7]

Two seminars for candidates for delegate to the Constitutional Convention were held on May 4 and May 5, 1967. These were attended by 550 candidates. The faculty for these seminars, as well as for the educational seminars, were largely consultants and reporters to the Commission.

Another major area of activity was the production of four visual programs, each consisting of from sixty to eighty picture slides, and one 30-minute motion picture film in color. The first slide program, entitled *Our Maryland Constitution: The General Background on the Need for Revision,* was produced in August, 1966. A dozen copies of this slide program were distributed throughout the State for use by civic, religious and educational institutions and organizations. The second slide program, entitled *Our Maryland Constitution: A General Review of Proposed Revision,* was produced in August, 1967, for use until the close of the Constitutional Convention. Two additional slide programs, entitled *Our Maryland Constitution: The Judicial Branch,* and *Our Maryland Constitution: Issues on Local Government,* will be completed in September, 1967, for similar distribution throughout the State.

The motion picture entitled *The Mighty Oak of Maryland: A story of Constitutional Change* was produced by Monumental Films and Recordings, Inc., for use both on television and by civic, educational and religious institutions and organizations between September 1, 1967, and May 14, 1968. Twelve copies of this film were produced for use directly in this public information program. Additional copies were purchased by educational institutions for their own use.

Public education on constitutional issues is exceedingly difficult but of great importance to the success of a constitutional convention. The Commission did not have the means or the staff to carry out a really adequate public information program but it believes the program which it was able to undertake in conjunction with the Law

[7] See Appendix, page 573.

School and the Cooperative Extension Service of the University of Maryland has been and will continue to be of inestimable value in alerting the citizens of Maryland to the purposes of the forthcoming Constitutional Convention.

LEGISLATIVE HISTORY—1966 and 1967

As has been noted above, the Commission on August 20, 1965, adopted a resolution that in its opinion "the complete revision of the Constitution of Maryland which this Commission has heretofore declared to be urgently desirable and necessary can best be accomplished by means of a constitutional convention." This conclusion was immediately reported to the governor and was reported to the General Assembly as soon as it convened in January, 1966. Subsequently, at the 1966 session of the General Assembly, the Commission recommended the enactment of two bills, one providing for a referendum to take the sense of the voters as to whether a constitutional convention should be held and the other calling a constitutional convention in the event the referendum vote was favorable. In accordance with these recommendations, Chapters 500 and 501 of the Acts of the General Assembly were enacted.[8] Chapter 501 provided for a special referendum election to be held on September 13, 1966, to determine whether a constitutional convention should be convened. Chapter 500 provided that in the event of an affirmative vote at the September 13, 1966, referendum, a constitutional convention should convene on September 12, 1967, and that "each county and each of the legislative districts of Baltimore City" should have in such convention the same number of delegates as "there would be elected to the House of Delegates from such county or legislative district in November 1966."

[8] See Appendix, pages 451 and 452.

At the 1966 session of the General Assembly, the Commission also advised the legislative leaders that doubt existed whether under the present Constitution members of the General Assembly and other holders of offices of profit or trust in Maryland could serve as delegates to the Constitutional Convention, and stated that if the General Assembly desired that such persons be eligible to serve as delegates to the Convention it would be desirable to submit a constitutional amendment to the vote of the people at the general election to be held in November, 1966. Accordingly, Senate Bill 609,[9] which proposed a constitutional amendment specifically authorizing members of the General Assembly and the holders of other offices of profit to serve as delegates to the Constitutional Convention, was introduced in the General Assembly and passed by the Senate. However, it was not passed by the House of Delegates.

On September 13, 1966, the special referendum election was held pursuant to Chapter 501 of the Acts of 1966. At the election the vote was 160,280 for a constitutional convention, and 31,680 against. [10] Much of the success of the referendum election can be attributed to the work of the Citizens' Committee on the Constitutional Convention Referendum of which Judge

[9] See Appendix, page 452.

[10] The figures given in the text are those compiled by the Commission by direct personal inquiry to each of the 24 Boards of Election Supervisors in the State. They differ somewhat from the figures given in the proclamation issued by the Governor.

John B. Gray, Jr. was Chairman and Professor Clinton I. Winslow was Vice Chairman. The Committee, which was appointed by Governor Tawes on June 16, 1966, and which spent the following three months publicizing the election and encouraging the return of a favorable vote. The only limitations upon the extensiveness of the Committee's campaign arose not from an exhaustion of the energy of its members, but from the shortness of time in which it had to work. The Committee and its small staff worked tirelessly in taking such steps to publicize the election as preparing and distributing literature, encouraging various private companies to include flyers announcing the election in their regular mailing, requesting merchants to place a line in their advertisements urging the people to vote, and writing press releases and spot announcements for the radio. The Committee was very valuably assisted in its work by the Extension Service of the University of Maryland which developed three leaflets, prepared a program of slides which was shown on many occasions through the State, and developed a "work-shop" program through which speakers were made available to the public.[11]

After the affirmative vote in the referendum election, the responsibility devolved upon the General Assembly to supplement Chapter 500 of the Acts of 1966 by enacting legislation providing in more specific detail for the mechanics of convening the Constitutional Convention. To aid the legislators in the performance of this task the Commission, on January 16, 1967, forwarded to the governor and to the members of the General Assembly its Report on Constitutional Convention Enabling Acts, which included drafts of two enabling acts recommended by the Commission.[12] The principal one of these two acts was drafted as an emergency measure and contained most of the detailed provisions with respect to the Constitutional Convention. As an emergency measure it would become effective immediately upon its enactment. The other enabling act provided for the payment of compensation and an allowance for expenses of the delegates to the Convention. It was not an emergency measure and would therefore become effective on June 1, 1967.

Separate bills embodying each of the two enabling acts recommended by the Commission were introduced simultaneously in the Senate and in the House of Delegates by the president of the Senate and the speaker of the House, respectively, on the second day of the legislative session[13]. In the Senate the two bills were referred to the Committee on Judicial Proceedings under the chairmanship of Senator J. Joseph Curran, Jr., and in the House of Delegates the two bills were referred to the Committee on the Constitutional Convention under the chairmanship of Delegate Elroy G. Boyer. The two committees held several joint hearings and each committee held a series of separate hearings on each of the two enabling acts.

Both the Senate committee and the House committee recommended numerous amendments to the two enabling acts, and most of these amendments were adopted by the respective houses. Eventually, the two house bills, thus amended, were enacted by both houses and were signed into law by Governor

[11] See Appendix, page 464.

[12] See Appendix, page 469.

[13] Senate bills numbers 39 and 40 and House bills numbers 27 and 28 of the 1967 session of the General Assembly.

Agnew, becoming Chapters 4 and 5 of the Acts of 1967.[14] It is of historical interest to note that concurrence by the House of Delegates in the final amendment made by the Senate, and final adoption of the principal enabling act by the House of Delegates occurred on Monday, March 20, 1967; the last previous constitutional convention enabling act in Maryland was passed on March 20, 1867.

The amendments which were made by the General Assembly to the Constitutional Convention Enabling Acts recommended by the Commission dealt principally with matters of detail, such as the dates for filing certificates of candidacy and the dates of election, and in their final form the two acts were substantially in line with the recommendations of the Commission. On the important matter of financing, the Commission's recommendations were also accepted. The Commission recommended that the State pay the entire cost of the two special elections required by the Constitutional Convention Enabling Act, one for the election of delegates and the other for the adoption or rejection of the new constitution recommended by the Constitutional Convention. The sum of $750,000 was suggested as the approximate cost of each special election and the General Assembly, by the deficiency appropriation bill, appropriated $750,000 to pay the cost of the special election to be held on June 13, 1967, for the election of delegates.[15] Under the Constitutional Convention Enabling Act this sum will be distributed by the comptroller among the counties and Baltimore City. The Commission also recommended an appropriation of $2,000,000 to pay the expenses of the Convention, the cost of publicizing the constitution to be recommended by the Convention, the cost of the special election to adopt or reject the new constitution, and certain other expenses. This amount was appropriated in the budget for the fiscal year ending June 30, 1968.[16]

It was beyond the power of the General Assembly to resolve one important question by the enabling legislation: the eligibility of the members of the General Assembly and other public officers of the State to be elected as delegates to the Constitutional Convention. Accordingly, while the General Assembly was considering the two convention enabling acts recommended by the Commission, legal proceedings were instituted to resolve this question.

Prior to the commencement of committee hearings on the enabling legislation, the Commission requested from the attorney general of Maryland an opinion as to whether members of the General Assembly and other public officers of the State could serve as delegates to the Constitutional Convention without forfeiting their respective offices. On January 26, 1967, the attorney general rendered his opinion in which he concluded that the position of delegate to the Constitutional Convention was not an office within the meaning of the

[14] See Appendix, page 502. See also the statement of Governor Agnew upon the signing of these two bills, Appendix, page 501.

[15] 1967 Deficiency Appropriation to the Board of Public Works, Chapter 199 of the Acts of the General Assembly of 1967, at page 437. This appropriation included $750,000 to provide funds for the special election and $10,000 for the expense of the orientation seminar held by the Constitutional Convention Commission for the delegates to the Constitutional Convention.

[16] Budget Bill for the fiscal year ending June 30 1968, Chapter 199 of the Acts of the General Assembly of 1967, at page 366.

present Constitution, and that accordingly members of the General Assembly and other holders of public office in the State, with perhaps some exceptions, could serve as delegates in the Constitutional Convention without forfeiting their offices.[17]

The attorney general pointed out that, although he thought this was clearly the law, it would nevertheless be desirable to obtain a decision of the Court of Appeals of Maryland on the question. Following this opinion, it became apparent that members of the General Assembly desired to have the question settled authoritatively. Accordingly, the chairman of the Commission collaborated with the attorney general of Maryland in preparing for consideration of the General Assembly a bill providing for a declaratory judgment proceeding to settle the questions which had been presented. This bill was enacted by the General Assembly and signed by Governor Agnew as Chapter 1 of the Acts of 1967 on February 17, 1967.[18]

On the same day, a declaratory judgment proceeding was instituted on behalf of the General Assembly of Maryland in the Circuit Court for Anne Arundel County. The court, on February 28, 1967, handed down its opinion that the position of delegate to the Constitutional Convention was not an office within the meaning of the present Constitution.[19] An appeal to the Court of Appeals of Maryland was argued on March 6, 1967, and on March 7, 1967, the Court of Appeals issued a *per curiam* order affirming the decree of the Circuit Court of Anne Arundel County. The opinion of the Court of Appeals was filed on April 14, 1967.[20]

THE ELECTION OF DELEGATES AND THE ACTIVITIES OF THE CONVENTION

Pursuant to Chapter 4 of the Acts of 1967, the election for delegates to the Constitutional Convention was held on June 13, 1967. Thereafter, pursuant to a proclamation of the governor issued pursuant to Chapter 4 of the Acts of 1967, the Convention held an organization meeting on July 11, 1967, at which its officers were elected. The first plenary session of the Convention will convene on September 12, 1967, as provided in Chapter 500 of the Acts of 1966. Chapter 4 of the Acts of 1967 provides that the Convention shall remain in session until December 12, 1967, or until January 12, 1968, if the Convention finds it necessary to extend the period. A special election will be held on May 14, 1968, at which the voters of Maryland are to adopt or reject the constitution proposed by the Convention.

Although it was not provided for specifically in the Constitutional Convention Enabling Acts, the Commission recommended that there be an orientation seminar for delegates to the Constitutional Convention prior to the first meeting of the Convention. The General Assembly accepted this recommendation and appropriated money for such a seminar. Accordingly, an orientation seminar was held at Goucher College

[17] See Appendix, page 511.

[18] See Appendix, page 517.

[19] See Appendix, page 521.

[20] See Appendix, page 531.

on June 26, 27, 28 and 29, 1967. At this seminar, the newly elected delegates assembled to hear a series of talks and panel discussions dealing with various aspects of state government and with current issues of constitutional revision. The speakers and panel participants, in addition to members and staff of the Commission, consisted of various officials of the State of Maryland and a few persons having no official connection with the State but who are regarded as experts in various fields. Because of the large number, the delegates were divided into three groups for most of the sessions. Therefore, the lectures and panel discussions were each repeated three times so that every delegate had the opportunity to hear each address and panel discussion.

PUBLICATIONS OF THE COMMISSION

In addition to this Report, the Commission proposes to publish three additional volumes as follows:

Volume II—Source Materials. This will consist of the research monographs prepared for the Commission, the full text of each of the prior Maryland State Constitutions, together with an index comparison in parallel columns of the four constitutions, monographs and addresses relevant to constitutional revision which are pertinent in Maryland but which were not prepared especially for the Commission, position papers addressed to the Commission by various individuals or organizations, and a bibliography.

Volume III—Debates and Committee Reports of the Commission. This will contain the full debates of the Commission referred to earlier and a list of the dates and places of Commission meetings. In addition, this volume will contain, to the extent that space and time permit, the committee reports presented to the Commission during the course of its deliberations.

Volume IV—Hearings of the Commission. This will contain the edited text of the formal hearings held by the Commission or any of the committees thereof.

This Report, which is Volume I of the Commission's publications, will be made generally available to the public. Volume II will also be generally available although on a much more limited basis. Volumes III and IV will be available on a still more limited basis. It is hoped, however, that there will be sufficient copies of each of these publications of the Commission to permit the Commission to place a complete set in a number of representative libraries throughout the State, so that they will be available for reference in the future by any member of the public. These libraries, which have not yet been selected, are sometimes referred to hereafter in this Report as "depository libraries."

As is indicated in the Table of Contents, this Report is presented in six chapters, of which this is the introductory portion or Chapter I. In each of the succeeding chapters there will be a short foreword or prefatory statement outlining generally the purpose and function of the chapter and its arrangement. Thus, for example, the prefatory statement to Chapter III will describe the general style and arrangement and numbering system used in the draft constitution and the reasons therefor. Similarly, the prefatory statement for Chapter IV, in addition to stating the purpose of

the chapter, will describe its arrangement and indicate in much more detail than is possible in a table of contents, precisely what is to be found in that chapter. Accordingly, it is not necessary in this chapter of the Report to describe in detail the purpose and function of each of the succeeding chapters. Users of this Report are urged to read carefully the prefatory statement in each chapter before referring to the contents of the chapter.

Because publications of the Commission are designed principally as working tools or study documents for the use of delegates to the Constitutional Convention, they have been prepared with this end in view as their primary function. At the same time it has been realized that these are historical documents and an effort has been made to bring together in these four publications all pertinent documents to which future students of Maryland constitutional history may wish to refer in connection with the Constitutional Convention of 1967 and the preparations therefor.

SUMMARY OF RECOMMENDATIONS

The recommendations of the Commission are contained in the draft constitution presented in Chapter III of this Report and in the commentary presented in Chapter IV. No attempt will be made here to restate all of these recommendations, but the principal ones may be summarized as follows:

DECLARATION OF RIGHTS

1. The Declaration of Rights, which presently is a separate document, should be incorporated into the constitution as the first Article.

2. The Declaration of Rights should state with all possible clarity and simplicity those essential rights which the people wish to hold free from governmental interference.

3. The Declaration of Rights should be confined to defining those rights which may be effectively enforced by the courts; mere exhortatory language and unenforceable statements of principle should be omitted so that the mandatory nature of the guaranteed rights will be unquestioned.

4. The prohibition against unreasonable searches and seizures in the present Declaration of Rights should be extended to unreasonable interceptions of oral or other communications so as to restrict wiretapping, electronic listening and similar forms of eavesdropping.

SUFFRAGE AND ELECTIONS

5. The minimum voting age should remain at twenty-one years and should not be lowered to eighteen years.

6. The present residence requirements for voting of one years' residence in the state and six months' residence in the voting district should be reduced to six months' residence in the state and three months' residence in the voting district.

7. Eligible voters who meet the most minimal residence requirements should be entitled to vote for president and vice president of the United States or for presidential electors.

8. The elective franchise in national and state elections, but not in local elections, should be extended to persons otherwise qualified who reside in federal enclaves.

9. Disqualifications for voting by reason of mental incompetency or convic-

tion of serious crime and detailed provisions for a registration system, nomination of candidates, and administration of elections to protect the integrity of the election process should be provided by statute and not by the constitution.

10. The right of referendum should be retained but the number of signatures required on a referendum petition should be increased from three per cent to five per cent of the total number of votes cast for governor in the last gubernatorial election.

11. No right of initiative or recall should be included in the constitution.

LEGISLATIVE BRANCH

12. The General Assembly should be continued as a bicameral body but the number of members of each house should be provided by statute rather than be prescribed by the constitution.

13. There should be a system of automatic congressional redistricting and legislative redistricting and reapportionment by the General Assembly upon the initiative of the governor after each decennial census.

14. A person seeking election as a member of the General Assembly should not be required to be a resident of the district from which he seeks election.

15. The compensation and allowances of members of the General Assembly should be provided by statute and not by the constitution; similarly all provisions prescribing the compensation of other public officials should be omitted so that the compensation of all public officials may be prescribed by statute.

16. The provision for annual seventy day legislative sessions should be retained but the General Assembly by the affirmative vote of three-fifths of all the members of each house should have the power to extend a regular session for a period not longer than thirty days.

17. The provision authorizing the governor to convene a special session of the General Assembly should be retained but upon the written request of three-fifths of the members of each house the governor should be required to convene a special session.

EXECUTIVE BRANCH

18. The executive power of the State should continue to be vested in the governor but provision should be made also for a lieutenant governor.

19. The constitution should contain explicit provisions for gubernatorial disability and succession.

20. The governor, lieutenant governor, members of the General Assembly and judges should be the only elective offices provided for in the constitution; accordingly provisions for the election by the people of an attorney general, a comptroller, states attorneys, registers of wills, sheriffs, surveyors and county commissioners, and for the election by the General Assembly of a state treasurer, should be omitted.

21. The power of gubernatorial veto should be retained but the provisions of the present Constitution permitting a "pocket veto" should be removed.

22. The provision authorizing the governor to grant a *nolle prosequi* in a criminal case should be eliminated.

23. All offices, agencies and instrumentalities of the legislative and executive branches exercising executive and administrative functions should be allocated by statute among and within principal departments, and the functions, powers and duties of the principal de-

partments and agencies within the legislative and executive branches should be prescribed by law.

24. The governor should be empowered to reallocate the functions, powers and duties of the principal departments and agencies within the executive branch subject to veto by the General Assembly.

25. The head of each principal department should be either a single executive or a board or commission and, if a board or commission, the General Assembly should be authorized to provide by statute for a chief administrative officer.

26. The governor should have the power to appoint and remove each executive serving as the head of a principal department and each chief administrative officer serving under a board or commission which is the head of a principal department except the head or chief administrative officer of an institution of higher education, of the public school system, or of a principal department within the legislative or judicial branches.

27. The governor should be empowered to appoint the members of each board or commission which serves as the head of a principal department—except the governing board of an institution of higher education—and such members should be subject to removal in the manner prescribed by statute.

28. The members of the governing board of an institution of higher education, the head or chief administrative officer of an institution of higher education, of the public school system, or of a principal department within the legislative or judicial branches, and the members of an agency which does not serve as the head of a principal department, should be appointed and removed as prescribed by law.

JUDICIAL BRANCH

29. The judicial system of the State should be reorganized into a unified system in a four-tiered structure composed of one supreme court, one intermediate appellate court, one statewide court of general original jurisdiction and one statewide court of limited original jurisdiction.

30. No provision should be made for separate orphans courts, or for municipal courts, peoples courts, trial magistrates or justices of the peace.

31. The jurisdiction of each of the four statewide courts should be prescribed by law except where jurisdiction over particular matters is conferred upon the Supreme Court by the Constitution.

32. The Supreme Court should be empowered to prescribe by rule for commissioners who would be authorized to exercise powers only with respect to arrest, bail, collateral and incarceration pending hearing.

33. Judges should be appointed by the governor from a list of no fewer than two and no more than five persons nominated by a judicial nominating commission composed of an equal number of lawyers and lay persons and a judge.

34. Each judge should be subject to approval or rejection by the electorate at the next general election following the expiration of two years from the date of his appointment and every ten years thereafter as long as he retains his office. In the event of the rejection of a judge by the electorate, the office should be vacant.

35. The provision for the retirement of judges at the age of seventy should be continued but the chief justice of the Supreme Court with the approval of the members of that court should be empowered to authorize a retired judge temporarily to perform judicial duties in any court.

36. Each judge should be compensated for his judicial service solely by the State and all judges of the same court should be paid the same compensation; a judge's salary should not be reduced during his continuance in office.

37. The Supreme Court should be empowered to remove any judge from office for misconduct in office or persistent failure to perform the duties of his office, or to retire any judge seriously disabled from performing the duties of his office.

38. The chief justice of the Supreme Court should be granted broad administrative powers to enable him to make the judicial system work efficiently and the Supreme Court should be granted broad rule-making power.

STATE FINANCES

39. The present requirement that that each bond issue be accompanied by a specific tax for debt service should be eliminated but the full taxing power of the State should stand behind its general obligation bonds.

40. Only general obligation bonds supported by a pledge of the full faith and credit and unlimited taxing power of the State should be considered state indebtedness subject to constitutional restrictions.

41. The maximum maturity of general obligation bonds should be fixed at twenty-five years rather than fifteen years as at present.

42. The State should have the power to incur indebtedness for any "public purpose."

43. The executive budget system should be retained and no money should be appropriated out of the state treasury except by a budget bill or supplementary appropriation bill.

LOCAL GOVERNMENT

44. Baltimore City should be treated for all purposes as a county.

45. The county should be clearly established as the primary unit of local government and "home rule" should be mandatory for every county whether or not it has heretofore adopted a charter.

46. Regional or other multi-county governmental units should not be prescribed by the constitution but provision should be made in the constitution for the creation of a popularly elected representative government for a region either by the General Assembly, by the county governments within the region or by the registered voters within the region.

47. A county, including Baltimore City, should be empowered to exercise any power, other than judicial power, or perform any function not denied to it by the constitution, by its charter or by public general law.

48. The General Assembly should be prohibited from enacting public local laws.

49. Each county rather than the General Assembly should be empowered to provide for incorporation, dissolution or change of boundaries of municipalities located in the county but no existing municipality should be dissolved or have its present charter powers withdrawn except with the consent either of its own

governing body or of the General Assembly.

50. Intrastate and interstate intergovernmental cooperation should be fostered and encouraged.

GENERAL PROVISIONS

51. The prohibition against lotteries should be omitted from the constitution and the prohibition or regulation of the lotteries should be left to the General Assembly.

52. No taxes should be imposed except for a public purpose and except by elected representatives of the people exercising legislative powers.

53. The guarantee of a statewide system of free public schools "sufficient for the education of, and open to, all children of school age" should be continued.

54. The regents of the University of Maryland should have exclusive general supervision of the University and the control and direction of all expenditures from the University's funds.

55. The governing boards of state colleges and other state institutions of higher education should formulate policies for their respective institutions and should be granted by statute additional powers of supervision, direction and control of their respective institutions and institutional funds.

56. The House of Delegates should continue to have the sole power of impeachment of state officials but trial of impeachment cases should be by a special tribunal of ten judges appointed by the Supreme Court rather than by the Senate.

57. The new constitution should be subject to amendments proposed either by the affirmative vote of three-fifths of the members of each house of the General Assembly or of a majority of the members of a constitutional convention. In either case a proposed amendment should be subject to approval of the voters at a special or general election.

58. The General Assembly should be empowered to call a constitutional convention at any time or at any time submit to the voters the question of calling a constitutional convention, but if the question of calling a constitutional convention shall not have been submitted to the voters for twenty years, it shall be submitted at the next general election.

II

Constitution Making in Maryland

PREFATORY STATEMENT

This chapter contains a relatively brief discussion of the history and preparation of the four prior Maryland constitutions. The complete text of each of these constitutions will be reproduced in Volume II of the Commission's publications which will also contain a parallel column comparison of the four constitutions. A parallel column comparison of the present Constitution and the draft constitution will be found in Chapter V of this volume.

INTRODUCTION

A survey of state constitutional development in America shows that the course of constitution making is a never-ending progressive evolution. The frequent revisions and numerous amendments clearly demonstrate this fact. Maryland has had four constitutions since declaring her independence in 1776. They bear the dates of 1776, 1851, 1864 and 1867. Out of the four, three were written within an eighteen-year period.

All four were, in a sense, prepared by constitutional conventions. That of 1776, however, could hardly be classified with the others since the convention which wrote the Constitution of 1776 was at the same time the *de facto* governing body of the State. From June 1774 to 1776, a series of meetings of delegates took place which apparently grew out of the revolutionary Committee of Correspondence. The fourth of these meetings, held between April 24 and May 3, 1775, referred to itself as "a convention."[1] What appears in the proceedings to have been the ninth of such assemblies and one to which delegates were especially elected August 1, 1776,[2] elected a committee on August 17, 1776, three days after convening, to prepare a declaration and charter of rights and a form of government.[3] On September 17, 1776, it ordered that the proposals be printed for public distribution.[4] On November 3,[5] the convention adopted the Declaration of

[1] PROCEEDINGS OF THE CONVENTION OF THE PROVINCE OF MARYLAND HELD IN THE CITY OF ANNAPOLIS IN 1774, 1775, AND 1776, at 11 (1836) [hereinafter cited as PROCEEDINGS OF CONVENTIONS, 1774-1776].

[2] *Id.* at 184.

[3] *Id.* at 220.

[4] *Id.* at 258.

[5] *Id.* at 310.

Rights and on November 8,[6] the Constitution. The last paragraph of that Constitution provided for the election of the electors of the Senate and for the selection of delegates.[7] Without further formalities, the Constitution of 1776 was in force.

Sandwiched in between the consideration of constitutional questions, the powers of government were exercised, particularly with matters concerned with the public safety, chief of which was the conduct of the War of Independence. Actually, therefore, the Convention of 1776 was the government of Maryland and not in the modern sense a constitutional convention.

The Constitution of 1776 provided for its own amendment by a proposal passed by majority action of the General Assembly, with publication for three months before the next election of legislators and final confirmation by the following assembly. If any amendment should relate to the Eastern Shore particularly, a vote by two-thirds of all the members was required.[8] No mention was made in the Constitution of the possibility of a revising convention.

It was after a long public debate about the need for a new fundamental law for the State and the constitutionality of the General Assembly calling a constitutional convention that in 1850 the General Assembly enacted a bill providing that the sense of the people be taken in regard to their desire for the calling of a constitutional convention to frame a new basic instrument of government. The result of this vote was overwhelming. In addition to commanding the Constitutional Convention of 1850-1851, the election also established the inherent right of the people of Maryland to call constitutional conventions to frame new structures of government. Governor Lowe, in his inaugural adress, January 6, 1851, referring to the convention then in session, said:

> "Even should no practical reforms result from the labors of the present convention, . . . still I regard the value of the principle, now established, so great in view of the possible future, as to hold the expenses, inconveniences, and even total failure of this first attempt, however in itself deplorable, to be entirely of subordinate importance; . . . . Whilst, therefore, the people yearn for the enjoyment of those salutary reforms, which right, justice and good policy call for; and although they should possibly be doomed to meet with a total or partial disappointment of their reasonable hopes, they cannot forget to console themselves with the knowledge that the great battle, in fact was fought and won, when the legislature after a steady resistance of twenty years, finally promulged, and Maryland by an almost unanimous vote, ratified the doctrine, that the people are not enchained by the fifty-ninth article of the Constitution. This is the entering wedge to the future. This is the key to the treasury of popular rights. With this weapon the people will be resistless, in all future struggles for the extension of their privileges."[9]

[6] *Id.* at 349.

[7] MD. CONST. art. 61 (1776).

[8] MD. CONST. art. 59 (1776).

[9] Quoted in Harry, *The Maryland Constitution of 1851*, at 71-72 ("The Johns Hopkins University Studies in Historical and Political Science," Vol. 20, Nos. 7-8, 1902).

The sense of the people in regard to calling a constitutional convention was again taken in 1858. This time the vote was unfavorable.

The convention of 1851 provided that the sense of the people be taken after every decennial census.[10] This was not done after the 1860 census until 1864. The election held at that time resulted in a favorable vote. This led to the convention of 1864, which drafted a constitution containing the provision that "in the year one thousand eight hundred eighty-two, and also in each twentieth year thereafter, the question, 'shall there be a convention to revise, alter or amend the constitution,' shall be submitted to the electors of the State; and in case a majority of all the electors voting at such election shall decide in favor of a Convention, the General Assembly at its next session, shall provide by law for the election of Delegates and the assembling of such Convention, as is provided in the preceding section; . . . ."[11]

Under the Constitution of 1851, there could be no amendment except by a convention assembled for that purpose, and as a matter of fact no amendment ever was made to that Constitution.[12]

Due to the unfavorable reaction to the 1864 Constitution, the people of the State demanded that the sense of the people again be taken in regard to calling a constitutional convention in 1867. This referendum also resulted in an affirmative vote. The resulting convention drafted a document providing that, "it shall be the duty of the General Assembly to provide by Law for taking, in a general election to be held in the year eighteen hundred and eighty-seven, and every twenty years thereafter, the sense of the people in regard to calling a convention for altering this constitution; and if a majority of the voters at such election or elections shall vote for the convention, the General Assembly at its next session shall provide by Law for the assembling of such convention and for the election of delegates thereto."[13]

Pursuant to this provision the sense of the people was taken in 1887 and 1907, resulting in large votes against the calling of a convention. In 1922 the fewer elections amendment changed the calendar for the next vote to 1930. The popular vote in that election was 108,351 for a convention and 93,701 opposed. However, the total vote cast in the 1930 election was 506,894. The affirmative vote was therefore less than half of the voters at the election, and it was the opinion of Mr. Philip B. Perlman, at that time in private practice but who had been requested by the General Assembly for his opinion, that the legislature was therefore not *required* to call a convention. Since one of the difficult problems of the day concerned the reapportionment of the General Assembly, it is perhaps not surprising that no convention was called. The 1950 vote on a convention ended similarly. The popular vote was 200,439 for and 56,908 against. However, the total vote at the election was 645,631, more than twice the affirmative vote on the convention. The General Assembly chose to follow the 1930 example, and again there was no convention. This history influenced the Commission in recommending in 1965 a

[10] MD. CONST. art. XI (1851).

[11] MD. CONST. art. XI, § 3 (1864).

[12] NILES, MARYLAND CONSTITUTIONAL LAW 333 (1915).

[13] MD. CONST. art. XIV, § 2 (1867).

special election to take again the sense of the people in regard to calling a constitutional convention, in order that those who voted *on* the convention question would be the same as those voting *at* the election.

THE CONSTITUTION OF 1776

THE ESTABLISHMENT OF AUTHORITY IN A TIME OF REVOLUTION

The Constitution of 1776 provided for Maryland what came later to be recognized as a most undemocratic form of government. Its property qualifications for voting and for holding office were high enough to remove control from the masses of the people. The governor was elected annually by the legislature and he in turn, with the advice of the Senate, appointed all the judges of the various courts. The scheme of apportioning the members of the House of Delegates gave the small counties legislative power out of all proportion to their population and it resulted in a government by the minority.[14] With the rising spirit of democracy, as well as with social and economic changes, the plan of government was in serious conflict. It is important, however, to note the developments which led up to the adoption of the State's first Constitution.

Under successive proprietors Maryland was saddled with possibly a more expensive government than any of the other British colonies, great or small, with a corresponding drain on its prosperity.[15] As absentee landlords, the successive proprietors had no other interest in their fief than the enhancement of its value in the extraction of revenue. At the time of the revolution, they received about 12,000 pounds a year from rents, taxes, fines, and duties, and placemen who administered the government and served the established church cost the colonists about 20,000 pounds more. Only about 18,500 pounds of the colony's gross revenue went to support local services.[16] In the minds of most of the colonists, the issue of British taxation tended to be merged with the actions of proprietary officials, and the magnitude of the combined grievances united behind the Assembly all classes not profiting from the proprietary system. Yet the tone of the resistance was conservative. Because of the great unpopularity of the proprietor and his officials, the Assembly came to be looked upon as the guardian of the people's liberties.

Opposition to the proprietary interests was led by the "Country Party" in the Assembly. The difference between the proprietary and Assembly factions were political rather than social and economic, however. One member of the Country Party owned 17,000 acres of land, and many others possessed from 3,000 to 5,000 acres, which was the average holding of the proprietors' councilors.[17]

[14] Blauch, *Education and the Maryland Constitutional Convention, 1850-1851,* 25 MD. HIST. MAGAZINE 169, 169-70 (1930).

[15] BARKER, THE BACKGROUND OF THE REVOLUTION IN MARYLAND 144-45 (1940). "The great officials at the top (numbering about 120), were the guardians of the land system and of the proprietor's revenues, they were the keepers of order in a province where quitrents, fees, and duties were sacrosanct." *Ibid.*

[16] *Id.* at 143, 151.

[17] DOUGLASS, REBELS AND DEMOCRATS, THE STRUGGLE FOR EQUAL POLITICAL RIGHTS AND MAJORITY RULE DURING THE AMERICAN REVOLUTION 45-46 (Quadrangle paper ed. 1955).

The leadership of the Whig party was assumed by planters or lawyers of means and well-established social positions who had been influential in the Assembly, among them Matthew Tilghman, Edward Lloyd, Robert Goldsborough, Charles Carroll of Carrollton (who had inherited an estate worth 88,000 pounds), Charles Carroll the barrister, William Paca, Thomas Johnson, Daniel of St. Thomas Jenifer, and Samuel Chase.[18] These men "were more than representative of the ruling class; they were almost identical with it."[19] It was they who formed the committees of correspondence at Baltimore and Annapolis, called and dominated the Provincial Conventions, and raised the military forces which swept away the proprietary government.[20]

On Saturday, May 28, 1774, Governor Robert Eden (1769-1776), the last of the State's proprietary governors, left Annapolis for the Patuxent to embark on board the Annapolis, for London. With his departure went his authority as Governor of Maryland and the authority of the Proprietor, Lord Baltimore, over the State.

When he returned, in November, 1774, the people of Maryland had, under the authority of its Provincial Convention, assumed control of the government of the State.

Important events had occurred previous to his departure for England, and before his return to America. The citizens of Annapolis, three days before the Governor had left the city, on hearing the news of the blockade of the harbor of Boston, had met in public meeting, and resolved, "that it is the unanimous opinion of this meeting that the town of Boston is now suffering in the common cause of America, and that it is incumbent on every colony in America, to unite in effectual measures to obtain a repeal of the late act of Parliament for blockading the harbor of Boston." They resolved that they would join an association to ban all trade with England, and that they would break off all trade with any colony or Province that would not join this Association.

Before Governor Eden's return in November, the dramatic incident of the destruction of the Peggy Steuart had occurred. On October 14, 1774, a brig arrived in the harbor of Annapolis having, as part of its cargo, seventeen boxes of tea, on which Anthony Steuart, the owner of the brig, paid the tax. Immediately the Committee of Public Safety, which had been established by the Provincial Convention, met, and this meeting was followed by meetings of citizens who, after deliberation, decided that to burn the tea would be sufficient reparation for this act of infidelity to the spirit of the Maryland Association against the importation of tea. This resolve did not satisfy the minority, chiefly composed of citizens from the upper end of Anne Arundel County. They, under the leadership of Major Charles Alexander Warfield, a young physician commanding the Whig Club of Howard District, in Anne Arundel County, a military organization, gathered before Steuart's residence on Hanover Street, Annapolis, and erected a gallows in front of his house. Steuart was most indignant. He came out upon his front porch, and, denouncing the

[18] Crowl, *Maryland During and After the Revolution,* 22-29 ("The Johns Hopkins University Studies in Historical and Political Science," Vol. 61, No. 1, 1943).

[19] *Id.* at 29.

[20] DOUGLASS, *op. cit. supra.* note 17, at 47.

company as rebels, in a vehement speech threatened them with the vengeance of the King. Major Warfield, sitting upon his horse, waited in silence until Steuart had finished his protest and threat, and then, in a tone that has rung down the corridors of Maryland's history in patriotic emphasis, said, as he pointed his finger to the gallows: "BURN OR HANG."

Steuart immediately sent for Charles Carroll, of Carrollton, who accompanied Steuart to the harbor, where he set fire to the Peggy Steuart, and she was soon consumed upon the altar of American liberty surrounded by an imposing audience of Maryland patriots.

The Convention of the provincial deputies, chosen by the Free Men of Maryland, had assembled on June 22, 1774, and, in the absence of Governor Robert Eden, assumed the government of Maryland. Thus, in a bloodless revolution, the people of Maryland changed its government from one authority to that of another without a halt or a jar in the machinery of administration. Governor Eden was from that time until his final departure as governor from the Province, a king without a sceptre, and when, on June 13, 1776, he issued writs for the election of a new General Assembly, the Convention resolved that the writs be not obeyed, and they were not.[21]

On May 8, 1776, the Convention assembled at Annapolis, and on May 24 resolved "That it be signified to the governor, that the public quiet and safety, in the judgment of this convention require that he leave this province, and that he is at full liberty to depart peaceably with his effects."[22]

Complimentary resolutions upon the Governor's services were passed, and the hope expressed that when "the unhappy disputes, which at present prevail, are constitutionally accommodated, he may speedily return and resume the reins of government.[23]

On Sunday, June 23, 1776, the British Frigate, Fowey, arrived at Annapolis to take Governor Eden to England. The Governor was conducted by the Council of Safety to the ship's barge, where they took an affectionate leave of him.

The second public revolutionary assembly of Maryland met at Annapolis on November 21, 1774, and continued until the twenty-fifth of the same month. This convention was composed of deputies chosen by the several counties of Maryland. It again met on December 8; on April 24, 1775; on July 26, 1775; on December 7, 1775; on May 8, 1776; on June 21, 1776; and on August 14, 1776.

These conventions assumed authority over the province. Martial was the spirit and proceedings of the several assemblies. In one and the same breath the Convention proclaimed its loyalty to England and voted thousands of dollars to raise men and to equip them to defend the liberties of America.[24]

The western portions of the state tended to be stronger in radical sentiment than the East. The reasons for this are obscure, but perhaps the West, as a debtor region, suffered more from the exactions of proprietary government

[21] RILEY, A HISTORY OF THE GENERAL ASSEMBLY OF MARYLAND, 1635-1904, at 301-03 (1905).

[22] PROCEEDINGS OF CONVENTIONS, 1774-1776, at 151.

[23] *Id.* at 303.

[24] *Id.* at 304.

than the more affluent tidewater counties. In any case, when the Whigs Samuel Chase and Charles Carroll made an expedition into the western country in the spring of 1776 to gain support for independence, they had relatively good success.[25]

As radical sentiment burgeoned near the frontier, an undercurrent of hostility toward the eastern-dominated Conventions became apparent. Committees in Frederick County complained of the secrecy of debates in that body and declared that "where the power to make laws and the power to enforce such laws is vested in one man or in one body of men, a tyranny is established."[26] In part, this hostility may have been cause by the under-representation of the West,[27] but a more immediate reason was the continuing desire on the part of many leading Maryland Whigs for a reconciliation with Britain.[28]

The provincial convention resolved on July 3, 1776, to call an election for a new convention to be held August 1, 1776, for the express purpose of forming a new government. Representation at this convention was to be made more proportionate to population by dividing Frederick County into three districts, each with four delegates, and by allowing Baltimore and Annapolis two delegates apiece. The delegates to the convention were to be elected by all freemen above twenty-one years of age who were freeholders of fifty acres of land or of visible property to the value of 40 pounds. Householders, men who had served a trade for five years, owners of a lot of land or of 20 pounds worth of visible property were given the ballot in the city of Annapolis. In all cases they must have had a year's residence in the county where they voted.[29]

The property qualification for voting—a fifty-acre freehold or personalty worth 40 pounds—was the same as under the proprietary government.[30] This provision evoked protest in some sections, particularly among militiamen who could not meet the qualifications. When election judges in Prince George's County refused to recognize the plea "that every taxable bearing arms, had an undoubted right to vote for representatives at this time of public calamity," the people chose new judges who carried on the elections without regard to property qualifications.[31] In Kent County the judges closed the polls when unqualified persons asserted the right to vote, but in the lower district of Frederick County, delegates were elected by "all who had armed in defense of the country" regardless of property qualifications.[32]

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[25] DOUGLASS, *op. cit. supra* note 17, at 47-48.

[26] Steiner, *Western Maryland in the Revolution*, 20 ("The Johns Hopkins University Studies in Historical and Political Science," Vol. 20, No. 1, 1902).

[27] In Maryland, one-third of the population lived in the back country, over 14,000 in Frederick County alone; yet all counties had the same number of Assembly delegates regardless of population. "The whole frontier area of the province, from the upper Potomac to the Elk, stood in a kind of colonial relationship to the old Maryland of the proprietary government and the tobacco plantations." BARKER, *op. cit. supra* note 15, at 22.

[28] DOUGLASS, *op. cit. Supra* note 17, at 48.

[29] PROCEEDINGS OF CONVENTIONS, 1774-1776, at 185.

[30] Crowl, *supra* note 18, at 29-30; Silver, *The Provisional Government of Maryland*, at 521-22 ("The Johns Hopkins University Studies in Historical and Political Science," Vol. 13, No. 10, 1895).

[31] DOUGLASS, *op cit. supra* note 17, at 49.

[32] Silver, *supra* note 30, at 30.

These instances of democratic aspirations were apparently not numerous, however. "The masses of the inarticulate citizens remained, on the whole, inarticulate. When they did raise their voices to demand a share in state making, they were disregarded or squelched."[33] The Convention, refusing to acknowledge that those who were willing to fight for their country deserved the right to participate in its political life, would not seat the delegates from Frederick who had been irregularly elected and had new elections held with a proper regard for property qualifications. When a group of voters in Anne Arundel County attempted to force their representatives to support a plan of government which they had drawn up and which was reputed to be "democratical in the extreme," three of the representatives—Chase, Carroll the Barrister, and Brice Worthington—resigned their seats in protest. Worthington and Chase subsequently returned, presumably after new elections, but not Carroll.[34] Nothing more was heard of the democratic plan.[35]

The convention met on August 14, 1776, and soon took up the task of forming a new government. On August 17, it appointed a committee of eminent men to prepare a "declaration and charter of rights, and a plan of government agreeable to such rights as will best maintain peace and good order, and most effectually secure happiness and liberty to the people of this state."[36]

The committee to draft the constitution was made up of the outstanding Whig leaders—Tilghman, Carroll of Carrollton, Carroll the Barrister, Paca, George Plater, Chase, and Goldsborough.[37] The document they framed, and which was subsequently adopted by the Convention, was basically conservative.[38]

On August 27, George Plater reported for the committee a "Declaration and Charter of Rights," and on September 10, he presented a constitution or form of government. These were read and laid on the table. On September 17, a resolution was offered that, since the formation of a constitution was a matter of utmost importance to the people, they ought to give the matter the fullest consideration. It was resolved, therefore, that the Bill of Rights and the constitution as proposed be printed and twelve copies be sent to each county, and that the convention adjourn for two weeks, presumably to ascertain public reaction to the documents. The motion passed, and, after the recess, the convention took up the documents first in the committee of the whole, and then paragraph by paragraph in the convention until the Declaration of Rights was adopted November 3, and the constitution November 8, 1776.[39] Apparently there were no serious objections from constituents for the Convention voted the drafts into fundamental law.[40] No provision was made for popular ratification.

[33] Crowl, *supra* note 18, at 18-19.

[34] NEVINS, THE AMERICAN STATES DURING AND AFTER THE REVOLUTION, 1775-1789, at 157 (1924); ROWLAND, THE LIFE OF CHARLES CARROLL OF CARROLLTON, 1737-1832, at 187 (1898).

[35] DOUGLASS, *op. cit. supra* note 17, at 50.

[36] PROCEEDINGS OF CONVENTIONS, 1774-1776, at 220.

[37] Crowl, *supra* note 18, at 31.

[38] DOUGLASS, *op. cit. supra* note 17, at 50.

[39] PROCEEDINGS OF CONVENTIONS, 1774-1776, at 228, 258, 310 & 349.

[40] DOUGLASS, *op. cit. supra* note 17, at 53-54.

The changes occasioned by the Revolution of 1776 have so engrossed attention that the fact that local and state institutions were continued through it has been much overlooked. There was no occasion for great disturbances in the Maryland institutions, and few changes were made. After the Revolution as before there were: a Governor and Council, a General Assembly of two houses, a Court of Appeals, a general trial court with only the change in name necessitated by the disappearance of the provincial status, a Chancellor and Court of Chancery, a Court of Admiralty and the several county courts. There was still an Attorney General, a Land Office, and other institutions of familiar titles and duties.

The basic principle underlying the constitution of 1776 was popular sovereignty. In accordance with this principle, the Declaration of Rights recognized the principle of individual legal equality. However, the ruling element never accepted the principle of political equality. From the beginning, discriminations were made between those who had and those who did not have property. Consequently, the same aristocratic landowning and slave-holding class, which held a dominant position in the colonial governments, retained that position under the state constitutions. This class was in the minority, but was able to retain control of the state governments because of the religious tests and property qualifications for suffrage and office holding, and because of the system of equal county representation which prevailed.[41]

Maryland adopted a constitution which secured the rights which were a primary objective of the Revolution and erected barriers against arbitrary government, but this constitution also protected the economic interests and political privileges of the aristocracy by excluding large numbers of the common people from participating in political processes and by denying authority to majorities.[42]

DELINEATION OF SPECIFIC PROVISIONS

DECLARATION OF RIGHTS

The Constitution was preceded by a comprehensive declaration of rights which declared all persons invested with legislative power to be "trustees of the public".[43] The conception of relations between government and people as trustee-beneficiary rather than agent-principal is typical of Whig thinking. Public officials, as trustees, were primarily responsible not to their beneficiaries but to a higher moral law which governed them both, and they were bound to administer their trust according to the dictates of the moral law rather than the will of the beneficiary. By the agent-principal conceptions of political society, however, the will of the delegate is considered only an extension of the will of the electorate; the moral considerations of policy are exclusively the province of the constituency.

Although democratic government is today considered an agency rather than a trust, both conceptions hold dangers when carried to their logical extremes.

[41] GREEN, CONSTITUTIONAL DEVELOPMENT IN THE SOUTH ATLANTIC STATES, 1776-1860: A STUDY IN THE EVOLUTION OF DEMOCRACY 297 (1930).

[42] DOUGLASS, *op, cit. supra* note 17, at 50-51.

[43] 3 THORPE, FEDERAL AND STATE CONSTITUTIONS 51 (1909).

The Whig leaders who looked on representation as a trust, although dedicated to the maintenance of human rights, tended to equate the economic and political welfare of their class with moral law, and thus justified an aristocratic system of government which would keep the people permanently in tutelage. When representatives today regard themselves as agents whose sole duty is to accomplish the will of their constituents, they intensify sectional differences, overlook ethical principles, and hinder the formulation of state policies. If hamstrung by the conflict of local interests, the legislature may lose its capacity for leadership and become a center of weakness for a democratic government rather than a source of strength.

SUFFRAGE AND ELECTIONS

Section 5 of the Declaration of Rights declared, "The right of the people to participate in the legislature is the best security of liberty and the foundation of all free government." However, suffrage was to be given only to those "having property in, and a common interest with, and an attachment to, the community." Why did the Whig leaders see no inconsistency between these two propositions, both of which were commonplaces of their political thought? The reason is that they considered the state as a vast corporation, much like our industrial corporations today, in which political privileges were commensurate with equity in the corporate assets. They felt that persons without equity would not have enough interest in the welfare of the corporation to merit a voice in its administration.[44]

The drafters of the Constitution set the price of a share of voting stock in the corporation of Maryland at a fifty acre freehold or a 30 pound estate—slightly lower than under the proprietary government. For officers the requisite equity was of course higher. Assemblymen must be worth, in real and personal property, 500 pounds; senators, councillors, and congressional delegates 1000 pounds.[45]

Poll taxes were declared oppressive by the Constitution of 1776; nevertheless, only about 55 per cent of the free adult male population enjoyed the right to vote.[46]

THE STRUCTURE OF GOVERNMENT

The committee appointed to draft a declaration of rights on October 31, 1776, reported the following two clauses: article 6, that the legislative, executive and judicial powers of government ought not to be vested in the same man or body of men; and article 30, that the judges, the Chancellor and other officers, should hold their offices during good behavior and hold only one office each. The first of these principles, that concerning the separation of governmental powers, was not so obvious at that time as custom has made it appear since; it was adopted in the convention by a margin of only one vote, thirty to twenty-nine, and it found no place in most of the other state constitutions adopted at about the same time.[47]

LEGISLATIVE BRANCH

The Constitution of 1776 provided that the legislature was to consist of two houses, the Senate and the House of Delegates, and would be called "The General Assembly of Maryland."

[44] DOUGLASS, *op. cit. supra* note 17, at 50-52.

[45] MD. CONST. arts. 2, 15, 26 & 27 (1776).

[46] Crowl, *supra* note 18, at 34-36.

[47] PROCEEDINGS OF CONVENTIONS, 1774-1776, at 297 & 302.

The members of the House of Delegates were to be elected annually by the freemen, resident of the State, above twenty-one years of age, having a freehold of fifty acres of land in the county in which they offered to vote, or having property in the State above the value of thirty pounds current money, and having resided in the county in which they offered to vote one whole year preceding the election. The first House of Delegates was to be elected at a special election on Wednesday, December 18, 1776. The freemen were then to elect "*viva voce,* four delegates for each county, of the most wise, sensible, and discreet of the people, residents in the county, for which they are to be chosen, one whole year next preceding the time of election, above twenty-one years of age, and having in the State real and personal property above the value of five hundred pounds current money." Thereafter, beginning in 1777, delegates would be elected annually on the first Monday in October.

The sheriff, or his deputy in case of sickness, was to conduct the election, which might last four days, and submit the returns to the chancellor of the State. The city of Annapolis and Baltimore town were each allowed two delegates. A majority of the delegates, with their Speaker, who was to be elected by them by ballot, constituted a quorum of the House. While the Constitution declared that the "House of Delegates may originate all money bills," it provided that the House should not attach any matter to the bills not immediately relating thereto, in order that the Senate might not be compelled either to reject a money bill or assent to it.[48]

An electoral college, chosen by persons qualified to vote for county delegates, would elect the Senate. At a special election to be held on Monday, November 25, 1776, qualified voters would elect, *viva voce,* by a majority of votes, two persons for their respective counties, who were qualified to be elected county delegates, to be electors of the Senate. The electors were to meet in Annapolis on Monday, December 9, 1776, and elect the Senate. Thereafter, beginning in 1781, senatorial electors would be chosen every five years on the first Monday in September. Meeting two weeks later the electors would elect, "by ballot, either out of their own body, or the people at large, fifteen senators (nine of whom to be residents on the western, and six to be residents on the eastern shore), men of the most wisdom, experience and virtue, above twenty-five years of age, residents of the state above three whole years next preceding the election, and having therein real and personal property above the value of one thousand pounds current money."[49]

In addition to being selected by an electoral college, the Senate could fill vacancies by its own appointment, and was thus effectively isolated from popular control. This method of choosing the upper house, suggested by Charles Carroll of Carrollton, elicited considerable admiration from contempories and later observers. Jefferson included it in his draft of a constitution for Virginia drawn up in 1783. Madison, who particularly liked the fact that the Senate could fill its own vacancies, declared in *The Federalist* (No. 63) that the Maryland constitution "is daily deriving, from the salutary operation of the indirectly-elected senate, a reputation in which it

[48] RILEY, *op. cit. supra* note 21, at 305.

[49] MD. CONST. art. 15 (1776).

will probably not be rivaled by that of any state in the Union."[50]

A majority of the Senate was necessary to transact business.

EXECUTIVE BRANCH

The Senators and Delegates were, on the second Monday in November, 1777, and annually thereafter, by joint ballot, to elect a Governor, but the Governor could not be elected for more than three terms. The Senate and House, by joint ballot, were to elect five men, as councilors of the Governor, to constitute his council.

The Governor was given no powers over legislation. The Executive veto had stood too often in the way of freemen's rights, for the Free Men of Maryland to confer this great privilege upon one man while the recollection of their wrongs were fresh in their indignant memories.[51]

JUDICIAL BRANCH

The committee appointed to draft a declaration of rights also took up the correction of defects which were felt to exist in the judicial system, and which had been discussed in years past, and recommended the provisions for organization of the courts which were finally adopted. By Article 56, it was provided,

> "That there be a Court of Appeals, composed of persons of integrity and sound judgment in the law, whose judgment shall be final and conclusive, in all cases of appeal, from the General Court, Court of Chancery, and Court of Admiralty: That one person of integrity and sound judgment in the law, be appointed Chancellor: That three persons of integrity and sound judgment in the law, be appointed judges of the Court now called the Provincial Court; and that the same court be hereafter called and known by the name of *The General Court*; which Court shall sit on the western and eastern shores, at such times and places as the future legislature of this State shall direct and appoint."

Article 40 provided that all judges should hold office during good behavior; and by Article 48 they were to be appointed by the Governor by and with the advice of the Council. It should be noted, however, that these provisions prescribed no particular number of judges for the Court of Appeals, and no basis of selection, geographical or otherwise. All such details were left in the first instance, at least, to the determination of the Assembly, by a provision in Article 61 of the Constitution, that,

> "for filling in the first instance only all the offices in the disposition of the Governor, with the advice of the Council, the House of Delegates may also propose to the Senate a list of all officers in the appointment of the Governor, with the advice of the Council, and on the Senate concurring therein, in the recommendation of any of the persons therein mentioned, such persons so recommended shall be commissioned by the Governor."

In case of disagreement there was to be a joint ballot of the two houses.[52]

[50] DOUGLASS, *op. cit. supra* note 17, at 52-53.

[51] RILEY, *op. cit. supra* note 21, at 52.

[52] BOND, A HISTORY OF THE COURT OF APPEALS OF MARYLAND 59-60 (1928).

Only one court did the revolutionists declare abolished at the time, and that was the court of the Commissary General or Prerogative Court at Annapolis, for probate of wills and administration of estates. In the preamble to the act of 1777, chapter 8, which inaugurated the system of Orphans Courts, it was recited that "by the form of government lately assented to by the representatives of the freemen of this State, it is intended that the office of Commissary-General should be abolished."

Sheriffs were to be elected in the counties instead of being nominated by the governor, as was the case in most states.

THE PERIOD FROM 1776 TO 1850

The Maryland Constitution of 1776 continued to be the fundamental law of the State for three-quarters of a century. However, the document did not remain unchanged throughout this period. The first series of amendments was adopted during the last decade of the eighteenth century. Generally, these amendments, as distinguished from those which were later adopted, seem to have sprung from relatively diverse and isolated concerns, and not to have reflected broad social and economic change. Thus, in 1792 an amendment was adopted prohibiting persons who held any office of trust under the federal government from being members of the state legislature or holding any other public office. In the amendments of 1795 and 1799, provision was made for Quakers, Mennonists and Nicolites, who refused to take an oath, to qualify for public office and as witnesses by affirmation. In 1799 the counties were divided into local election districts, and the sections of the Constitution dealing with the choice of judges, electors and sheriffs were repealed and the selection of these officials was thereafter governed by statute.[53]

Social and economic changes were, of course, occurring at the end of the eighteenth century, and the beginnings of change in the political climate as well can be seen in the attempts made in 1797 and 1798 to remove from the constitution a property qualification for voting.[54] However, these attempts failed, and it was not until the early years of the nineteenth century that an effective movement for broadening the franchise developed. Finally, in 1810, property qualifications for membership in the legislature were abolished, and voting rights were extended to all free white male citizens who were twenty-one years of age and who had lived in the State for one year and in the county in which they voted for six months.[55]

After the War of 1812 various forces were brought into play which demanded not only *ad hoc* revision of particular provisions of the constitution, but a complete overhaul of the governmental structure. To a large extent this development can be attributed to the great industrial and economic changes which

[53] GREEN, CONSTITUTIONAL DEVELOPMENT IN THE SOUTH ATLANTIC STATES, 1776-1860: A STUDY IN THE EVOLUTION OF DEMOCRACY 137 (1930).

[54] See *id.* at 138.

[55] *Id.* at 201. Other 1810 amendments substituted the ballot for the *viva voce* method of voting, abolished plural voting, prohibited the legislature from levying taxes for the support of any religion, and provided that sheriffs should be elected by popular vote, rather than appointed. *Ibid.*

accompanied the post-war period. During this time, the commercial class grew in significant proportion, and members of this class—although assuredly conservative in many of their instincts—were joined with exponents of a more radical democracy against aristocratic, agrarian elements in a desire for constitutional revision. Reform of the judiciary—including popular election of judges—was one area in which there was agitation for change. Similarly, the reformers desired that senators and the governor be popularly elected. The greatest point of contention during the period, however, concerned the apportionment of the legislature. Population shifts and the growth of the City of Baltimore had caused the state government, in which representation was based upon old county lines, to become a government of the minority. It was the desire to remedy this situation which provided the greatest stimulus for the attempts at constitutional revision.[56]

The presence of similar pressures in other states resulted in the convocation of constitutional conventions Thus conventions were held in Virginia in 1820, in Georgia in 1833 and 1839, and in North Carolina in 1836.[57] Newspapers in every state, including Maryland, proclaimed the necessity for constitutional reforms which would enable the states to begin industrial development, railroad construction and soil reclamation through legislatures more responsive to the will of the majority of the people.[58] However, notwithstanding the efforts of its advocates, constitutional revision was not to be effected in Maryland for many years for the simple reason that the power to call the convention rested in the very legislature whose malapportionment was the primary cause of the dispute.

The legislators who desired to block constitutional revision found technical authority for their position in the combination of Article 59 of the Constitution, which provided for amendment by the identical action of two successive legislatures, and the section of the Declaration of Rights which stated "That this . . . [constitution] ought not to be altered, changed, or abolished by the legislature of this State, but in such manner as this Convention shall prescribe and direct." The advocates of reform had their own theory that there is underlying the whole system of democratic government a principle of acknowledged right in the people to change their constitution in the manner in which a majority of the people desire. Whatever the merits of these respective theories, the question in the final analysis was one of political power. This is made strikingly clear by the fact that those who resisted change did not seem to find it necessary to explain why the legislature which they controlled should not pave the way for constitutional revision by amending the constitution in a manner consistent with their own theory to permit the calling of a convention.

The dispute came to a head in 1836. In June of that year a reform convention was held in Baltimore, which was attended by members of both the Whig and the Democratic parties. This convention adopted a resolution in which it recommended that representatives be

[56] See generally Harry, *The Maryland Constitution of 1851*, at 13 ("The Johns Hopkins University Studies in Historical and Political Science," Vol. 20, Nos. 7-8, 1902).

[57] GREEN, *op. cit. supra* note 53, at 152.

[58] *Ibid.*

elected to the next legislature who would be pledged to support a bill calling for a vote to take the sense of the people regarding the convocation of a constitutional convention and, in the event of an affirmative vote, for the election of delegates to that convention. Moreover, the resolution required the president of the reform convention to "convene this convention for the adoption of such ulterior measures as may be deemed expedient, just and proper, and as may be best calculated, to insure the accomplishment of the desired results" if the legislature did not take favorable action within forty days after the opening of its session.[59]

After this convention the cohesiveness of the reform movement was weakened by the workings of party politics. In attempting to secure control of the senatorial electoral college, the Democrats defined themselves as the exclusive party of reform, and when they were able to elect only nineteen of the forty electors, refused to cooperate with the Whigs. Pursuant to a suggestion in the September 9, 1836, edition of the *Baltimore Republican,* the organ of the Democratic Party, the Democratic electors refused to meet with the Whig electors to choose the senators, unless the Whigs agreed to elect no member of the preceding Senate and no member of the House of Delegates who had voted against a convention bill, to the Senate, and to elect at least eight persons to the Senate who were known to be in favor of calling a convention and of such "radical reform of the constitution . . . as will insure to all citizens living under it, equal political rights and privileges."[60]

The Whigs refused to accept these conditions, and accordingly the Democratic electors, instead of joining the electoral college, met separately and prepared a statement in which they discussed the unfairness of the legislative apportionment under the existing constitution and the refusal of those in control of the legislature to take effective action. The Democratic electors then disbanded, and the Democrats proceeded to hold meetings throughout the State to elect delegates to a convention which was to meet in December, 1836, to adopt a new constitution and establish a new government.

The twenty-one Whig electors met this crisis by issuing a counter-statement in which they pointed out that many Whigs were themselves amenable to reform, and that if the Democrats had met with them, a Senate favorable to reform would have already been elected. The Whigs further appealed for the support of the people to prevent the outbreak of revolution, which appeared to be necessarily attendant to the course which the Democrats intended to pursue.

During the fall of 1836 public sentiment turned to the Whig position, even in Democratic strongholds.[61] Only the most radical of the Democratic partisans, such as the working men of Baltimore, continued to endorse the revolutionary stand of the Democratic electors. Consequently, at the election of November 6 the Whigs scored an overwhelming victory, carrying all but two counties and Baltimore city.[62] Immediately thereafter, on November 8, Governor Veasey proclaimed that the old senators would remain in office until their succes-

[59] *Id.* at 241.

[60] *Id.* at 242-43.

[61] *Id.* at 244.

[62] *Id.* at 245.

sors were elected, and called a special session of the legislature for November 21 to take measures to prevent a crisis which he felt might result in civil war. The situation was considered to be so grave that the governor requested military officers, as well as all citizens, to remain prepared to render aid to the civil authorities.[63]

On November 19 the Democrats held another reform convention in Baltimore to decide what steps they should now take. At this convention seven amendments to the constitution were drawn which the Democrats said would satisfy their demands. The first of these amendments would have provided for the popular election of the governor and the abolition of the governor's council, and the second for the direct election of senators, one from each county and one from the City of Baltimore. Similarly, another amendment would have required the popular election of minor officials, such as clerks and registers. Two of the other amendments were concerned with the abolition of life tenure for various offices and the appointment of judges by the governor, with the consent of the Senate, for a limited term. Still another amendment would have limited the powers of the legislature, especially in granting charters. The final amendment would have required a reapportionment which assured fair representation for all citizens, while preserving the power of the smaller counties to protect their interests.[64]

While the delegates to the reform convention were preparing these amendments, the Democratic electors requested the Whigs to promise that they would provide for an unrestricted constitutional convention. This the Whigs refused to do, but they did pledge themselves "to endeavor to effect all such amendments of the constitution as the interest and happiness of the people of the state might require" through "any mode . . . convention or otherwise consistent with the principles and provisions of that instrument." Given this assurance, five of the Democratic electors joined the Whig electors, and the electoral college elected a Senate composed of fifteen Whigs.[65]

The question now became whether the mood of the new legislature would be one of reconciliation or one of reaction. At first it appeared that the reform movement would be betrayed, as the legislature appointed a special committee to report on the expediency of making it high treason to conspire to alter the constitution by any method other than that established by the constitution itself. However, the committee reported that a majority of the people had the right to change the constitution whenever they desired. This concession to the reformers was supplemented by the enactment of several reform amendments—which became effective when reenacted by the legislature of 1837. These amendments abolished the governor's council, and provided for the direct popular election of both the governor and the senators. All other officers, unless otherwise provided by law, were to be appointed by the governor with the consent of the Senate. Moreover, the amendments also instituted a plan of reapportionment. After the census of 1840, and every decennial census thereafter, representation in the House of Delegates was to correspond more closely to the population distribu-

[63] *Id.* at 246.

[64] *Id.* at 244-45.

[65] *Id.* at 246.

tion within the State. Each county with a "federal population" (including whites and free Negroes) of less than 15,000 was to elect three delegates, each county with a population from 15,000 to 25,000 was to elect four, each county with a population from 25,000 to 35,000 was to elect five, and each county with a population above 35,000 was to elect six. The City of Baltimore was to have as many representatives as the largest county, whereas after 1841 Annapolis was to be joined with Anne Arundel County and lose her separate representation.[66]

The reformers were distressed that these amendments did not provide for a reform of the judiciary or the popular election of minor officials. However, the Whig amendments had effected sufficient changes to quell popular discontent, and the reformers were temporarily powerless to effectuate their further demands.

But the compromise of 1836 did not long endure, for within the next few years an additional impetus toward reform was generated by an independent force: the need to stabilize state finances. The period after the War of 1812 was a time of unprecedented economic expansion and prosperity. However, it was also a time of unprecedented speculation, to which state governments themselves contributed by financing internal improvements beyond their means. Maryland began to follow a course of fiscal irresponsibility as early as 1826 when in order to provide capital for private corporations she started to accumulate a state debt. Although it gradually became apparent that these investments would not produce the profits which had been originally contemplated—and although the instability of the nation's economic conditions was dramatically demonstrated by the Panic of 1837[67]—Maryland continued to accumulate her debt so that by 1840 it amounted to over sixteen million dollars.[68] When the large returns which had been anticipated from the works of internal improvement failed to be realized, the State was forced to impose a tax to pay the interest on the bonds which it had floated. These taxes were highly unpopular, and associations were formed for the purposes of resisting payment of them[69] and of pressing for constitutional restrictions on the power of the legislature to make appropriations and extend state credit to private companies.

Thus fiscal mismanagement reunited in the demand for constitutional revision many elements of the commercial community, who had deserted the Democratic cause in 1836, with those who desired further democratization of political institutions. Accordingly, in the 1840s the reform movement acquired a renewed vigor, and the issues which had remained unresolved in 1836 again became salient. Moreover, in addition to the surviving demands for a complete reorganization of the judiciary and the popular election of minor officials, new demands were made for the reduction of executive patronage,

[66] See generally *id.* at 247-48.

[67] The disestablishment of the Bank of the United States seems to have been the immediate cause of the Panic of 1837. However, the heavy state debts were undoubtedly a contributing cause. *Id.* at 154.

[68] Blauch, *Education and the Maryland Constitutional Convention, 1850-1851*, 25 MD. HIST. MAGAZINE 169, 170 (1930).

[69] The resistance to the tax seems to have been successful, because from 1841 to 1848 the State did not pay interest on the bonds. *Id.* at 170-71.

the abolition of many useless offices, the limitation of special legislation, the institution of biennial, rather than annual, legislative sessions and still further equalization of representation in the legislature.[70]

In 1845 the reformers initiated a statewide campaign for a constitutional convention by holding a reform convention in Baltimore. At this convention a central committee was formed to direct the efforts of the reform movement, and each election district was urged to appoint a local committee to aid reform candidates for the legislature in their campaigns. However, the time was not yet ripe for the success of the reform movement. When the legislature met in December 1845, a bill was introduced providing for a vote taking the sense of the people as to whether a constitutional convention should be called, but the committee to whom the bill was referred reported that it was unconstitutional. The bill was then defeated on the floor of the House by a tie vote.[71]

The reformers did achieve one significant success at this session of the legislature, however. An amendment was adopted providing that the legislature should meet in biennial instead of annual sessions. Although this was in itself one of the goals of the reformers,[72] the bill was actually passed as an anti-reform measure designed to reduce the agitation for constitutional reform. Nevertheless, the amendment accrued to the benefit of the reformers, because it was submitted to the people for ratification, rather than held over for the approval of the next legislature, and thus provided a precedent for following a course of constitutional revision other than that stipulated in the constitution itself.

Although opposition to reform remained, at least partially from a fear of raising the slavery question by disrupting the political structure,[73] it was becoming increasingly apparent that the reform movement could not be forever forestalled. The strength which the movement had acquired was reflected in the gubernatorial election of 1847 when Philip Francis Thomas, the Democratic nominee and the champion of the reform party, was elected governor. However, if the election of Governor Thomas was a mandate for constitutional revision, this mandate could not be immediately translated into action, because the Whigs had a majority in both houses of the General Assembly. But it was now only a matter of time. In 1849 county conventions were held throughout the State pressing for the calling of a constitutional convention, and early in 1850, pursuant to a message delivered by the Governor, the General Assembly enacted a law providing for the taking of a vote of the people on the question of calling a constitutional convention. On May 8, 1850, the election was held, and by a vote of 23,906 to 5,340 the people expressed their desire that a convention be called.[74]

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[70] GREEN, *op. cit. supra* note 53, at 273.

[71] Harry, *supra* note 56, at 23.

[72] The reformers favored biennial sessions because they felt that a limitation on the length of legislative sessions would restrict the legislature's involvement in financial affairs and reduce the accumulation of the State's debt. *Id.* at 50.

[73] See *Id.* at 20.

[74] See Table 2-A *infra.*

THE CONVENTION OF 1851

The Constitutional Convention convened at Annapolis on November 4, 1850. Superficially, it appeared that the Convention would be able to effect without substantial difficulty the constitutional changes which the conditions of the age required. The power which the Convention possessed was virtually unlimited, since the only restriction which the legislature had placed upon it was to forbid it from changing the relation of master and slave as it existed under the present Constitution.[75] Moreover, among the delegates were some of the most prominent men in the State, including three men who served as governors, three as United States senators and several as members in the House of Representatives.[76]

However, a spirit of partisanship which pervaded the Convention prevented the delegates from performing their task effectively. Because representation in the Convention was based upon representation in the House of Delegates, there was an imbalance within the Convention itself favoring the more conservative sections of the State. Thus, although the purpose of the Convention was reform, the Democrats—the party of reform—had only forty-eight of the one hundred and three delegates. Furthermore, although the Whigs had demonstrated in the past that they were willing to respond to the feelings of the majority of the people where circumstances necessitated, the flexibility of action of many of the Whig delegates was severely restricted by specific instructions which they had been given by their constituents.[77]

[75] GREEN, *op. cit. supra* note 53, at 276.
[76] *Ibid.*
[77] Harry, *supra* note 56, at 40.

The difficulties caused by partisanship were manifested early in the proceedings of the Convention. It was not until the eighth day that the delegates were able to elect a chairman, and when they succeeded in doing so, they elected John G. Chapman, a Whig who, although not opposed to all reform, felt that the Convention was improper and had voted against its convocation. Party spirit continued to run high throughout the Convention's debates, and near the end of the proceedings it became apparent that if the whole constitution which had been drafted was put to a vote of the Convention, it might well be defeated. Therefore, it was voted upon section by section, and this aggregate product was the document which was submitted to the vote of the people. Subsequently, during the campaign for ratification fifty-five of the delegates—a bare majority—seem to have recommended the adoption of the constitution, but many influential delegates, including the chairman of the Convention, continued to be opposed to it.[78]

The Convention adjourned on May 13, 1851. Much of the public was disenchanted with its work. In an editorial of May 7, 1851, the *Baltimore Sun* commented:

> "It is clear to every dispassionate observer that the people were either remiss in their selections of men as reformers; were governed in the

[78] The fact that a majority of the delegates recommended adoption of the constitution during the ratification campaign does not prove that the constitution would have been approved as a whole by the Convention, because apparently a substantial number of the delegates had left the Convention before its final sessions met.

> matter by *party* rather than by *political* considerations, or were unprepared to appreciate the quality and character of a bold and searching reform. Instead of a convention of men acting under an exhalted sense of great responsibility, we have seen on the part of many of them a constant display of factious opposition, originating in sectional interests and party prejudice."[79]

In contrast—and perhaps reaction—to the divisive partisanship which had characterized the proceedings of the Convention, the general tone of public discussion surrounding the campaign for ratification was free from strict party spirit.[80] Although there was only a period of twenty-two days between the adjournment of the Convention and the ratification vote, the constitution was exposed to careful public scrutiny by publication of the document in newspapers throughout the State and in pamphlet form. One observer has commented, however, that one of the primary motivating considerations influencing the election did not involve an appraisal of the relative merits of the Convention's product, but was simply the people's desire to remove from the legislature the exclusive power to alter the structure of government.[81] In any event, when the constitution was submitted to the vote of the people on June 4, 1851, it was adopted by a majority of 10,409 votes.[82]

THE CONSTITUTION OF 1851

THE CONSTITUTION AND THE REFORM MOVEMENT

Although a majority of the delegates to the 1851 Convention were Whigs, the new Constitution embodied many of the reforms which the Whig amendments of 1836 had failed to incorporate. Three factors seem to have combined to produce this result. First, reform under the new Constitution was far from complete, because the legislature, although reapportioned, remained under the control of a conservative minority,[83] while districting plans also preserved a great portion of the minority's strength in the executive and judicial branches.[84] Secondly, although the Whig party was representative of the more conservative elements of the community, many Whigs were not irreconcilably hostile to constitutional revision and were willing to effect those changes which had become necessary since 1836. Thirdly, the reformers prepared the road to compromise, especially on the legislative

[79] Harry, *supra* note 56, at 67.

[80] *Id.* at 69.

[81] *Id.* at 81.

[82] See Table 2-E *infra*.

[83] For instance, slight relief was given to the citizens of Baltimore City, because although the city was to be allotted four more delegates than the largest county, at that time Baltimore had a population of 169,012 whereas the largest county had a population of only 41,589 and was given six representatives. MD. CONST. art. III, §3 (1851). For a table containing the opportionment of the House of Delegates from 1851 to 1864, see Table 2-F.

[84] Thus, although the governor was elected by popular vote, he was to be chosen in rotation from a different one of three districts into which the State was divided. MD. CONST. art. II, §§ 2 & 4 (1851). Consequently, the smaller counties were assured that the governor would not also be a resident of the more populous areas. Similarly, although the judges of the Court of Appeals were to be elected by popular vote, each of the four members of the Court were to come from a different one of the four districts into which the State was divided for their selection. MD. CONST. art. IV, § 4 (1851).

apportionment issue, by proposing a constitutional provision prohibiting the legislature from changing the relationship between master and slave as it presently existed.[85]

Thus, by coalition and compromise the reformers secured adoption of many of the constitutional provisions which they had been proposing for over a decade. A reorganization of the judiciary was made in order to consolidate the courts and reduce the expense of the State, and the popular election of judges was provided.[86] Provision was similarly made for the popular election of minor public officers and local officials.[87] A more extensive plan of reapportionment was established, with the results that representation generally was based more upon population than it had been in the past and that the City of Baltimore was given a slightly greater voice in the legislature.[88]

Protection against the irresponsible expenditure of public funds was also provided in the new Constitution by severely restricting the power of the legislature in fiscal matters. Thus the Constitution prohibited the legislature from contracting debts, unless the law which authorized a debt also provided for an annual tax sufficient to pay the interest on the debt and to discharge the principal within fifteen years.[89] Furthermore, the Constitution prohibited extending the credit of the State for the benefit of any private person, association or corporation, and prohibited the General Assembly from involving the State in the construction of any works of internal improvement.[90]

The experience of the reformers had made them exceedingly sensitive to the undesirability of leaving the process of constitutional amendment and revision exclusively within the province of the legislature, and they succeeded in including in the new Constitution a provision designed to assure that the people would not be powerless to change their form of government. In the section setting forth the amendment process, the legislature was required to provide for the taking of the sense of the people as to whether the Constitution should be amended at each session immediately following the publication of a United States census.[91] However, the reformers were unsuccessful in their attempt to include in the Declaration of Rights an article reciting the inalienable right of the people to change their form of government, even by methods not established by the Constitution.[92]

[85] This proposal was made by Mr. Presstman, a reformer from Baltimore City. Harry, *supra* note 56, at 40.

[86] MD. CONST. art. IV (1851). See generally Harry, *supra* note 56, at 47-50.

[87] See *id.* at 74.

[88] MD. CONST. art. III, § 3 (1851). *But cf.* note 83 *supra.*

[89] MD. CONST. art. III, § 22 (1851).

[90] *Ibid.*

[91] MD. CONST. art. XI (1851).

[92] MD. DECLARATION OF RIGHTS art. 1 (1851). Ironically in 1863 an argument was made by those opposed to constitutional revision that the combination of Article XI of the 1851 Constitution and of Article I of the 1851 Declaration of Rights prohibited the taking of a vote of the people on the question of calling a constitutional convention in any year other than that immediately following a United States census. See Myers, *The Maryland Constitution of 1864,* at 63 ("The Johns Hopkins University Studies in Historical and Political Science," Vol. 19, Nos. 8-9, 1901). This clearly was not the intent of the framers of the provisions, since they desired to open, rather than close, opportunities to revise the Constitution. Neverthe-

Despite the extensive changes which were made in the Constitution of 1851 (of the sixty articles of the old Constitution, twenty-five were abrogated and twenty were rewritten almost beyond recognition) the document seems to have pleased no one. The conservatives were aggrieved by the many liberal principles which were accepted, while the reformers felt that the compromises which they had been forced to make weakened the implementation of those principles. But dissatisfaction may have been inevitable. The age was one of great social unrest, and was a difficult period in which to debate political theory and design the structures of government.

DELINEATION OF SPECIFIC PROVISIONS

DECLARATION OF RIGHTS

A provision was included declaring that the people retained the inalienable right to alter their form of government when a majority of them found it necessary, but the exercise of this right was limited to the mode prescribed by the Constitution.

After substantial debate, the compact theory of government was written into the Constitution. (This was the theory espoused by the conservatives. The reformers adhered to the idea of Mr. Justice Story that a constitution has the status of merely fundamental law.)[93]

SUFFRAGE AND ELECTIONS

Residency requirements were set at one year in the State and six months in the district in which the vote was to be cast. The right to vote in one district was retained until the same right was acquired in another.

An effort was made to extend the franchise to married men of eighteen years of age, but the traditional age requirement of twenty-one years was retained.[94]

An unsuccessful attempt was made to establish general registration laws throughout the State.[95]

LEGISLATIVE BRANCH

Each county and the City of Baltimore were to be given one senator.

The House of Delegates was reapportioned. Representation of the counties was to be based solely upon their respective populations—except that each county was to be allowed two delegates—and the City of Baltimore was to be given four more delegates than the largest county.

Clergymen were disqualified as legislators.

The term of the office of senator was reduced from six to four years. One-half of the senators were to be elected every two years.

Compensation of the legislators was set at four dollars per diem, and mileage expenses were allowed.

The total number of members in the

less, a similar argument, founded upon an amendment provision in the 1864 Constitution much like Article XI of the 1851 Constitution, was made by opponents of constitutional revision in 1867. See PERLMAN, DEBATES OF THE MARYLAND CONSTITUTION CONVENTION OF 1867, at 9-13 (1923). Although the suit in which this argument was made was dismissed by the Court of Appeals, the dismissal was based on procedural grounds, and the merits of the argument were not passed upon. See *id.* at 13-27.

[93] GREEN, *op. cit. supra* note 53, at 277.

[94] *Id.* at 281.

[95] Harry, *supra* note 56, at 73.

House of Delegates was not to be less than sixty-five nor more than eighty.

The General Assembly was to meet annually in 1852, 1853 and 1854, and biennially thereafter. (By this provision, the principle of biennial sessions was established, while the legislature was given the time which was thought to be necessary to enact new laws required by the adoption of the new Constitution.)

The General Assembly was to meet on the first Wednesday in January in every year in which it had a session. The 1852 legislative session was to continue until the representatives adjourned themselves, but all subsequent regular sessions were to close on March 10.

A majority of each house was to constitute a quorum.

The Senate was given equal power with the House to initiate revenue bills.

A law could be enacted only by the affirmative vote of a majority of the members elected in each house.

At the final vote on a bill, the ayes and nays had to be recorded.

EXECUTIVE BRANCH

Residency requirements for the governorship were set at five years in the State and three years in the district from which the candidate was elected.

The governor was to be elected by popular vote. The State was divided into three districts, from each of which the governor was to be chosen in rotation. (This provision was carried over from an 1836 amendment.)[96]

The governor's term of office was set at four years.

The power to appoint judges, clerks of the court, registers of wills and many subordinate executive officials was taken from the governor. Thereafter, these officers were to be elected by popular vote.

The office of Attorney General was abolished, and replaced by the "State's Attorney" who was to be paid in fees, rather than by salary.

The office of Comptroller of the Treasury was established. The function of the comptroller was to act as a check upon the treasurer. He was to be elected by popular vote, and his term of office was two years.

The State Treasurer was made a constitutional office. The treasurer was to be elected by the two houses of the General Assembly on a joint ballot.

The board of "Commissioners of Public Works" was established. It was composed of four members, who were elected by popular vote every four years.

The governor was required to examine the accounts of the treasury semi-annually.

An unsuccessful attempt was made to check the governor in the use of his pardoning power and to require him to publish the petitions for pardon at least one month before he acted affirmatively upon them.[97]

JUDICIAL BRANCH

The Court of Appeals was established as the appellate tribunal. It was composed of four judges, each of whom was selected from one of four districts into which the State was divided.

The State was divided into eight circuits for the purpose of the selection of

[96] MD. CONST. 1836 amend., § 20 (1776).

[97] GREEN, *op. cit. supra* note 53, at 280.

trial judges. One judge was to be selected from each circuit, and was to circulate among the county courts therein.

Judges were no longer to be appointed, but were to be elected by popular vote. Their term of office was ten years.

Judges were eligible for reelection until they reached the age of seventy.

The salary of the judges of the Court of Appeals was set at twenty-five hundred dollars, and that of the circuit judges at two thousand dollars.

The Court of Appeals was to appoint its own clerk, but the clerks of the circuit courts were to be elected.

The Court of Appeals was required to file an opinion in each case which it decided. It was further required that provision be made by law for the publication of the opinions.

The terms of the Court of Appeals were to be in June and December, and all sessions of the Court were to be held in Annapolis.

STATE FINANCES

The legislature was prohibited from contracting debts, unless the law authorizing a debt also provided for an annual tax sufficient to pay the interest on the debt and to discharge the principal within fifteen years.

The credit of the State was not to be given in aid of any individual, association or corporation—except for the purpose of education—and the General Assembly was prohibited from involving the State in the construction of works of internal improvement.

LOCAL GOVERNMENT

County commissioners were to be elected by the people, rather than appointed by the governor.

The legislature was empowered to give the county commissioners general authority to manage the county affairs of their respective counties.

MISCELLANEOUS PROVISIONS

The legislature was prohibited from authorizing the issue of lottery grants. (The same restriction had been imposed by an 1834 amendment.)[98]

An unsuccessful attempt was made to establish a uniform system of public education throughout the State. (Opposition to the plan came from the City of Baltimore and the larger counties because of the inequitable manner in which the existing school fund was distributed, and because the City and many of the counties had sufficient provisions for public schools under their local systems. However, the Constitution of 1864 contained a provision for public schools very similar to the plan recommended at the 1851 Convention.)[99]

A change in the oath of office made by an 1824 amendment to allow Jews who believed in an after-life of rewards and punishments to hold public office was retained.

THE AMENDMENT PROCESS

The legislature was required to provide for the taking of a vote of the people on the question of whether a constitutional convention should be called at each session immediately succeeding the returns of every United States census.

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[98] MD. CONST. 1834 amend. (1776).

[99] See generally Blauch, *supra* note 68.

THE PERIOD FROM 1851 TO 1864

Although the Constitution of 1851 was never amended, its unpopularity increased with the passage of time. The causes of the Constitution's unpopularity varied with the points of view of its various critics. However, the fact that the Constitution had never been voted upon as a whole by the Convention enabled persons who may have been dissatisfied with its substantive provisions for conflicting reasons to unite in attacking "the irregularity of its adoption."[100]

Nevertheless, in spite of the general discontent with the document, when an election taking the sense of the people on whether a new convention should be called was held in 1858, a negative response was elicited from a majority of more than 8000.[101] And when a bill was introduced in the 1862 legislature to provide for the taking of another vote, it failed to be enacted into law.[102]

This contradiction between the acknowledged unpopularity of the 1851 Constitution and the inability to call a new convention seems to be explainable by a more fundamental contradiction which characterized Maryland during this period: the simultaneous dominance of the slave system in the southern counties of the State and of a free labor economy in the northern and mountain regions. Although this situation naturally created a deep division in political sentiment among certain segments of the population, the necessity of carrying on the affairs of state required a resolution of the tension which inevitably arose from the coexistence of two diametrically opposed ways of life within the borders of the State. This resolution could be accomplished only by the refusal to confront directly the issues which were at that time dividing the nation, including the slavery question. Thus, it is not surprising that the people declined to call for constitutional revision, because this would necessarily have involved considering the provision of that document which declared that the relationship between master and slave should not be altered.

The pressure of events over which Maryland had no control was quickly rendering her ambivalent position untenable, however, and the State had no choice but to take a stance after the outbreak of hostilities in April, 1861. It is questionable whether reasonable doubts could have existed as to what the State's official stance would be, because it is difficult to contemplate that the North could have tolerated the encirclement of its capital by rebel territory. In any event, any doubts which may have lingered were removed by the election of Augustus Bradford, the Unionist candidate, as governor in November, 1861, by a majority of more than 31,000.[103] Some felt that Maryland was now definitely lost to the cause of secession.

The entry of federal troops onto Maryland soil undoubtedly helped to define the State's policy. Although sym-

[100] Myers, *The Maryland Constitution of 1864,* at 13 ("The Johns Hopkins University Studies in Historical and Political Science," Vol. 19, Nos. 8-9, 1901).

[101] See Table 2-A *infra.*

[102] Myers, *supra* note 100, at 13.

[103] *Id.* at 8-9.

pathy for the rebels still prevailed in some areas, especially on the Eastern Shore and in the lower counties, the Unionist Party became the only party with statewide strength. However, a dispute within the Unionist Party itself as to the extent to which federal policy should be supported arose during the preparations for the 1863 election. At this election the Comptroller of the Treasury, the Commissioner of the Land Office, five members of Congress, a State Legislature and various local officials were to be chosen. The most clearly defined issue which was joined during the dispute among the Unionists was whether the Party should adopt as part of its platform President Lincoln's proclamation of September 22, 1862, emancipating the slaves in the rebel states and his plan for compensated emancipation of slaves in loyal states, which he had outlined in a message to Congress on March 6, 1862. When the conservative State Central Committee, which controlled the party machinery, refused to incorporate Lincoln's emancipation policy into the party's program, the more radical Unionists bolted the party. Thus, despite the fact that the Democrats were now no longer a political force, except on the Eastern Shore and in the southern counties, there were two parties competing in the 1863 campaign: the conservative "Conditional Union" Party, which although it recited a desire for a Union victory in the War, condemned President Lincoln's "unconstitutional actions," and the radical "Unconditional Union" Party, which supported an aggressive federal policy.[104]

The emancipation issue, which lay at the core of the dispute, clearly raised the question of constitutional revision, since the 1851 Constitution explicitly condoned slavery and implicitly gave power to slave-holding interests. The Unconditional Unionists realized this fact, and attempted to make constitutional revision an issue in the election. Apparently, despite the fact that the Conditional Unionists officially supported taking a vote of the people on the question of calling a constitutional convention,[105] this attempt was successful.[106] In any case, even if both parties were pledged to take such a vote, it seems clear that the nature of a new constitution would necessarily be dependent upon the outcome of the 1863 election.

The campaign in the fall of 1863 was a vigorous one, in which the differing points of view appear to have been fairly and fully aired. However, the election itself, held on November 4, was badly tainted by the intervention of federal troops.[107] On October 27, General Schenck, the commanding officer of the federal forces in Maryland, issued an order requiring (1) all provost-martials and other military officers to arrest all persons near polling places who were rebels or who did not support the federal government, (2) the judges of election to give an oath of allegiance to the federal government to anyone whose loyalty was challenged, and (3) the reporting of any judge of election who did not comply with the order. Upon complaint by Governor Bradford to President Lincoln, the first part of this order was rescinded on the ground that it vested excessive discretion in the

[104] See generally *id.* at 14-16.

[105] *Id.* at 15.

[106] *Id.* at 16.

[107] For a thorough discussion of the military's interference in the 1863 election, see *id.* at 17-29.

military officers. However, this part of the order was replaced by Lincoln's own order that the military officers prevent disturbances of the peace at the polls. Moreover, the other two parts of the original order were left standing.

On its face Schenck's order did not appear to interfere with a choice between the Unconditional Unionist and Conditional Unionist candidates, since it only required the voters' allegiance to the federal government and since both parties claimed to be loyal. However, General Schenck and other military officers had strongly endorsed the Unconditional Unionist ticket, and two of the five provost-marshals were themselves candidates. Accordingly, many citizens feared that the soldiers at the polling places would intimidate anyone who did not vote for the Unconditional Unionist candidates, and thus many persons who were loyal, but who favored the Conditional Unionist platform, did not go to the polls. Actually, several instances of intimidation were subsequently reported, and in the counties of Kent and Queen Anne's, the local commanding officer issued a proclamation that only those who voted the Unconditional Unionist ticket would be considered loyal.

The result of the election was an overwhelming victory for the Unconditional Unionist Party.[108] Henry Goldsborough, the Unconditional Unionist candidate for Comptroller, won by a majority of nearly 20,000 votes. Moreover, the candidates of that party also won a clear majority in both houses of the General Assembly. It is difficult to ascertain the extent to which the presence of soldiers at the polls affected the vote. However, it has been suggested that even in a completely free election, Goldsborough would have won handily, as would most of the Unconditional Unionist representatives in the House of Delegates, while the result in the senatorial elections may have been different.[109]

The new General Assembly convened at Annapolis on January 6, 1864. In his message to the legislators, Governor Bradford urged that they enact convention enabling legislation. Accordingly, on January 8, the question of whether a vote of the people should be taken in regard to the desirability of calling a constitutional convention was submitted to the consideration of a special committee of the House of Delegates. On January 15, the committee reported a bill which provided for a taking of this vote and the election of delegates on the same day. A minority report was also presented, which declared that the vote on the question of calling a convention should be taken first, the legislature reserving the power not to call the convention if the vote was affirmative.

After a prolonged debate, the bill contained in the majority report was passed by the House on February 3. The bill was then sent to the Senate, where certain questions were raised, and on February 8, a conference committee was appointed. This committee immediately adjusted the differences between the two houses, and on the same day the Senate passed the bill in slightly modified form. On the following day, the bill was enacted into law when the House passed the Senate version.[110]

[108] *Id.* at 24.

[109] *Id.* at 24-25.

[110] *Id.* at 30-31.

Under this enabling legislation, the election was to be held on April 6, 1864, and in the event that a favorable vote was returned, the convention was to convene on April 27. In reaction to the experience in the November election, the Enabling Act further provided that if the military should interfere with the election in any district, a new election should be held in that district.

In their campaigns, the Unconditional Unionist candidates ran on a radical platform, completely supporting the national administration in all matters, including its emancipation policy. Some of the Conditional Unionist leaders felt that the November election had expressed the people's will on this issue in favor of their opponents, and, therefore, in a few counties and in the City of Baltimore there were no Conditional Unionist candidates in the delegate election.[111] Once again in this election, the Democrats did not organize throughout the State, but in the lower counties they fielded candidates who declared themselves as opposed to emancipation and even against the call for the convention itself.

At the April 6 election, there was much less military interference than there had been in November. General Schenck had been replaced by a man even more vociferous in his support of the Unconditional Unionists than Schenck himself had been, but upon Governor Bradford's assurance that the State's own election laws would be sufficient to protect against voting by disloyal persons, no general military orders were issued. Military interference was reported in only one county, and pursuant to the Enabling Act, a new election was held there.[112]

Even without the aid of federal troops, the Unconditional Unionist policy was again overwhelmingly endorsed at the polls. The vote on calling the convention was 31,593 "for" and 19,524 "against", [113] and of the ninety-six delegates elected, sixty-one were Unionists and thirty-five were Democrats from southern Maryland. The time had arrived for Maryland to adopt a constitution consistent with her—perhaps unwilling—status as a member of the Union.

THE CONVENTION OF 1864

Maryland's second constitutional convention in fifteen years convened on April 27, 1864 and adjourned *sine die* on September 6 of the same year. During the months of June and July, the Convention temporarily suspended its proceedings on three different occasions. From June 4 to June 9 there was an adjournment on account of the Republican National Convention which was being held at that time in Baltimore and to which several of the members of the Convention were delegates. The Convention again adjourned from June 24 to July 6 to allow the delegates, especially those who were farmers and needed to harvest their crops, to attend to their personal affairs. The meetings of the Convention were interrupted for the last time, shortly after the Convention reconvened, by the entry into Maryland of Confederate forces, commanded by General Jubal Early, which disrupted the affairs of the State. Although a few of the members of the

[111] *Id.* at 32.

[112] *Id.* at 35.

[113] See Table 2-A *infra.*

Convention remained in Annapolis at this time, meeting and adjourning from day to day, the business of the Convention was not resumed until July 19.[114]

Except during the period immediately preceding and succeeding Early's raid, when the feelings of the delegates ran high, the proceedings of the Convention seem to have been marked by a cordiality which was quite surprising in light of the fact that the diametrically opposed factions were assembled. Off the Convention floor the relations between the Unionists and the Democrats were amiable, while during the official Convention debates, every effort was made to allow the presentation of both the majority and minority points of view. During the first five weeks of the proceedings, debate was unlimited, but it became unfeasible to continue this policy since little work was being accomplished, as is evidenced by the fact that it took the Convention a month to adopt its rules. Accordingly, restrictions on the length of speeches—first of one hour, then of thirty minutes and finally of twenty minutes—were progressively imposed. These restrictions were disadvantageous to the Democrats, who naturally wanted to attenuate the Convention's proceedings to the greatest extent possible. Nevertheless, the minority delegates appear to have acknowledged the fairness of the procedures which were enacted, for when at the close of the Convention a resolution of commendation of Henry Goldsborough, the President of the Convention and a staunch Unionist, was proposed, it was unanimously adopted and "heartily endorsed" by several of the Democrats.[115]

Another manifestation of the mutual respect which the majority and minority delegates held for one another was the passage by non-partisan action of a resolution stating that all the delegates were qualified to serve and had been duly elected. Apparently, this resolution may not have actually corresponded to fact, but the members of the Convention felt that the people in their sovereign capacity had a right to choose persons to represent them whom the legislature had declared ineligible.[116]

Courtesy between the delegates could not alter the basic fact, however, that many of the decisions which the Convention was called upon to make would favor one party at the expense of the other. And the commanding majority which the Unionists held left little doubt as to which party would be favored. Early in the Convention, the Unionists solidified their position by adopting a rule that only a majority of delegates present, rather than a majority of the delegates elected, was necessary to pass the substantive provisions of the draft constitution, and thereafter it was clear that the day-by-day proceedings of the Convention would reflect the inexorable triumph of Unionist policy.[117] The debates between the

[114] See generally *id.* at 44-48. As a result of the raid, the Convention passed several resolutions not related to constitutional revision, such as a request to the President to assess Southern sympathizers within the State in order to compensate loyal citizens who had suffered injury at the hands of the Confederate forces. The minority delegates condemned the adoption of these resolutions as being outside of the province of the Convention.

[115] *Id.* at 50-51.

[116] *Id.* at 49-50.

[117] It has been suggested that the Unionist majority adopted this rule in order to remove an inducement to the Democrats to delay the proceedings of the Convention by absenting themselves from the Convention. *Id.* at 42-43, 51. This analysis seems to be incorrect, because there would have been no

Unionists and the Democrats were often no more than a mere formality, and in fact on several occasions the Unionists at the beginning of a debate would politely—but firmly—acknowledge that the issue being debated had already been foreclosed. Thus the only significant interchange on questions of national scope actually occurred only when the Unionists themselves were divided in opinion.

In this context the result of the final vote by the Convention on the draft constitution was fully predicatable: fifty-three of the delegates voted for it and twenty-six against, while seventeen were absent and did not cast their ballots.

By virtue of a provision in the document drafted by the Convention, a ratification vote was to be taken on October 12 and 13, 1864. In the period preceding this election, the Democrats, who were acquiring new strength and beginning to reorganize throughout the State, campaigned vigorously for rejection of the new constitution. Immediately after the Convention adjourned, the thirty-five minority delegates unanimously signed and published a protest against the document, and on September 29, at its State Convention held in the City of Baltimore, the Democratic Party adopted a resolution condemning the Convention's draft. Apparently, many Unionists opposed the new constitution as well. This is understandable, since the new constitution dealt with a wide range of issues, many of which involved considerations of fundamentally domestic concern to which party allegiance was not germane. Moreover, many Unionists felt that the provision in the new constitution forever disenfranchising and barring from public office Southern sympathizers was unjust, while others made a more limited argument that the Convention had exceeded its authority by requiring the test oath of voters at the ratification election.[118] On the other hand, the new constitution was not without its influential advocates, including President Lincoln who strongly urged its adoption.

The vote of October 12-13 was almost equally divided. In fact, at the regular state elections the new constitution was rejected by a vote of 29,536 to 27,541. However, this tabulation did not include the votes of soldiers fighting away from home in the Union army, and after those votes had been returned—and after the

more incentive for the Democratic delegates to absent themselves from the Convention under a "majority of those elected" rule than under the "majority of those present rule" which was adopted. For their absence would preclude the Convention from acting only if it prevented the assemblage of a quorum, and to this point the voting rule was irrelevant. In other words, the Democrats would have acquired no additional leverage to delay by absenteeism from a "majority of all those elected" rule since the Unionists necessarily discounted the Democratic vote anyway and since the Democrats had the same degree of power to prevent the assemblage of a quorum under either voting rule.

Therefore, it appears that the purpose behind the adoption of the rule was not to preclude the Democratic delegates from delaying the Convention by absenting themselves. Rather, this purpose seems to have been to allow the proceedings of the Convention to go forward even if a large number of Unionists absented themselves. Thus, whereas under a "majority of those elected" rule forty-nine Unionist delegates would have had to be on the floor of the Convention at all times, under the "majority of those present" rule, only thirty-six Unionists were required, whenever there were at least thirteen Democrats also present to comprise a quorum.

[118] *Id.* at 91.

Court of Appeals had upheld the legality of including them in the final count—the new Constitution was ratified by a majority of 375.[119]

THE CONSTITUTION OF 1864

THE CONSTITUTION AND THE UNIONIST PROGRAM

For the purpose of analyzing the Constitution of 1864 as one stage in the evolution of the structure of Maryland government, it is clearly inadequate to focus upon that document solely as the effectuation of the program of the Unionist Party. For the Unionists, unlike the reformers of the previous decade who were influential in the Convention of 1851, were not concerned with constitutional revision primarily because of a desire to change the organic law of the State, but out of considerations of national policy. Therefore, in viewing the Constitution of 1864, it must be kept in mind that that document incorporated several important changes in the structure of Maryland government, such as the creation of the office of lieutenant governor,[120] the re-establishment of the office of Attorney General[121] and the institution of a statewide system of public education,[122] which were not related to the Unionist program.

On the other hand, the Constitution of 1864 cannot be understood without reference to the dispute between the Unionists and the Democrats, because the document is above all the result of Unionist policy. It was the implementation of this policy which spurred the movement for constitutional revision in the election of 1863, and which gave content to the movement in the 1864 Convention.

Unionist sentiment was most clearly reflected in the Declaration of Rights. Thus, in one simple article the new Constitution destroyed what had been the basis of compromise in 1851 by completely abolishing slavery in the State.[123] Similarly, in a general article supplementing this provision it was declared "that we hold it to be self-evident that all men are created equally free; that they are endowed by their creator with certain inalienable rights, among which are life, liberty, the enjoyment of the proceeds of their own labor and the pursuit of happiness."[124]

In accordance with the platform of the Unionist Party, compensation of the owners of emancipated slaves by the State was prohibited.[125] Moreover, although many of the Unconditional Unionist delegates to the Convention may have preferred otherwise,[126] the Declaration of Rights further remained in strict compliance with the Unionist platform by leaving open the possibility of compensation of the ex-owners of emancipated slaves by the national government.[127]

Unionist ideas were embodied elsewhere in the new Constitution as well. In the Article on Elective Franchise it

[119] See Table 2-E *infra*.
[120] MD. CONST. art. II, § 6 (1864).
[121] MD. CONST. art. V (1864).
[122] MD. CONST. art. VIII (1864).
[123] MD. DECLARATION OF RIGHTS art. 24 (1864).
[124] MD. DECLARATION OF RIGHTS art. 1 (1864).
[125] MD. CONST. art. III, § 36 (1864).
[126] See Myers, *supra* note 100, at 55.
[127] MD. CONST. art. III, § 45 (1864).

was provided that Southern sympathizers should be forever disenfranchised in State elections and barred from holding public office, unless their rights were restored by a two-thirds vote of the General Assembly.[128] Similarly, a new section providing for forfeiture of estate—which had previously not been imposed for any crime in Maryland—for high treason was obviously included in the Constitution by the Unionist majority.[129] Further, the Unionists secured the adoption of a rather unique provision empowering the General Assembly to accept any lands in Virginia or West Virginia which the federal government might cede to Maryland.[130] Finally, clear Unionist influence is seen in the sections of the Constitution requiring all citizens voting in the ratification election to take an oath declaring their allegiance to the federal government, and providing for the taking of the votes in that election of Maryland soldiers fighting in the Union army outside of the borders of the State.[131]

In retrospect, the zeal with which the Unionist delegates to the Convention of 1864 effectuated the principles which they advocated seems to have been undeniably excessive. Furthermore, the closeness of the ratification vote and the rapid adoption of the Constitution of 1867 demonstrate that their zeal was not shared even by many of their Unionist colleagues. However, it must be recognized that the Constitution of 1864 was adopted in a time of war when passions were high and stringent measures necessary. The failings of the Unionists should obscure neither the accomplishments of their Party nor the advances made in the Constitution of 1864 which were independent of Unionist policy.

DELINEATION OF SPECIFIC PROVISIONS

DECLARATION OF RIGHTS

Involuntary servitude, except as punishment for crime, was abolished in Maryland.

Compensation by the State to the ex-owners of emancipated slaves was prohibited, but the General Assembly was given the power to receive and distribute any funds received from the national government for this purpose.

A declaration of the inalienable right of the people to "alter, reform or abolish" their form of government was retained. Moreover, the limitation on the exercise of that right contained in the 1851 Constitution to the "mode prescribed" in the document was deleted.

SUFFRAGE AND ELECTIONS

The right of suffrage remained confined to free white male citizens.

An oath of allegiance, stating that the declarant had not served in the rebel army or given aid and comfort to the Confederacy, was required as a condition to the right to vote.

A uniform system of registration of voters was established throughout the State.

THE LEGISLATIVE BRANCH

The City of Baltimore was divided into three legislative districts, and each

[128] MD. CONST. art. I, §§ 4 & 7 (1864).

[129] MD. DECLARATION OF RIGHTS art. 27 (1864).

[130] MD. CONST. art. III, § 48 (1864).

[131] MD. CONST. art. XII, § 9 (1864).

of these districts, as well as each county, was to be given one senator.

The House of Delegates was reapportioned to implement further the principle of representation based on population and, accordingly, to give more delegates to the City of Baltimore. Preliminarily the power of the smaller southern counties was reduced by a provision that apportionment should be based solely upon the white population. The general apportionment plan itself worked in the following manner: for every 5,000 persons or fractional part over one-half in each county and legislative district of the City of Baltimore, one delegate was to be allotted until the total number of delegates representing that area reached five; above that figure, one delegate was to be given for the next 20,000 people, and then one additional delegate was to be given for every additional 80,000 persons. The Constitution further specified the apportionment plan to be followed until the next census was taken, and this plan gave eighteen delegates to the City of Baltimore and sixty-two to the counties.

The provision disqualifying clergymen from serving in the General Assembly was omitted.

The compensation of legislators was raised from four to five dollars per diem. An absolute limitation of $400 as compensation for regular sessions was set.

The provision prohibiting the regular sessions of the legislature from meeting beyond March 10 was deleted. However, a thirty-day limitation was set on the length of special sessions.

The power of the General Assembly to pass local or special laws was restricted in fourteen different cases. For example, limitations or prohibitions were imposed upon the legislature's authority in regard to laws relating to the assessment and collection of taxes, the interest on money, the effectiveness of an invalid deed or will, the sale of real estate belonging to minors, the construction and repair of roads and bridges, and non-judicial grants of divorce.

THE EXECUTIVE BRANCH

The system of choosing the governor from one of three districts in rotation was abolished. The governor continued to be elected by popular vote.

The office of lieutenant governor was established. Apparently, this idea was a new one which originated among the delegates at the Convention itself.[132] Candidates for the position were required to possess the same qualifications as candidates for the governorship, and the same manner and time of election was established for the elections to the two offices. The lieutenant governor was to preside over the Senate and was given the right to cast a vote in the event of a tie. He was to succeed to the governorship in the event of the "death, resignation, removal from the state, or other disqualification" of the chief executive. The lieutenant governor was not salaried, but was to receive the same compensation as that allowed the Speaker of the House during the sessions of the General Assembly.

The office of Attorney General was re-established. The attorney general was to be chosen by popular vote. Candidates for the position were required to have resided and practiced law in the State for the seven years preceding the election. The term of office was four years, and the salary set at $2500 per year.

A fixed salary of $2000 was provided for the commissioner of the Land Office,

[132] MD. CONST. art. XII, §§ 12-15 (1864).

but he was required to pay into the treasury all fees which he received, rather than retain them as his compensation as he had under the former provision.

The Board of Public Works was entirely reorganized. The old procedure of electing four commissioners from a like number of districts was deleted, and the members of the Board were now the governor, the comptroller and the treasurer. These officers were not to receive any compensation for performing this additional function.

THE JUDICIAL BRANCH

The Court of Appeals was increased to five judges. A requirement was set that each judge have been a resident of the district from which he was elected for at least one year preceding his selection.

The chief judge of the Court of Appeals was to be appointed by the governor with the advice and consent of the Senate.

The number of circuits for trial work was increased to thirteen.

Despite a strong recommendation that all judges be appointed,[133] the elective system was retained, except that justices of the peace were now to be appointed by the governor, and constables by the county commissioners or mayor and city council of Baltimore.

The term of office of judges was raised from ten to fifteen years.

The salary of judges of the Court of Appeals was raised from $2500 to $3000.

The Court of Appeals continued to appoint its own clerk and the clerks of the circuit courts continued to be elected.

Judges of the Court of Appeals were prohibited from sitting in the trial courts.

A requirement that the Court of Appeals file its opinion within three months of the date of argument was imposed.

The terms of the Court of Appeals were changed to April and October.

LOCAL GOVERNMENT

Townships were substituted for election districts as the smallest unit of local government. Their powers were to be prescribed by statute.

The General Assembly was given the power to organize new counties under certain circumstances.

MISCELLANEOUS PROVISIONS

A statewide system of public education was provided for. A new state officer, the State Superintendent of Public Instruction, was to establish a uniform program of public schools throughout the State. The state superintendent was to be appointed by the governor, subject to Senate approval, and he held a four-year term and received a fixed salary of $2500. He was to be guided in his duties by the State Board of Education, which consisted of the governor, the lieutenant governor and the Speaker of the House, as well as the state superintendent himself, and the program which he established was to be administered by school commissioners appointed by the State Board for four-year terms in each county. The General Assembly was to provide by law for the public school system, assuring that a school be kept open in each district for at least six months in every year. Furthermore, the General Assembly was required to finance the system by levying an annual property tax, until a School Fund of six million dollars had been accumulated,

[133] See Myers, *supra* note 100, at 83-84.

the interest from which could support the system.[134]

The oath taken by public officers was changed to allow non-Christians other than Jews who believed in an after-life of rewards and punishments to hold public office.

AMENDMENT PROCESS

Three different methods for revising the Constitution were provided. First, proposed amendments could be passed by three-fifths of the members of each house of the General Assembly, and then submitted to the people for ratification. Second, the General Assembly could provide at any time by a two-thirds vote in each house for taking a vote of the people on whether a constitutional convention should be called. Third, in 1882 and each twenty years thereafter a vote of the people on this question was to be held without prior legislative approval.

SCHEDULE

Attached to the Constitution of 1864 was a schedule which included provisions controlling the transitional period between the effective date of the new Constitution and the operative times of certain of its specific sections. All officials who were presently in office were to retain their positions during the tenure specified under the existing law, unless it was specifically directed otherwise in the Constitution. Salary increases were to become effective on January 1, 1865. The existing courts were to retain their appointed powers and jurisdiction until the judicial department provided by the new Constitution was organized.

THE CONSTITUTION OF 1867

THE YEARS OF REACTION

The adoption of the Constitution of 1867 seems to have been the inevitable consequence of the termination of the War Between the States. That conflict had created artificial conditions which placed the radical Unionists, who did not represent the views of the majority of Maryland citizens, in a position of power, and after the cessation of hostilities, the 1864 document which embodied the radical Unionist policy could not long survive.

The disenfranchisement provision which the Unionists had devised in order to preserve their authority precluded an immediate transfer of power at the end of the War. The Democrats were well aware of the effect of this provision, and in the fall of 1865, pursuant to a resolution drafted by a mass meeting in Howard County, an attempt was made to have the disenfranchisement act which implemented the constitutional provision declared unconstitutional.[135] However, this attempt failed when in *Anderson v. Baker*,[136] the Court of Appeals upheld the validity of the act in a four to one opinion. It is difficult to evaluate the effect which this decision had upon the movement for constitutional revision. Its most obvious impact would seem to have been to buttress the main bulwark of Unionist power. On the other hand, by upholding the most unpopular provision of the 1864 Constitution, the opinion may have paved the way for the repudiation of that

[134] See generally Blauch, *Education and the Maryland Constitutional Convention, 1864*, 25 MD. HIST. MAGAZINE 225 (1930); Myers, *supra* note 100, at 85-87.

[135] BOND, A HISTORY OF THE COURT OF APPEALS OF MARYLAND 173 (1928).

[136] 23 Md. 531 (1865).

document by the people and the total collapse of Unionist authority.

In January, 1866, shortly after the *Anderson* decision was rendered, a meeting of Democrats was held in Baltimore, which adopted a proposal requesting the General Assembly to take the vote of the people on the question of whether a constitutional convention should be called.[137] The legislature did not act upon this petition. However, during this period the legislature was taking a step calculated to accomplish the result desired by the Democrats. Under the disenfranchisement clause of the 1864 Constitution, it was provided that the right to vote could be restored to those who had been disenfranchised by a two-thirds vote of each house of the General Assembly. In accordance with this provision, the General Assembly gradually extended the suffrage to the conservative elements of the community, so that within a short time after the close of the War, most persons who had been disenfranchised by the Constitution had reacquired the right to vote.[138]

The effect of this process was manifested in the election of 1866, in which the Democrats won control of the General Assembly.[139] The path for constitutional revision was now open. When the new legislature met in January, 1867, a law was quickly enacted providing for an election to be held on April 10, taking the sense of the people on whether a constitutional convention should be called. Drawing upon the precedent established by the 1863 General Assembly, the legislators also provided for the simultaneous election of delegates to the convention. The position of the opposing parties was now reversed, and it was the radicals who turned to the courts for relief. A suit was filed for the purpose of enjoining the election on the grounds that the time of the election was different than that prescribed in the Constitution and that the Constitution did not contemplate an election of delegates simultaneous with an election on the question of calling a convention.[140] This move of the radicals failed, however, when the Court of Appeals dismissed the suit on procedural grounds.[141]

Thus, the only hope remaining to the radicals was to convince a majority of the now-broadened electorate of the undesirability of calling a convention. The only major issue which the radicals appear to have raised in their campaign was a fear that reconsideration of the 1864 Constitution would reopen the way for compensation by the State of ex-owners of emancipated slaves, and this issue may have been a false one since the act calling for the vote contemplated that a new constitution would prohibit the legislature from enacting such a measure.[142]

At the April 10 election, the people expressed their desire that a convention be called by a vote of 34,543 to 24,136.[143] Accordingly, pursuant to the enabling legislation, the Convention met at Annapolis on May 8, 1867. It remained in session for nearly three

[137] BOND, *op. cit. supra* note 135, at 173-74.

[138] PERLMAN, DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1867, at 28 (1923).

[139] BOND, *op. cit. supra* note 135, at 174.

[140] PERLMAN, *op. cit. supra* note 138, at 9-12. The suit was brought by Alexander M. Rogers, Benjamin Deford, John Clark, William Kennedy and Johns Hopkins, all of whom were residents of Baltimore City. *Id.* at 9.

[141] *Id.* at 13-27.

[142] *Id.* at 28.

[143] See Table 2-A *infra*.

months, and the constitution which it prepared and adopted by a vote of 99 to 4 was submitted to the vote of the people on September 18, 1867—little more than one month after the Convention's adjournment. At this election, the new Constitution was ratified by a vote of 47,152 to 23,036.[144]

The expedition of the process by which the Constitution of 1867 was adopted demonstrates that there was a felt need to replace the 1864 document, and the decisiveness of the Convention's vote and the ratification election demonstrates that the new Constitution accurately reflected the views of the people. The question is therefore raised as to what changes were effected by the new document which made it acceptable to a populace to whom the former constitution had been unpalatable.

By necessity, the answer to this question is one of emphasis and not one of fundamental principle. For although the doctrines of the Unionists may have remained offensive to some of the citizens of Maryland, the new Constitution could not alter the basic fact that the War had conclusively resolved in favor of the Unionists the issues which had previously divided the nation. But the changes of emphasis were real, and they were crucial to the people of the State. Thus, whereas the Constitution of 1864 had merely left open the possibility of national compensation to the ex-owners of slaves, the new Constitution, both in the Declaration of Rights and in the Legislative Article, urged that such a measure be enacted.[145] Similarly, the adverse reaction of many Maryland citizens to the excesses which had been committed by federal troops during the occupation of the State was reflected in the article of the Declaration of Rights asserting that "the provisions of the Constitution of the United States, and of this State, apply as well in time of war as in time of peace,"[146] and in the section of the article on the Legislative Department prohibiting the suspending of the privilege of the writ of habeas corpus for any purpose.[147]

Although viewed from the perspective of the present day many of the provisions of the 1867 Constitution appear to be illiberal— and although the document was an obvious reaction to the radical constitution which it replaced—it would be incorrect to characterize the events of 1867 as a triumph of the forces of illiberalism over the forces of enlightenment. First, the new Constitution was not itself without liberal reforms, such as the provision giving Negroes the full right to testify in the courts.[148] Moreover, although some radicals were certainly more enlightened by modern standards than their contemporaries, for many persons radicalism was a stance dictated more by their own self-interest than by an enlightened philosophy, as, for example, on the compensation question. Therefore, to a great extent the Constitution of 1864 was overthrown not so much because it was liberal, but because it was partisan. Recognition of this fact is a necessary condition to an objective appraisal of the provisions of the document which replaced it.

[144] See Table 2-E *infra*.

[145] MD. DECLARATION OF RIGHTS art. 24 (1857); MD. CONST. art. III, § 37 (1867).

[146] MD. DECLARATION OF RIGHTS art. 44 (1867).

[147] MD. CONST. art. III, §55 (1867).

[148] MD. CONST. art. III § 53. It should be noted, however, that the General Assembly was given the power to enact laws declaring persons incompetent as witnesses. *Ibid.*

DELINEATION OF SPECIFIC PROVISIONS

DECLARATION OF RIGHTS

The legislature was prohibited from passing a law under any circumstances suspending the privilege of the writ of habeas corpus.

In the same article which recognized the abolition of slavery there was included an exhortation to the national government to compensate the ex-owners of emancipated slaves.

No person was to be disqualified as a witness because of race or color unless the General Assembly should thereafter so declare.

The only religious test set for witnesses and public officers was the belief in the existence of God, moral accountability to him and a system of rewards and punishments either "in this world or the world to come."

All retrospective or expurgatorial oaths were abolished.

SUFFRAGE AND ELECTIONS

The disenfranchisement accomplished by the Constitution of 1864 was abolished.

LEGISLATIVE BRANCH

The House of Delegates was reapportioned. Representation was based upon the whole population, and not only white citizens. Each county having a population of 18,000 or less was to have two delegates; each county with a population from 18,000 to 28,000, three delegates; each county with a population from 28,000 to 40,000, four delegates; each county with a population from 40,000 to 55,000, five delegates; and each county with a population above 55,000, six delegates. Each of the three legislative districts of the City of Baltimore was to have the same number of delegates as the largest county.

The provision disqualifying clergymen from serving in the General Assembly was restored.

The length of the regular sessions of the legislature was restricted to ninety days, and the length of special sessions was limited to thirty days.

The legislature was required to enact a law punishing the bribery of public officers.

The legislature was prohibited from passing a general pension law.

EXECUTIVE BRANCH

The office of lieutenant governor was abolished.

The governor was required to make periodic reports to the legislature on the condition of the State, and to recommend the enactment of measures which he deemed necessary and expedient.

The governor was given veto power.

The governor was given the power to appoint the state librarian and the commissioner of the General Land Office.

A department of labor and agriculture was established, whose duties included those which had previously been possessed by the commissioner of immigration and the immigration agent. These latter offices were abolished.

JUDICIAL BRANCH

The independent Court of Appeals was abolished. The members of that Court were now to be the chief justices of each circuit, except that a judge without any trial duties was to be elected to the Court of Appeals from the City of

Baltimore. Four judges were to be sufficient to constitute a quorum, and a concurrence of three judges was necessary for a decision.

The State was divided into eight judicial circuits for the purpose of trial work. In each circuit there was to be one chief judge and two associate judges.

The Orphans' Court system was substantially retained, both in the counties and in the City of Baltimore.

The general court system of the City of Baltimore was reorganized. Six courts were established by the Constitution, and the General Assembly was empowered to create one additional court whenever it deemed it expedient. The Supreme Bench of Baltimore City, which was composed of the judges of the other five city courts, was to have appellate jurisdiction, except that the decisions of the Baltimore City Court on appeals from decisions of justices of the peace were to be final.

The compensation of judges was fixed in the Constitution.

The clerks of the circuit courts continued to be elected; moreover, the clerk of the Court of Appeals was no longer to be appointed by the Court, but was also to be elected.

The Court of Appeals was required to remain in session at least ten months in every year if the business before the Court required it.

STATE FINANCES

The prohibition on the loaning of the State's credit for works of internal improvements was retained, with an exception to the extent of $300,000 in favor of St. Mary's, Charles and Calvert Counties.

The General Assembly was required to provide by law for the taxation of the revenue accruing to foreign corporations from business done within the State.

LOCAL GOVERNMENT

Wicomico County was created by constitutional provision.

All counties and municipal corporations were prohibited from extending their credit for works of internal improvement without prior authorization from the General Assembly and ratification of the action by a majority of their citizens.

Personal property was made taxable in the county or city where the taxpayer maintained a bona fide residency for the greater part of the year, except that leaseholds and tangible property were to be taxed in the city or county where located.

MISCELLANEOUS PROVISIONS

The specific constitutional provisions regarding the public school system were deleted, but the General Assembly was required to establish such a system and provide for its support. The principal of the school fund which had already been accumulated was to be preserved inviolate, and the interest therefrom was to be appropriated only for the purposes of education.

The oath of office was further liberalized to require as the only religious test for holding public office a belief in the existence of God.

THE AMENDMENT PROCESS

The General Assembly was authorized to propose constitutional amendments by a three-fifths vote of the members of each house. An amendment so proposed was to be published in newspapers throughout the State for at least three months before an election, at which the amend-

ment was to be submitted to the vote of the people.

The General Assembly was required to provide by law for the taking of a vote of the people on whether a constitutional convention should be convened in 1887 and every twenty years thereafter. If the vote was affirmative, the General Assembly at its next session was to provide for the assembling of the convention and the election of delegates thereto. At the convention, each county and each legislative district of the City of Baltimore was to have a number of delegates equal to the number of its representatives in both houses of the legislature at the time the convention was called.

SCHEDULE

All elective public officials, with the exception of the Governor, were to be displaced by adoption of the new Constitution, and new elections were to be held as provided for therein. The Governor was to serve until the expiration of the term for which he had been elected.

Table 2-A

VOTES TAKEN ON THE SENSE OF THE PEOPLE IN REGARD TO CALLING A CONSTITUTIONAL CONVENTION

1776	None			
1850	May 8	for	23,906	
		against	5,340	
		majority	18,566	*for*
1858	May 26	for	11,539	
		against	20,093	
		majority	8,554	against
1864	April 6	for	31,593	
		against	19,524	
		majority	12,069	for
1867	April 10	for	34,534	
		against	24,136	
		blank	48	
		majority	10,398	for
1887	Nov. 8	for	72,464	
		against	105,735	
		abstentions	8,906	
		majority	33,271	against
1907	Nov. 5	for	32,778	
		against	87,035	
		majority	54,257	against
1930	Nov. 4	for	108,351	
		against	93,701	
		majority	14,650	for
1950	Nov. 7	for	200,439	
		against	56,998	
		majority	143,441	for
1966	Sept. 13	for	160,280	
		against	31,680	
		majority	128,600	for

Table 2-B

STATE POPULATION AND NUMBER OF STATE EMPLOYEES

Year	Population	Number of Employees
1774	320,000	
1850	583,035	
1860	687,000	
	(83,945 free Negroes)	
	(87,189 slaves)	
1867		500
1930	1,631,526	6,507
1950	2,343,001	14,773
1966	3,632,140	
1967		31,240

Table 2-C

ELECTION OF DELEGATES

1776	August 1	(provided for by the Convention in July, 1776). 76 delegates
1850	September 4	103 delegates
1864	April 6	96 delegates [61 Union men—35 Democrats]
1867	April 10	118 delegates
1967	June 13	142 delegates

Table 2-D

CONVENTION DATES

Convened		Duration and Recesses	Adjourned
1776	August 14		November 11, 1776
1850	November 4	6 months duration	May 13, 1851
1864	April 27	Recesses: June 4 — June 9 June 24 — July 6 2 week recess until July 19	September 6, 1864
1867	May 8	75 days duration 10-day recess	August 17, 1867
1967	September 12	July 11, 1967 [Organization Meeting]	

Table 2-E

VOTE FOR ADOPTION AND RATIFICATION OF CONSTITUTION

1776	September 17	Convention ordered proposals printed for public distribution.
	November 3	Convention adopted Declaration of Rights.
	November 8	Convention adopted Constitution.
	November 8	Constitution took effect.
1851	May 13	Convention adopted a motion to submit draft of constitution as adopted section by section to the people for ratification without the Convention having first adopted the draft in its entirety. [40 for to 22 against.]
	June 4	Ratification Referendum: For 29,025 Against 18,616 Blanks 53 Majority 10,405 for
	July 4	Constitution took effect.
1864	September 6	Convention adopted Constitution. [53 for to 26 against; with 17 delegates being absent and not voting for final draft.]
	October 12-13	Ratification Referendum: Home vote against ..... 29,536 Home vote for ..... 27,541 Majority of home vote ..... 1,995 against Soldiers' vote for ..... 2,633 Soldiers' vote against ..... 263 Majority of soldiers' vote ..... 2,370 for Majority ..... 375 for
	November 1	Constitution took effect.
1867	August 17	Convention adopted Constitution. [99 for to 4 against.]
	September 18	Ratification Referendum: For 47,152 Against 23,036 Blanks 27 Majority 24,116 for
	October 5	Constitution took effect.

Table 2-F

APPORTIONMENT OF HOUSE OF DELEGATES[149]

County and Date of Formation	1776	1838	After 1840 Census	1851-1864[150]	1864	1867	After 1870 Census	1930	1950	1960	1967
Allegany (1789)	4	3	4	4	5	5	4	6	6	6	4
Annapolis (1708)	2	1	—	—	—	—	—	—	—	—	—
Anne Arundel (1650)	4	4	5	3	2	3	3	5	6	7	9
Baltimore City (1797)[151]	2	5	5	10	18	18	18	36	36	39	43
Baltimore (1659/1660)	4	5	5	6	6	6	6	6	6	13	22
Calvert (1654)	4	3	3	2	1	2	2	2	2	2	2
Caroline (1773)	4	3	3	2	2	2	2	2	2	2	1
Carroll (1835)	4	4	4	3	5	4	4	4	4	4	2
Cecil (1674)	4	3	4	3	4	4	3	3	3	3	2
Charles (1658)	4	3	3	2	1	2	2	2	2	2	2
Dorchester (1668/1669)	4	4	4	3	2	3	3	3	4	4	1
Frederick (1748)	4	5	5	6	6	6	5	5	6	6	3
Garrett (1872)	—	—	—	—	—	—	—	3	3	3	1
Harford (1773)	4	4	4	3	4	4	3	4	4	4	4
Howard (1851)	—	—	—	2	2	2	2	2	2	2	2
Kent (1640)	4	3	3	2	2	2	2	2	2	2	1
Montgomery (1776)	4	4	4	2	2	3	3	5	6	10	16
Prince George's (1695)	4	4	4	3	2	3	3	6	6	10	16
Queen Anne's (1706)	4	3	3	2	2	2	2	2	2	2	1
St. Mary's (1637)	4	3	3	2	2	2	2	2	2	2	2
Somerset (1666)	4	4	4	4	3	3	3	3	3	3	1
Talbot (1661/1662)	4	3	3	2	2	2	2	3	3	3	1
Washington (1776)	4	4	5	5	5	5	4	6	6	6	4
Wicomico (1867)	—	—	—	—	—	—	2	4	4	4	2
Worcester (1742)	4	4	4	3	3	3	2	3	3	3	1

[149] This table shows the apportionment (1) as set explicitly by constitutional amendment in 1837 and by provisions of the 1776, 1851, 1864 and 1867 Constitutions; (2) as made after the 1840 census pursuant to a supplementary section in the 1837 amendment and after the 1870 census pursuant to a supplementary provision in the 1867 Constitution; (3) as set at the times of the 1930 and 1950 referendum votes on the question of calling a constitutional convention; (4) as set at the beginning of this decade; and (5) as set pursuant to court order at the present time.

Apportionment in the Senate has had a less varied history. The 1776 Constitution provided for a Senate composed of fifteen members, nine from the Western Shore and six from the Eastern Shore. By the amendment of 1837 each county and Baltimore City were given one senator. This provision was retained in the 1851 Constitution. In 1864, Baltimore City was divided into three legislative districts, each of which was entitled to one senator. The next alteration in the plan of senate apportionment was not made until 1900, when Baltimore City was given four senators. Today, by court order, the basis of apportionment in the Senate, as well as in the House, is population.

[150] The 1851 Constitution contained a supplementary provision requiring reapportionment after the 1860 census. However, apparently this reapportionment was never effected.

[151] Baltimore City was made a separate legal entity by the 1851 Constitution.

III

Draft Constitution

PREFATORY STATEMENT

This chapter contains the complete text of the draft constitution recommended by the Commission without comment or annotation. It will be observed that the draft constitution is much shorter than the present Constitution. No attempt has been made to make an exact comparison of the number of words in each of the two documents, but examination will show that the draft constitution is approximately one fourth the length of the present Constitution.

The shorter length of the draft constitution is not merely happenstance but by design. It results in part from the close adherence of the Commission to the drafting principles set forth in Chapter I, but is due more to the omission from the draft constitution of unnecessarily detailed provisions of a legislative nature which are contained in the present Constitution.

It will be noted also that the Declaration of Rights is an integral part of the draft constitution—being Article I—and not a separate document as it is at present. This is in accord with the Commission's recommendations stated in Chapter I.

No preamble has been included. This is not because the Commission does not believe a preamble desirable, but instead results from the fact that the Commission never agreed upon one.

There is a considerable difference of opinion among scholars as to the desirability of a preamble and the nature and purpose to be served. Some believe that a preamble should be very short; others, that it is the place for exhortatory declarations of principle, and therefore should be long. Some feel that the language should be just as terse, simple, plain and direct as the language of the Constitution. Others feel that because of its nature, greater latitude of expression should be allowed in the preamble and that it should be more poetic than prosaic.

Most members of the Commission believe that a preamble of some sort is desirable and can be drafted by the Constitutional Convention.

The draft constitution does not contain a schedule of transitory provisions. These provisions would consist principally of the effective dates of various parts of the

constitution which cannot very well be worked out until the constitution to be recommended by the Constitutional Convention is complete. Such a schedule will be necessary in connection with the constitution recommended by the Convention and is authorized by the Enabling Act, Chapter 4 of the Acts of the General Assembly of 1967. The Commission recommends that the Constitutional Convention provide in the schedule of transitory provisions that the various public officials elected in November, 1966, continue in office until the expiration of the terms to which they were elected.

It will be observed that the draft constitution is divided into articles and sections and that the decimal system of numbering the sections is used. Under this system the number preceding the decimal is the same as that of the article in which the section is included, and the number following the decimal indicates the numerical order of the section in that article. The Commission considered a number of different possible arrangements for the draft constitution and concluded that the arrangement embodying the article and section method and the decimal system of numbering the sections was the most desirable.

The titles and subtitles of the articles and the titles of the sections are intended to have no legal or interpretive effect. They are used merely for convenience and for reference. By reason of their use, an outline of the contents of the draft constitution can be seen at a glance by reference to the table of contents of this report.

It will be noted also that each section comprises only one paragraph and that there are no subsections. In addition, every effort has been made to make each section as short as completeness permits. This results not only in greater readability and clarity, but also facilitates a more orderly and logical arrangement by subject matter. As noted in Chapter I, every effort has also been made to keep the draft constitution terse and free of unnecessary detail and to use language which is simple, direct and plain.

This chapter does not contain any of the alternate provisions drafted by the Commission. These will be found in the comments in Chapter IV.

ARTICLE I. DECLARATION OF RIGHTS

Section 1.01. **Purpose of Government.**

All political power originates in the people and all government is instituted for their liberty, security, benefit and protection.

Section 1.02. **Freedom of Expression.**

The people shall have the right peaceably to assemble and to petition the government for the redress of grievances. Freedom of the press and freedom of speech shall not be abridged, each person remaining responsible for abuse of those rights.

Section 1.03. **Freedom of Religion.**

No law shall be enacted respecting an establishment of religion. Every person shall have the right to worship or not to worship as he thinks most acceptable, and no person shall be disqualified from holding public office or be rendered incompetent as a witness or juror because of his opinion on matters of religious belief.

Section 1.04. **Due Process.**

No person shall be deprived of life, liberty or property without due process of law, or be denied the equal protection of the laws, or be subject to discrimination by law or other governmental action because of religion, race, color, or national origin.

Section 1.05. **Eminent Domain.**

Private property shall not be taken for public use without just compensation.

Section 1.06. **Jury Trial in Civil Cases.**

Every person shall have the right of trial by jury of issues of fact in civil proceedings at law in the courts of this State in which the amount or value in controversy exceeds such minimum as may be fixed by law.

Section 1.07. **Legal Limitations.**

No bill of attainder, or *ex post facto* law, or law impairing the obligation of contracts shall be enacted, nor shall any conviction of crime work corruption of blood or forfeiture of estate.

Section 1.08. **Search and Seizure.**

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures and in their oral or other communications against unreasonable interceptions shall not be violated. No search warrant shall be issued except upon probable cause supported by oath or affirmation, and the place to be searched, the persons or things to be seized, or the communications sought to be intercepted shall be particularly described in the warrant.

Section 1.09. **Rights of Accused.**

A person accused of crime shall have the right to be informed of the charge against him in time to prepare his defense, to have the assistance of counsel in his defense, to be confronted with and to examine under oath or affirmation the witnesses against him, to have compulsory process for obtaining witnesses and to have a speedy and public trial in the jurisdiction where the crime is alleged to have been committed and before an impartial jury, without whose unanimous consent he shall not be adjudged guilty.

Section 1.10. **Double Jeopardy; Self-Incrimination.**

No person shall be twice put in jeopardy of criminal punishment for the same offense or be compelled in any criminal case to be a witness against himself.

Section 1.11. **Unusual Punishment.**

Excessive bail shall not be required. Neither excessive fines nor cruel and unusual punishment shall be provided by law or be imposed by the courts.

Section 1.12. **Habeas Corpus.**

The privilege of the writ of habeas corpus shall not be suspended and the provisions of this Constitution shall apply both in time of war and in time of peace.

Section 1.13. **Reserved Rights.**

This enumeration of rights shall not be construed to impair or deny others retained by the people.

ARTICLE II. SUFFRAGE AND ELECTIONS

VOTERS

Section 2.01. **Eligible Voters.**

Every citizen of the United States who has attained the age of twenty-one years, who has been a resident of this State for six months and of the House of Delegates district in which he offers to vote for three months next preceding an election, and who is registered to vote, shall be qualified to vote at such election for all officers to be elected by the people and upon all questions submitted to a vote of the people. Removal from one house district to another in this State shall not deprive a person of his qualification to vote in the house district from which he has removed until three months after his removal.

Section 2.02. **Eligible Voters in Presidential Elections.**

A person who has been a resident of this State less than six months next preceding an election, but who is otherwise eligible to vote under this Article, may vote for President and Vice President of the United States or presidential electors in that election.

Section 2.03. **Voters in United States Enclaves.**

A person shall not be deemed ineligible to vote in national or state elections solely by reason of the fact that he resides on land over which the United States exercises exclusive jurisdiction.

Section 2.04. **Disqualification.**

The General Assembly shall by law establish disqualifications for voting by reason of mental incompetence or conviction of serious crime, and may provide for the removal of such disqualifications.

ELECTIONS

Section 2.05. **Election Procedure.**

The General Assembly shall by law define residence, establish a uniform system of permanent registration of voters, provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting and protect the integrity of the election process.

Section 2.06. **General Elections.**

A general election shall be held on the Tuesday following the first Monday in November in the year 1970, and on the same day every even year thereafter. The candidates receiving the highest number of votes shall be elected to the offices for which they were candidates.

Section 2.07. **Local Elections.**

Voting qualifications for local elections shall be as provided in Section 2.01 of this Article except that a municipal corporation may establish a period of minimum residence not exceeding one year and may extend the right to vote to nonresidents owning taxable property within its limits.

REFERENDUM

Section 2.08. **Right of Referendum.**

If, within sixty days from the date on which a bill becomes law, a petition is filed with the office of the governor to refer the law to a vote of the people, the law shall be submitted to a vote at the next general election. If rejected by a majority of those voting on the question, the law shall stand repealed thirty days thereafter. If the petition is filed before the date on which the law is to take effect, then, unless the law is one passed by the affirmative vote of three-fifths of all the members of each house of the General Assembly, it shall not take effect until thirty days after its approval by a majority of those voting on the question in the election.

Section 2.09. **Referendum Petition.**

A petition shall be sufficient to refer a law, or any part thereof, to a vote of the people if signed by a number of qualified voters equal to five per cent of the total number of votes cast for governor in the most recent gubernatorial election, provided that not more than one-half of such required number shall be voters residing in any one county.

Section 2.10. **Referendum Restrictions.**

No plan for legislative districting or apportionment or congressional districting, no law imposing a tax and no law making an appropriation for maintaining the state government or for aiding or maintaining any public institution shall be subject to referendum.

ARTICLE III. LEGISLATIVE BRANCH

Section 3.01. **Legislative Power.**

The legislative power of the State is vested in the General Assembly, which shall consist of two houses, the Senate and the House of Delegates.

DISTRICTS

Section 3.02. **Legislative Districts.**

The State shall be divided by law into districts for the election of members of the Senate and into districts for the election of members of the House of Delegates. Each district shall consist of compact and adjoining territory, and the ratio of the number of legislators in each district to the population of such district shall be as nearly equal as practicable.

Section 3.03. **Redistricting.**

Within three months after official publication of the population figures of each decennial census of the United States, the governor shall present to the General Assembly plans of congressional districting and legislative districting and apportionment. If the General Assembly is not in session, the governor shall convene a special session. The General Assembly shall by law enact plans of congressional districting and legislative districting and apportionment. If no plan has been enacted for any one or more of these purposes within four months prior to the final date for the filing of candidates for the next general election occurring after publication of such census figures, then the pertinent plan as presented to the General Assembly by the governor shall become law. Upon petition of any qualified voter, the Supreme Court shall have original jurisdiction to review the congressional districting and legislative districting and apportionment of the State and grant appropriate relief, if it finds that any of them does not fulfill constitutional requirements.

Section 3.04. **District Representation.**

At least one senator, but not more than two senators, shall represent each senatorial district. At least one delegate, but not more than six delegates, shall represent each house district.

LEGISLATORS

Section 3.05. **Qualifications of Legislators.**

To be eligible as a senator or delegate, a person shall be a qualified voter of the State of Maryland at the time of his election or appointment, and shall have been a resident of the State for at least two years immediately preceding his election or appointment. To be eligible as a senator, a person shall have attained the age of twenty-five years, and, to be eligible as a delegate, he shall have attained the age of twenty-one years, at the time of his election or appointment.

Section 3.06. **Election of Legislators.**

A member of the General Assembly shall be elected by the qualified voters of the legislative district from which he seeks election, to serve for a term of four years beginning on the third Wednesday of January following his election.

Section 3.07. **Vacancies.**

A vacancy in the General Assembly shall be filled by appointment by the governor; provided that the appointee to succeed a party member shall be a member of the same party. The person appointed to fill the vacancy shall serve only until the next general election held more than ninety days after the vacancy occurs, at which election any remaining portion of the unexpired term shall be filled.

Section 3.08. **Compensation of Legislators.**

The members of the General Assembly shall receive such salary and allowances as may be prescribed by law.

Section 3.09. **Appointment of Legislators to Other Offices.**

No member of the General Assembly shall, during the term of office for which he was elected or appointed, be appointed to any office which shall have been created, or the salary or profits of which shall have been increased, by the General Assembly during such term.

Section 3.10. **Immunity of Legislators.**

A member of the General Assembly shall not be liable in any civil action or criminal prosecution for any words used in any proceedings of the General Assembly.

GENERAL ASSEMBLY

Section 3.11. **Size of General Assembly.**

The number of members of each house of the General Assembly shall be as prescribed by law.

Section 3.12. **Legislative Sessions.**

The General Assembly shall convene in regular session on the third Wednesday of January of each year, unless otherwise prescribed by law, and may continue in session for a period not longer than seventy days; provided, however, that by the affirmative vote of three-fifths of all the members of each house a session may be extended for a period not longer than thirty days. The governor may convene a special session of the General Assembly at any time and must convene a special session upon the written request of three-fifths of all the members of each house.

Section 3.13. **Organization of General Assembly.**

Each house shall be the judge of the qualifications and selection of its members, as prescribed by this Constitution and the laws of this State. Each house shall elect its own officers and determine its rules of procedure, and may permit its committees to meet between sessions of the General Assembly. Each house may, by the affirmative vote of three-fifths of all its members, compel the attendance and testimony of witnesses and the production of records and papers either before the house as a whole or before any of its committees, provided that the rights and the records and papers of all witnesses, in such cases, shall have been protected by law. No person's right to fair and just treatment in the course of legislative and executive investigations shall be infringed. Each house may punish a member for disorderly or disrespectful behavior and may expel a member by the affirmative vote of three-fifths of all its members.

Section 3.14. **Quorum.**

A majority of all the members of each house shall constitute a quorum for the transaction of business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may prescribe.

LEGISLATION

Section 3.15. **Form of Laws.**

The style of every law of this State shall be, "Be it enacted by the General Assembly of Maryland"; and the General Assembly shall enact no law except by bill. Every law enacted by the General Assembly shall embrace only one subject, which shall be described in its title. No law, nor section of law, shall be revived or amended by reference to its title or section only; nor shall any law be construed by reason of its title, to grant powers or confer rights which are not expressly contained in the body of the act. It shall be the duty of the General Assembly, in amending any article or section of the code or law of this State, to enact the article, section or law as it would read when amended.

Section 3.16. **Consideration of Bills.**

A bill may originate in either house of the General Assembly and be altered, amended, passed, or rejected by the other. Except during the first two days of a special session, no vote on final passage of a bill shall be taken until the bill shall have been printed in final form nor until the third calendar day after introduction.

Section 3.17. **Journal and Passage of Bills.**

Each house shall keep a current, daily journal of its proceedings which shall be open to public inspection at all times and shall be published as soon as practicable. No bill shall be enacted nor shall a resolution requiring the action of both houses be adopted, unless it is passed in each house by a majority of all the members of that house. A vote in joint session or by either house on any bill or resolution shall be taken only in public session. On final passage of a bill, including a bill proposing a constitutional amendment, or a resolution, the vote cast by each member shall be recorded in the journal of the house of which he is a member.

ARTICLE IV. EXECUTIVE BRANCH

Section 4.01. **Executive Power.**

The executive power of the State is vested in the governor, who shall be responsible for the faithful execution of the laws.

Section 4.02. **Duties of Lieutenant Governor.**

There shall be a lieutenant governor who shall perform such duties as may be prescribed by law and such other duties as may be delegated to him by the governor.

GOVERNOR AND LIEUTENANT GOVERNOR

Section 4.03. **Governor.**

To be eligible for election as governor, a person shall have attained the age of thirty years at the time of his election, and shall have been a qualified voter in the State for at least two years immediately preceding his election. No person elected governor for two full consecutive terms shall be eligible to hold that office again until one full term has intervened.

Section 4.04. **Lieutenant Governor.**

To be eligible for election as lieutenant governor, a person shall have attained the age of thirty years at the time of his election, and shall have been a qualified voter in the State at least two years immediately preceding his election. No person elected governor for two consecutive terms shall be eligible to hold the office of lieutenant governor until one full term has intervened.

Section 4.05. **Election of Governor and Lieutenant Governor.**

The governor shall be elected to serve for a term of four years beginning on the third Wednesday of January following his election. In the event of a tie

vote, the governor shall be elected from the candidates having received the tie vote by the affirmative vote in joint session of a majority of the combined membership of both houses as the first order of business after their organization. Each candidate for lieutenant governor shall run jointly in the general election with a candidate for governor and the votes cast for one shall be considered as cast also for the other. The candidate for lieutenant governor whose name appears on the ballot jointly with that of the successful candidate for governor shall be elected lieutenant governor.

GUBERNATORIAL SUCCESSION

Section 4.06. **Failure of Governor to Take Office.**

When the governor-elect is disqualified, resigns or dies following his election, but prior to taking office, the lieutenant governor-elect shall succeed to the office of governor for the full term. When the governor-elect fails to assume office for any other reason, the lieutenant governor-elect shall serve as acting governor, but if the governor-elect does not assume office within the first six months of the term, the office of governor shall be vacant.

Section 4.07. **Lieutenant Governor as Acting Governor.**

When the governor notifies the lieutenant governor in writing that he will be temporarily unable to carry out the duties of his office or when the governor is disabled and thereby unable to communicate such inability to the lieutenant governor, the lieutenant governor shall serve as acting governor until the governor notifies the lieutenant governor in writing that he is able to carry out the duties of his office. If the governor does not notify the lieutenant governor in writing that he is able to carry out the duties of his office within six months from the time the lieutenant governor begins serving as acting governor, the office of governor shall be vacant.

Section 4.08. **Legislative Determination of Disability.**

The General Assembly may, by the affirmative vote in joint session of three-fifths of the combined membership of both houses, pass a resolution stating that the governor is unable to carry out the duties of his office by reason of a physical or mental disability. Upon the written request of a majority of the members of each house the General Assembly shall be convened by the presiding officers of both houses to determine whether such a resolution should be passed. If the General Assembly passes such a resolution, it shall be delivered to the Supreme Court which shall then have exclusive jurisdiction to determine whether the governor is unable to discharge the duties of his office by reason of a disability. If the Supreme Court determines that the governor is unable to discharge the duties of his office by reason of a disability, the office shall be vacant.

Section 4.09. **Judicial Determination of Vacancy.**

The Supreme Court shall have exclusive jurisdiction to determine the existence of a vacancy under this Constitution in the offices of governor and lieutenant governor and all questions arising under this Article concerning the right to office or the exercise of the powers thereof.

Section 4.10. **Succession to Office of Governor.**

When a vacancy occurs in the office of governor, the lieutenant governor shall succeed to the office of governor for the unexpired term. If a vacancy exists in the office of lieutenant governor when the lieutenant governor is to succeed to the office of governor or to serve as acting governor, the president of the Senate shall succeed to the office of governor for the unexpired term or serve as acting governor. If a vacancy exists in the office of president of the Senate when the president of the Senate is to succeed to the office of governor or to serve as acting governor, the Senate shall convene and fill the vacancy.

Section 4.11. **Powers and Duties of Successor.**

When the lieutenant governor or the president of the Senate succeeds to the office of governor, he shall have the title, powers, duties and emoluments of the office; but when the lieutenant governor or the president of the Senate serves as acting governor, he shall have only the powers and duties of the office. When the president of the Senate serves as acting governor, he shall continue to be president of the Senate; but during his service as acting governor, his duties as president shall be performed by such person as the Senate shall select.

LEGISLATIVE RESPONSIBILITIES OF GOVERNOR

Section 4.12. **Messages to General Assembly.**

The governor shall inform the General Assembly of the condition of the State and may recommend measures he considers necessary or desirable.

Section 4.13. **Convening General Assembly.**

The governor may, on extraordinary occasions, convene the General Assembly or the Senate alone by proclamation, stating the purpose for which he has convened it.

Section 4.14. **Veto by Governor.**

All bills passed by the General Assembly shall be subject to veto by the governor, except budget bills and bills proposing amendments to the Constitution.

Section 4.15. **Item Veto.**

The governor may strike out or reduce any item in a supplementary appropriation bill and the procedure in such a case shall be the same as in the case of the veto of a bill by the governor.

Section 4.16. **Presentation of Bills to Governor.**

A bill subject to veto by the governor shall be presented to him within seven days after its final passage by the General Assembly. If the General Assembly is in session, the bill shall become law if the governor signs or fails to veto it within ten days of presentation. If the General Assembly adjourns *sine die* before presentation or during such ten-day period, the bill shall become law if the governor signs or fails to veto it within forty-five days of presentation.

Section 4.17. **Return of Vetoed Bills.**

When the governor vetoes a bill, he shall return it to the General Assembly within ten days of presentation if the General Assembly is in session. A bill that is returned by the governor may be reconsidered by the General Assembly; and if, upon reconsideration, the bill is passed by the affirmative vote of three-fifths of all the members of each house, it shall become law.

ADMINISTRATIVE ORGANIZATION

Section 4.18. **Organization of Principal Departments.**

All offices, agencies and instrumentalities of the legislative and executive branches of the state government exercising executive and administrative functions, powers or duties shall be allocated by law among and within principal departments. Regulatory and quasi-judicial agencies shall be assigned by law to either the legislative or executive branch and may, but need not, be established within a principal department. The head of each principal department shall be either a single executive or a board or commission. When a board or commission is at the head of a principal department, a chief administrative officer may be provided for it by law.

Section 4.19. **Reorganization of Principal Departments.**

The functions, powers and duties of the principal departments and of the agencies of the State within the legislative and executive branches shall be prescribed by law. The governor may reallocate the functions, powers and duties of the principal departments and of the agencies within the executive branch for efficient administration. Proposed changes in the allocations prescribed by law shall be set forth in executive orders which shall be submitted to the General Assembly within the first ten days of a regular session. A proposed change which is approved, or which is not specifically disapproved or modified by the General Assembly within fifty days after submission, shall become effective on a date designated by the governor and thereafter have the force of law.

Section 4.20. **Appointment and Removal of Administrative Officers.**

The governor shall appoint each executive serving as the head of a principal department and each chief administrative officer serving under a board or commission which is the head of a principal department, except the head or chief administrative officer of an institution of higher education, of the state public school system, or of a principal department within the legislative or judicial branches. Each gubernatorial appointee shall have the professional qualifications which may be prescribed by law and shall serve at the pleasure of the governor.

Section 4.21. **Appointment and Removal of Administrative Boards and Commissions.**

The members of each board or commission which serves as the head of a principal department, except the governing board of an institution of higher education, shall be appointed by the governor and their terms of office shall be

prescribed by law in such manner that the governor, upon taking office following his election, shall be able forthwith to appoint at least one-half of them. Such members may be removed as prescribed by law.

Section 4.22. **Appointments and Removals Prescribed by Law.**

The members of the governing board of an institution of higher education, the head or chief administrative officer of an institution of higher education, of the state public school system, or of a principal department within the legislative or judicial branches, and the members of a regulatory or quasi-judicial agency which does not serve as the head of a principal department, shall be appointed and may be removed as prescribed by law.

Section 4.23. **Information from Administrative Officers.**

The governor may at any time require information, in writing or otherwise, from any officer of any executive or administrative department, office, or agency upon any subject relating to that department, office, or agency.

CLEMENCY

Section 4.24. **Executive Clemency.**

The governor shall have power to grant reprieves and pardons, except in cases of conviction upon impeachment, and to remit fines and forfeitures for offenses against the State. He shall report to the General Assembly in writing, at least annually, of the instances of the exercise of this power.

ARTICLE V. JUDICIAL BRANCH

Section 5.01. **Judicial Power.**

The judicial power of the State is vested exclusively in a unified judicial system composed of the Supreme Court, the Appellate Court, the Superior Court and the District Court.

THE SUPREME COURT

Section 5.02. **Jurisdiction of Supreme Court.**

The Supreme Court shall be the highest court of the State and shall have the jurisdiction prescribed by law.

Section 5.03. **Composition of Supreme Court.**

The Supreme Court shall be composed of seven justices. Five justices shall constitute a quorum, and the concurrence of four shall be necessary for the decision of a case.

Section 5.04. **Chief Justice.**

The governor shall designate one of the justices of the Supreme Court to be chief justice for the remainder of his service on the court, or until he resigns the office of chief justice. During a vacancy in the office of chief justice, or

during a period, as determined by the Supreme Court, when the chief justice is unable to serve, the associate justice senior in service on the Supreme Court shall have the powers and duties of the office of chief justice.

THE APPELLATE COURT

Section 5.05. **Jurisdiction of Appellate Court.**

The Appellate Court shall have the jurisdiction prescribed by law.

Section 5.06. **Composition of Appellate Court.**

The Appellate Court shall be composed of no fewer than five judges, as prescribed by law. The Appellate Court may sit in panels of no fewer than three judges in each case, as prescribed by rule.

THE SUPERIOR COURT

Section 5.07. **Jurisdiction of Superior Court.**

The Superior Court shall have original jurisdiction in all judicial proceedings, except as otherwise prescribed by this Constitution or by law, and shall have such other jurisdiction as is prescribed by law. Jurisdiction of the Superior Court shall be uniform throughout the State.

Section 5.08. **Composition of Superior Court.**

The Superior Court shall be composed of the number of judges prescribed by law and the number shall be allocated among the counties by law. There shall be at least one Superior Court judge resident in each county.

THE DISTRICT COURT

Section 5.09. **Jurisdiction of District Court.**

The District Court shall have the original jurisdiction prescribed by law. Jurisdiction of the District Court shall be uniform throughout the State.

Section 5.10. **Composition of District Court.**

The District Court shall be composed of the number of judges prescribed by law. The State shall be divided by law into districts. Each district shall be composed of one or more entire and adjoining counties. There shall be at least one District Court judge resident in each district.

Section 5.11. **Commissioners.**

There may be commissioners of the District Court in the number and with the qualifications prescribed by rule. Commissioners in a district shall be appointed by and serve at the pleasure of that judge of the District Court who shall be designated by rule to appoint commissioners therein. Commissioners may exercise powers only with respect to arrest, bail, collateral and incarceration pending hearing, and then only as may be prescribed by rule.

SELECTION, TENURE AND REMOVAL OF JUDGES

Section 5.12. **Judicial Circuits.**

The State shall be divided by law into circuits of the Supreme Court and into circuits of the Appellate Court.

Section 5.13. **Eligibility for Appointment as Judge.**

To be eligible for nomination and appointment as judge, a person shall be a citizen of the State and shall have been a member of the bar of the State for at least five years immediately prior to his nomination, and shall be a resident of the circuit where the Supreme Court or the Appellate Court vacancy exists, a resident of the district where the District Court vacancy exists, or a resident of, or have his principal office for the practice of law in, the county where the Superior Court vacancy exists.

Section 5.14. **Nomination and Appointment.**

A vacancy in the office of judge shall be filled by the governor from a list of no fewer than two nor more than five eligible persons nominated by a judicial nominating commission. The commission shall make nominations to fill a vacancy not more than thirty days prior to nor more than sixty days after the occurrence of the vacancy. If the governor fails to make the appointment within sixty days after receiving the list of nominees, his power to make the appointment shall end and the chief justice of the Supreme Court shall appoint one of the nominees.

Section 5.15. **Appellate Courts Nominating Commission.**

Nominations to fill a vacancy on the Supreme Court or on the Appellate Court shall be made by the Appellate Courts Nominating Commission. The commission shall be composed of six lay persons, six lawyers, and the chief justice of the Supreme Court. The terms of the non-judicial members shall be four years.

Section 5.16. **Trial Courts Nominating Commission.**

Nominations to fill a vacancy on the Superior Court and on the District Court shall be made by a trial courts nominating commission. The number and composition of trial courts nominating commissions and the terms of their members shall be prescribed by law, but each commission shall have no fewer than five members and shall be composed of an equal number of lay and lawyer members, and a judge. Each commission shall make nominations to fill vacancies on the Superior Court in one or more counties, or on the District Court in one or more districts, or both, as prescribed by law.

Section 5.17. **Lawyer Members of Nominating Commission.**

Lawyer members of the Appellate Courts Nominating Commission shall be elected by lawyers throughout the State. Lawyer members of each trial courts nominating commission shall be elected by the lawyers of the area for which

such commission is established. Eligibility and elections of lawyer members of nominating commissions and eligibility of their electors shall be governed by rule.

Section 5.18. **Lay Members of Nominating Commission.**

Lay members of the Appellate Courts Nominating Commission shall be appointed by the governor from the qualified voters of the State. Lay members of each trial courts nominating commission shall be appointed by the governor from the qualified voters of the area for which such commission is established.

Section 5.19. **Judicial Member of Nominating Commission.**

The judicial member of a trial courts nominating commission shall be selected in the manner prescribed by law.

Section 5.20. **Rules Governing Nominating Commission.**

A nominating commission may act only upon the concurrence of a majority of its members. Each commission shall elect one of its members as chairman. A non-judicial member of a commission may not hold any state or local public office of profit or office in a political party while a member of a commission and for six months thereafter. A member of a commission shall receive no compensation for his service.

Section 5.21. **Term of Office of Judge.**

At the next general election following the expiration of two years from the date of appointment, and every ten years thereafter so long as he retains his office, each judge shall be subject to approval or rejection by the electorate. Each justice of the Supreme Court and each judge of the Appellate Court shall be subject to approval or rejection by the electorate of the entire State. Each judge of the Superior Court and of the District Court shall be subject to approval or rejection by the electorate of the county or district, respectively, for which the office then exists. Provision may be made by rule for the taking of a poll of the lawyers of the area in which the judge is required to stand for election as to whether he should be retained in office for a full or additional term, and for publication of the results thereof. In the event of the rejection of a judge by the electorate, the office shall be vacant.

Section 5.22. **Retirement of Judge.**

Each judge shall retire at the age of seventy. The chief justice of the Supreme Court, with the approval of a majority of the members of that court, may authorize a retired judge temporarily to perform judicial duties in any court.

Section 5.23. **Compensation of Judge.**

Each judge shall be compensated for his judicial service solely by the State and his salary shall not be reduced during his continuance in office. A pension payable to a retired judge or his surviving spouse pursuant to provisions in effect during his continuance in office shall not be reduced. All judges of the

same court shall be paid the same compensation, including any pension based upon length of service, except that a uniform reduction in compensation may be made applicable to all judges of the same court appointed after the effective date of the reduction.

Section 5.24. **Restriction of Non-Judicial Activities.**

No judge shall engage in the practice of law, or run for elective office other than the judicial office he then holds, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive any remuneration for his judicial service except as provided herein. No retired judge while engaging in such activities shall be paid any pension for his judicial service.

Section 5.25. **Removal of Judge.**

The Supreme Court shall have power, after hearing, to remove any judge from office upon a finding of misconduct in office or persistent failure to perform the duties of his office, or to retire any judge upon a finding of disability seriously interfering with the performance of his duties which is, or is likely to become, of a permanent character. A justice shall not sit in any hearing involving his own removal or retirement. Implementation and enforcement of this section may be by rule or order of the Supreme Court. A judge retired under this section shall have the rights and privileges prescribed by law for other retired judges. A judge removed under this section, and his surviving spouse, shall have the rights and privileges accruing from his judicial service only to the extent prescribed by the order of removal.

ADMINISTRATION

Section 5.26. **Administrative Functions of Chief Justice.**

The chief justice of the Supreme Court shall be the administrative head of the judicial system. He shall designate one Appellate Court judge, one Superior Court judge and one District Court judge as chief judges of their respective courts. Each shall serve as chief judge at the pleasure of the chief justice. The chief justice shall have the power to assign any judge to sit temporarily in any court.

Section 5.27. **Administrative Functions of Chief Judges.**

The chief judge of the Appellate Court shall assist the chief justice in the administration of the Appellate Court. The chief judge of the Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice. The chief judge of the District Court shall assist the chief judge of the Superior Court in the administration of the District Court.

Section 5.28. **Clerks of Court.**

The chief justice of the Supreme Court and the chief judges of the Appellate, Superior and District courts shall each appoint a chief clerk of his court who

shall serve at the pleasure of the appointing judge. There shall be a clerk of the Superior Court in each county and of the District Court in each district. Their appointment and terms shall be governed by rule.

Section 5.29. **Rule-Making Power.**

Except as to matters specifically provided to be prescribed by rule, the Supreme Court by rule and the General Assembly by law shall have concurrent power to prescribe regulations governing practice and procedure in all courts, governing the admission of persons to practice law in this State and the discipline of persons so admitted, and governing administration of the courts, officers of the judicial branch and officers of the executive branch, to the extent that their duties directly relate to the enforcement of judicial orders. In the event a rule and a law prescribing a regulation of any of the three foregoing classes conflict, the rule, if adopted or readopted after the enactment of the law, shall take precedence over the prior law to the extent of the conflict. "Rule" as used in this Article means a rule adopted by the Supreme Court.

ARTICLE VI. STATE FINANCES

STATE DEBTS AND GIFTS

Section 6.01. **State Indebtedness.**

The State shall have the power to incur indebtedness for any public purpose in the manner and upon the terms and conditions as the General Assembly may prescribe by law. All such indebtedness shall be secured by an irrevocable pledge of the full faith and credit and unlimited taxing power of the State. Unless the law authorizing the creation of an obligation includes such an irrevocable pledge, the obligation shall not be considered an indebtedness of the State. If at any time the General Assembly shall fail to appropriate sufficient funds to provide for the timely payment of the interest upon and installments of principal of all state indebtedness, there shall be set apart from the first revenues thereafter received applicable to the general funds of the State a sum sufficient to pay such interest and installments of principal. All state indebtedness shall mature within twenty-five years from the time when such indebtedness is incurred.

Section 6.02. **Gift or Loan of Assets or Credit.**

The assets or credit of the State shall not in any manner be given or loaned to any individual, association, or corporation unless a public purpose will be served thereby and unless authorized by an act of the General Assembly stating the public purpose and, in the case of a gift or loan of credit or a loan of assets, passed by the affirmative vote of three-fifths of all the members of each house.

BUDGET AND APPROPRIATIONS

Section 6.03. **Appropriations.**

The General Assembly may not appropriate any money out of the treasury except by a budget bill or a supplementary appropriation bill.

Section 6.04. **The Budget.**

On the third Wednesday in January in each year (except in the case of a newly elected governor, and then not later than twelve days after the convening of the General Assembly into regular session), unless such time be extended by the General Assembly, the governor shall submit to the General Assembly a budget for the ensuing fiscal year. The budget shall show the estimated surplus or deficit of revenues at the end of the preceding year and shall contain, for the fiscal year covered thereby, an estimate of revenues, a complete plan of proposed expenditures by program including all appropriations required by this Constitution or by law, and any additional information prescribed by law, all in such form and detail as the governor shall determine. The total of the proposed expenditures shall be limited to funds available therefor as shown in the budget.

Section 6.05. **Mandatory Appropriations.**

The estimates of appropriations for the legislative branch, certified by the presiding officer of each house, and for the judicial branch, certified by the chief judge of the Superior Court, shall be transmitted to the governor, in such form and at such time as he shall direct. To the extent that appropriations for the legislative and judicial branches and for state support of public school systems are required by law, the estimates therefor shall be included in the budget without revision.

Section 6.06. **Presentation of Budget Bill.**

The governor shall deliver to the presiding officer of each house the budget and a bill for all the proposed appropriations of the budget, classified and in such form and detail as he shall determine or as may be prescribed by law. The presiding officer of each house shall promptly cause the bill, called the budget bill, to be introduced. The governor may, before final action thereon by the General Assembly, amend or supplement the budget bill to correct an oversight, to appropriate funds contingent on passage of pending legislation or to provide for an emergency. Such amendment or supplement shall be delivered to the presiding officers of both houses, and it shall thereafter become a part of the budget bill as an addition, substitute or modification thereof or any item thereof. Each amendment shall be accompanied by a statement by the governor explaining the reasons therefor.

Section 6.07. **Amendment of Budget Bill.**

The General Assembly may amend the budget bill by increasing any item relating to the legislative or judicial branches, or by reducing or striking out any item except the appropriation of sufficient funds to provide for the timely payment of the interest upon and installments of principal of all state indebtedness and the appropriations required by law for state support of public school systems; but it may not otherwise amend the budget bill or change the estimate of revenues. The compensation of a public officer may not be decreased during his term of office.

Section 6.08. **Enactment of Budget Bill.**

The budget bill shall become law when passed by both houses of the General Assembly and shall not be subject to veto by the governor. If the budget bill has not been enacted within fifty days after its introduction, it shall become law in the form in which it was introduced and any amendment or supplement thereto shall be treated as a supplementary appropriation bill.

Section 6.09. **Testimony on Budget Bill.**

Either house of the General Assembly may require any person in any branch or agency of the state government, other than the governor, to appear and testify with respect to the budget bill or a supplementary appropriation bill. The governor or a person designated by him shall have the right to appear and testify with respect to the budget bill or a supplementary appropriation bill.

Section 6.10. **Supplementary Appropriations.**

Any other appropriation shall be embodied in a separate bill, called a supplementary appropriation bill, which shall be limited to some single work, object or purpose clearly defined therein. A supplementary appropriation bill may not be considered by either house until the budget bill has become law, but may be considered and enacted thereafter in a regular session or at any time in a special session. A supplementary appropriation bill shall provide the revenue necessary to pay the appropriation by a tax, direct or indirect, to be levied and collected as prescribed therein, or in the case of a budget bill amendment or supplement which has not become law by funds available therefor in conformity with the estimate of revenues contained in the budget or any supplement thereto.

ARTICLE VII. LOCAL GOVERNMENT

Section 7.01. **Units of Local Government.**

For the purposes of this Constitution, Baltimore City shall be considered a county; "municipal corporation" shall mean an incorporated city, town or village, but shall not include Baltimore City or any county; "region" shall mean an area comprising all or parts of two or more counties.

Section 7.02. **Establishment of Counties and Multi-County Governmental Units.**

The General Assembly may provide by law for the establishment, incorporation, change, merger, dissolution and alteration of boundaries of counties and multi-county governmental units, including intergovernmental authorities and popularly elected regional representative governments, but excluding municipal corporations. A law altering the boundaries of a county shall be enacted only by the affirmative vote of at least three-fifths of all the members of each house.

REGIONAL GOVERNMENTS AND INTERGOVERNMENTAL AUTHORITIES

Section 7.03. **Establishment of Regional Governments.**

Upon the establishment by the General Assembly by law of the boundaries of a region, a popularly elected representative government for the region, and

the instrument of government therefor, may be created by the General Assembly by law, or by the counties within or partly within the region acting concurrently by law, or by affirmative action of a majority of the registered voters of the region voting upon a plan proposed by a petition signed by a number of registered voters of the region equal to at least five per cent of the vote cast in the region for governor in the most recent gubernatorial election.

Section 7.04. **Change of Structure of Regional Government.**

The instrument of government for a region shall provide for amendment of the instrument by the affirmative vote of a majority of the voters of the region voting on an amendment submitted by the governing body or by petition of the voters in accordance with the provisions of the instrument.

Section 7.05. **Powers of Regional Governments.**

Powers may be vested in a regional government either by all counties within or partly within a region relinquishing powers to the regional government by law, by the General Assembly by law withdrawing specified powers from all counties within or partly within a region and conferring the powers upon the regional government, or by the General Assembly by law delegating powers of the State to the regional government. A power conferred upon a regional government may thereafter by law be relinquished by the regional government or be withdrawn by the General Assembly. In either event the power relinquished by or withdrawn from the regional government shall revert only to the respective counties or to the State, from which it originated.

Section 7.06. **Powers of Intergovernmental Authorities.**

The General Assembly or a popularly elected representative local government may by law grant to intergovernmental authorities the power to impose and collect service charges, to borrow money and to collect taxes imposed by the General Assembly or by the popularly elected representative local government, but may not grant the power to impose taxes.

COUNTIES

Section 7.07. **Powers of Counties.**

A county may exercise any power, other than judicial power, or perform any function which is not denied to it by this Constitution, by its charter or by a public general law which in its terms and in its effects is applicable to all counties or to all counties of the county's class, and which has not been transferred exclusively to another governmental unit.

Section 7.08. **Classification of Counties.**

Classes of counties, based upon population as determined by the most recent United States Census or upon other criteria, may be prescribed by law with not more than five classes and not less than three counties in any one class. No more than one classification shall be in effect at any one time but the classification may be changed at any time.

Section 7.09. **General Application of Laws.**

Except as otherwise specifically provided in this Constitution, the General Assembly may not enact any public local laws and, except with respect to appropriations, may enact only public general laws which in their terms and in their effects apply without exception to all counties or to all counties in a class. No county shall be exempt from any public general law applicable to counties in its class.

Section 7.10. **Structure of County Governments.**

Within one year following adoption of this Constitution, the General Assembly shall provide by law alternative procedures by which an instrument of government of a county may be proposed: by enactment of the local governing body, by petition of ten per cent of the qualified voters of the county, by board created by enactment of the local governing body or created by the voters of the county approving a voters' petition for such a board, or by such other methods as may be prescribed. An instrument of government shall be submitted for adoption by the affirmative vote of a majority of the voters of the county voting thereon. The General Assembly shall provide by law an instrument of government which shall become effective on the first day of January of the fourth year following the effective date of this Constitution for those counties which have not previously adopted an instrument of government as provided in this section.

Section 7.11. **Continuance of Existing County Governments.**

County governments existing at the effective date of this Constitution shall continue unless changed pursuant to this Constitution.

Section 7.12. **Change of Structure of County Government.**

An instrument of government of a county may be amended by the affirmative vote of a majority of the voters of the county voting on an amendment submitted by the governing body or submitted upon petition of voters in accordance with the provisions of the instrument of government.

CREDIT LIMITATIONS

Section 7.13. **Gift or Loan of Assets or Credit of Local Governments.**

The assets or credit of a county, representative regional government, or intergovernmental authority shall not in any manner be given or loaned to any individual, association, or corporation unless a public purpose will be served thereby and unless authorized by its governing or authorizing body by act stating the public purpose, and in the case of a gift or loan of credit or a loan of assets, passed by the affirmative vote of three-fifths of all its members.

MUNICIPALITIES

Section 7.14. **Municipal Corporations.**

A county may provide by law for the incorporation, change, merger, dissolution and alteration of boundaries of municipal corporations located in the county,

and may delegate powers of the county to any municipal corporation. No existing municipal corporation may be dissolved or have withdrawn any existing powers set forth in its charter without either the consent of its governing body or the consent of the General Assembly by law.

COOPERATIVE AGREEMENTS

Section 7.15. **Intrastate Intergovernmental Agreements.**

A county, municipal corporation or other governmental unit may, except to the extent prohibited by law, agree with the State or with any other county, municipal corporation or governmental unit for the joint administration of any functions and powers and the sharing of the costs thereof.

ARTICLE VIII. GENERAL PROVISIONS

Section 8.01. **Taxes.**

No tax shall be imposed except for a public purpose and except by the elected representatives of the people exercising legislative powers.

Section 8.02. **Assessments.**

No assessment nor any exemption therefrom with respect to any tax imposed by the State or any governmental unit thereof shall be made except pursuant to uniform rules within classes or subclasses of taxpayers, property or events as may be provided by law and such classes or subclasses may include property devoted to agricultural or open-space uses.

Section 8.03. **Public Education.**

The State shall provide by law for a statewide system of free public schools sufficient for the education of, and open to, all children of school age, and shall also provide for such other public educational institutions as may be desirable for the intellectual, cultural and occupational development of the people of this State.

Section 8.04. **Higher Education.**

The University of Maryland shall be managed by the regents of the University of Maryland in accordance with law, and the regents shall have exclusive general supervision of the institution and the control and direction of all expenditures from the institution's funds. The governing boards of the state colleges and other state institutions of higher education shall formulate policies for their respective institutions and shall by law be granted such additional powers of supervision, direction and control of their respective institutions and institutional funds as may be feasible and consistent with their status as public agencies.

Section 8.05. **Militia.**

The General Assembly may provide by law for a militia. The governor shall be its commander-in-chief and shall appoint its officers. The governor may call out

the militia to repel invasions, suppress insurrections, and enforce the execution of the laws. The military power of the State shall be and remain subject to civil control at all times, and only members of the militia when in actual service may be subject to trial by a military court of this State.

Section 8.06. **Interstate Intergovernmental Cooperation.**

This Constitution shall be construed to permit, except to the extent prohibited by law, the cooperation of the government of this State with any other government and the cooperation of the government of any county or other governmental unit with one or more other governments outside the boundaries of the State in the administration of their functions and powers.

Section 8.07. **Oath of Office.**

Every person elected or appointed to any office of profit or trust under the Constitution or laws of this State shall, before he enters upon the duties of such office, take and subscribe the following oath or affirmation: "I, ..., do swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of Maryland and support the Constitution and laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of ....., according to the Constitution and laws of this State." No other oath or political test shall be required.

Section 8.08. **Impeachment.**

The House of Delegates shall have the sole power of impeachment of elected officials, judges and any other state officers who may be designated by law, in cases of serious crimes or serious misconduct in office. The affirmative vote of three-fifths of all the members of the House of Delegates shall be required to impeach. Impeachments shall be tried by a special tribunal of ten judges appointed by the Supreme Court from among the judges of the State. The concurrence of three-fifths of the judges of the special tribunal shall be required to convict. Judgment upon conviction shall be removal from office and may include disqualification from holding any office of public trust, as well as deprivation of pension rights and other privileges of office. A person tried upon impeachment, whether or not convicted, shall be liable to criminal prosecution and punishment according to law.

ARTICLE IX. AMENDMENT OF THE CONSTITUTION

Section 9.01. **Amendments.**

An amendment to this Constitution may be proposed either by the affirmative vote of three-fifths of all the members of each house of the General Assembly or by the vote of a majority of all the members of a constitutional convention called by the General Assembly. In either case, the proposed amendment shall be submitted to the voters of the State at a special or general election as determined by the General Assembly or the Convention, whichever proposes the amendment. Notice of the election shall be given as prescribed by law. Unless otherwise provided, the

amendment shall become effective thirty days after approval by the vote of a majority of those voting thereon.

Section 9.02. **Constitutional Convention.**

The General Assembly may by law call a constitutional convention at any time or may at any time submit to the voters of the State the question of calling a constitutional convention. If the question of calling a convention shall not have been submitted to the voters of the State for a period of twenty years, then it shall be submitted at the next general election. A convention shall be held within one year after a majority of those voting on the question approve the calling of a convention. Within sixty days after such approval, the governor shall appoint a commission to prepare for the convention. At its next regular session following such approval, the General Assembly shall provide by law for the assembling of the convention, the election of delegates, the filling of vacancies in the postion of delegate, and the appropriation of sufficient funds for the work of the convention. The convention shall adopt its own rules of procedure. Any proposal recommended by the convention for changing the constitution shall be submitted to the voters of the State for adoption, and shall be effective only if approved by the affirmative vote of a majority of those voting thereon.

IV

Draft Constitution and Commentary

PREFATORY STATEMENT

This chapter repeats each section of the draft constitution included in Chapter III and then adds a detailed commentary and explanation. It is this chapter which more than any other contains the recommendations of the Commission both as to what should be included in a new constitution and what should be omitted therefrom. As is pointed out in Chapter I, the recommendations of the Commission as to what should be omitted from the new constitution are in some cases of equal importance with the recommendations of the Commission as to what should be included in the new constitution.

It is not possible within the limits of any reasonable commentary to set forth in detail the results of all the hearings and debates of the Commission and the research monographs prepared for it. The commentary therefore contains a relatively brief summary of the arguments for and against each recommendation of the Commission. For a more detailed statement of the arguments pro and con, reference must be made to the research monographs, position papers, transcripts of Commission hearings and transcripts of Commission debates published in Volumes 2, 3 and 4 of the Commission's publications.

In this chapter the commentary on each article begins with an introductory comment in which is set forth in general terms the overall purpose of the article. In many cases the introductory comment to an article contains the Commission's recommendations as to the omission of provisions in the present Constitution dealing with the subject matter of that article. In one instance—Article VI— there are two introductory comments. This was done because the two subjects dealt with in this article—State Debts and Gifts, and Budget and Appropriations—seemed sufficiently diverse to require separate discussion even though both are properly includable in the one article dealing with State finances.

The introductory comment is followed by an analysis of each section. The text of each section is reprinted and then followed by a detailed comment. It is in these detailed comments that the effort has been made to present alternates in those cases where the Commission believed that alternative drafts were desirable. It is also in the section comments that reference is made to divisions of the Commission in every instance where there was a substantial difference of opinion.

The only instance in which an alternative draft is not printed in the comment to the section to which it pertains is the alternate draft of sections providing for a unicameral general assembly. In order to present a complete picture of the provisions which would be necessary for a unicameral general assembly, the entire Article III as it would be drafted for a unicameral general assembly is printed at the end of the commentary for Article III. All of the changes which would be required in the draft constitution in the event that a unicameral general assembly is established are in Article III itself, with the sole exception of Section 8.08 dealing with impeachment. Section 8.08 as drafted in the alternate form which would be used if a unicameral general assembly were established is printed immediately following the alternate form of Article III for a unicameral general assembly.

It will be noted that the only elective offices provided for in the draft constitution are those of governor, lieutenant governor, members of the legislature and judges. The draft constitution therefore does not provide for the popular election of numerous officials, such as attorney general, comptroller, state's attorney, sheriffs, register of wills, clerks of court, whose election by popular vote is provided for in the present Constitution. The precise recommendations of the Commission with respect to these matters are set forth at length in the introductory comment to Article IV of the draft constitution. In connection therewith, reference should also be made to Sections 4.18, 4.19, 4.20, 4.21 and 4.22 of the draft constitution and the comment as to each of those sections.

ARTICLE I. DECLARATION OF RIGHTS

Introductory Comment:

The recommendations of the Commission embodied in Article I of the draft constitution result from the belief that a Declaration of Rights accompanying a state constitution should be designed primarily to reserve and declare those rights of the people which no official, no governmental agency, no transient majority may transgress. The Commission is of the opinion that the Declaration of Rights should be confined to defining with all possible clarity and simplicity those essential rights which the people wish to hold free from any diminution. It has attempted to enumerate those basic rights, to treat them with the utmost solemnity, and to formulate them so clearly as to ensure their protection against interference by any governmental agency.

The theory that certain rights are so vital to the people that they must be protected from infringement by their government is engrained in our nation's political tradition.[1] A bill or declaration of rights is contained in every state constitution.[2] Many of the provisions found in these enumerated rights in state constitutions impose restrictions upon state governments that are identical to the limitations imposed upon the states by the United States Constitution.[3] The question arises then as to whether a Declaration of Rights is necessary at the state level. The Commission concluded that the question should be answered unhesitatingly in the affirmative. A state Declaration of Rights remains an essential bulwark of the people's fundamental liberties.

This is so even though the Fourteenth Amendment to the United States Constitution brought federal protection for many of the civil rights often guaranteed by state constitutions. The United States Supreme Court has held that many of the provisions of the Bill of Rights of the United States Constitution (the first ten amendments) which were not originally considered applicable to the states have been made applicable to state action by the due

[1] The Bill of Rights of the United States Constitution (Amendments I through X) was proposed by Resolution of Congress on September 25, 1789, and ratified on December 15, 1791. Its roots in American history can be traced to the Virginia Declaration of Rights of 1776, the Declaration of Independence and the constitutions of the original thirteen states, and deeper still, in English history, to the English Bill of Rights of 1689 and the Magna Carta of 1215. SWISHER, AMERICAN CONSTITUTIONAL DEVELOPMENT (2d ed. 1954). Almost all the provisions of the Declaration of Rights of the present Maryland Constitution originated in the first Maryland Constitution of 1776 and were preserved in the Maryland Constitutions of 1851, 1864 and 1867.

[2] Students of state constitutions are indebted to the Legislative Drafting Research Fund of Columbia University for two indispensable research volumes: CONSTITUTIONS OF THE UNITED STATES, NATIONAL AND STATE (1962), which contains verbatim texts, supplemented annually, of the constitutions of the United States and of each of the states; and INDEX DIGEST OF STATE CONSTITUTIONS (2d ed. 1959) (hereafter cited as INDEX DIGEST), which indexes and compares, by subject matter, all state constitutions, and is supplemented periodically.

[3] This is particularly true of the substantive rights of freedom of speech, press, religion and assembly and the procedural guarantees of "due process of law" and "a speedy and fair trial." INDEX DIGEST; RANKIN, STATE CONSTITUTIONS: BILL OF RIGHTS 2 (National Municipal League 1960).

process clause of the Fourteenth Amendment.[4] At one time or another, ten justices of the United States Supreme Court have supported the view that the Fourteenth Amendment has made applicable to state action all the provisions of the first eight amendments to the United States Constitution.[5]

The Fourteenth Amendment, therefore, provides a basic and important protection against arbitrary state action inimical to civil liberties. It remains true, however, that there are certain rights guaranteed by the federal Bill of Rights which the courts have not found that the Fourteenth Amendment has extended to state action. Thus, the United States Supreme Court has excluded states from the coverage of the federal Bill of Rights in such areas as freedom from double jeopardy,[6] indictment by grand jury,[7] and trial by jury in both civil and criminal cases.[8]

For this reason national guarantees against state infringement of civil rights may be regarded as only minimal guarantees. The states themselves bear the responsibility for enlarging upon the basic protections in the national Constitution. It is an urgent responsibility since state and local governments are primarily responsible for the protection of life and property through the definition and enforcement of the criminal law. The role of state and local governments in providing for the health, safety and welfare of their people provides ample opportunity for the improper use of governmental power against which individuals would have no recourse were it not for protections afforded by a state Declaration of Rights.

The present Maryland Declaration of Rights is a lengthy document containing forty-five articles couched in exhortatory language, much of which is rhetoric and general declarations of principles concerning the rights of citizens and their relationship to the state government. The Commission is of the opinion that the solemnity of a new constitution would be enhanced by a more concise statement of the rights secured to the people. Moreover, the Commission recommends the omission of unenforceable statements of principle so that the mandatory nature of the guaranteed rights will be unquestioned. In this, the Commission takes as its model the Bill of Rights in the United States Constitution. Indeed, constitutional developments of recent years have moved the federal and state governments towards a single standard in the area of personal freedoms. The Commission has made a deliberate effort to conform to the standards that have evolved. In many instances the Commission has adopted the language of the United States Constitution, thereby mak-

[4] Most notably: the First Amendment guarantees of freedom of religion, Cantwell v. Connecticut, 310 U.S. 296 (1940), and speech, press and assembly, De Jonge v. Oregon, 299 U.S. 353 (1937); the Fourth Amendment protection against unreasonable searches and seizures, Wolf v. Colorado, 338 U.S. 25 (1949), and Mapp v. Ohio, 367 U.S. 643 (1961); the Fifth Amendment privilege against compulsory self-incrimination, Malloy v. Hogan, 378 U.S. 1 (1964); and the Sixth Amendment right to counsel, Gideon v. Wainwright, 372 U.S. 335 (1963).

[5] Malloy v. Hogan, 378 U.S. 1, 4 (1964).

[6] Palko v. Connecticut, 302 U.S. 319 (1937).

[7] Hurtado v. California, 110 U.S. 516 (1884).

[8] Maxwell v. Dow, 176 U.S. 581 (1900) (Sixth Amendment criminal cases); and Walker v. Sauvinet, 92 U.S. 90 (1875) (Seventh Amendment civil cases).

ing available an established, and controlling, body of jurisprudence for guidance in the application of the provisions of the Maryland Declaration of Rights.

The Commission believes that what has emerged from its deliberations is a judicially enforceable document which provides real and vital protection to the individual.

Section 1.01. **Purpose of Government.**

All political power originates in the people and all government is instituted for their liberty, security, benefit and protection.

Comment:

This draft section supersedes Articles 1, 4, 6 and 7 of the present Declaration of Rights. In essence it is a statement of the principle of popular sovereignty. This revision is offered in the belief that it is simpler and more readily comprehended than the detailed and prolix statements in the present Declaration.

The compact theory of government, stated in Article 1 of the present Declaration, was discussed by the Commission but was not considered to be of current validity and is, therefore, not included in this draft section.

Much of the language of the present Declaration has come down from the Maryland Constitution of 1776 and unquestionably may be regarded as a link with the traditions and history of the State. A minority of the Commission members was of the opinion that an effort should be made to preserve as much as possible of the traditional language and phrasing. The objection was made that the language favored by the majority was "sterile and test-tube like." The alternative provision recommended by the Commission to reflect the minority's view is as follows:

> That all government of right originates from the people and is instituted solely for the good of the whole.
>
> The people of this State have the sole and exclusive right of regulating the internal government and police thereof, as a free, sovereign and independent State.
>
> The right of the People to participate in the Government is the best security of liberty and the foundation of all free Government.
>
> All persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct.

The majority of the Commission members are persuaded that there are factors other than traditionalism which weigh more heavily in determining the most appropriate statement of constitutional principles for this century. Accuracy and clarity of expression were thought to be of paramount importance. In addition, it was recognized that the language and statements in the present articles were born of the revolutionary ferment of 1776 and continued by the sentiments rampant during the upheaval of the Civil War. They are, however, rendered inappropriate in a modern constitution by the maturity and stability of the Union. The spirit of popular sovereignty embodied in the superseded articles of the present Declaration can best be preserved by concise expression of that idea in modern terms.

It should be noted that the difference in the section recommended by the majority of Commission members and that of the alternate favored by a minority is one of style rather than of substance. Even the alternative version departs from the original language. Neither version incorporates the right of forcible revolution as a constitutional principle although this is the thrust of Article 6 of the present Declaration, because Commission members were in agreement that such a declaration is inappropriate in a stable and unified United States. The alternative language has the virtue of preserving some of the phraseology traditional to Maryland constitutions, but the Commission believes it does so at the cost of simplicity and clarity of purpose.

Section 1.02. **Freedom of Expression.**

The people shall have the right peaceably to assemble and to petition the government for the redress of grievances. Freedom of the press and freedom of speech shall not be abridged, each person remaining responsible for abuse of those rights.

Comment:

One of the objectives of the Commission in preparing the draft Declaration was to assemble provisions currently found in rather random fashion in the present Declaration and to present them in a more coherent and orderly fashion. This section contains the substance of Articles 13 and 40 of the present Declaration. No significant changes have been made. The right of freedom of assembly is expressly stated, and the right to petition the "government" is a somewhat broader statement than that in Article 13 of the present Declaration which speaks of the right to petition the "Legislature." It should also be noted that these rights are stated in positive and affirmative terms and not merely as a prohibition against their deprivation by law.

The United States Supreme Court has ruled that the First Amendment freedoms of the press, of speech, and of peaceable assembly are protected from limitation by state action by the due process clause of the Fourteenth Amendment.[9] It appears to the Commission advantageous to cast the draft section in language similar to that used in the United States Constitution. The language in this draft section is believed to be more direct and comprehensive. The final clause which explicitly states the principle of individual responsibility for abuse of freedom of the press and freedom of speech is found in Article 40 of the present Declaration and is recommended by the Commission as a desirable qualification to these broadly stated rights. This qualification makes it clear that one person may not defame another, may not incite to riot or other public disorder, and may not willfully injure another person and claim immunity for his actions under the principle of freedom of speech.

A minority of the Commission would again prefer to conform the draft section more closely to the language of the present Declaration, especially with regard to the statement of the rights of freedom of speech and freedom of the press. The alternative language recommended by the Commission to reflect this view is as follows:

The People shall have the right peaceably to assemble and to petition

[9] De Jonge v. Oregon, 299 U.S. 353 (1937).

the Government for the redress of grievances.

Any person shall be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege.

In the view of the majority of the Commission, however, substantial enlargement of these rights has occurred since 1867, primarily due to the Fourteenth Amendment to the United States Constitution which imposed First Amendment standards on state action. The standards to be met, therefore, are the First Amendment standards as established by the United States Supreme Court.[10] In such a situation there is a clear advantage in the use of First Amendment language to indicate adoption of these standards with respect to state action.

Section 1.03. **Freedom of Religion.**

No law shall be enacted respecting an establishment of religion. Every person shall have the right to worship or not to worship as he thinks most acceptable, and no person shall be disqualified from holding public office or be rendered incompetent as a witness or juror because of his opinion on matters of religious belief.

Comment:

Events of the last decade compel a complete reexamination of the provisions of the present Declaration regarding the protection of religious freedom. In recent court decisions the formulation of the principle of religious freedom found in Articles 36, 37 and 39 of the present Declaration has been found to be in conflict with the First and Fourteenth Amendments to the United States Constitution.[11] The right of citizens to the free exercise of religious belief has been held to be far more unqualified than the language of these articles suggests. For that reason the Commission recommends the simple and unqualified terms of this draft section which is confined to a statement of the broad principle of religious freedom. The Commission is of the opinion that it would be impractical to attempt a statement of all the applications of this principle.

The first sentence of this draft section is directed to the matter of affirmative state aid to, or endorsement of, religion.

In effect this sentence adopts the first clause of the First Amendment to the United States Constitution which declares that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." This is consistent with the Commission's efforts to use language akin to that in the Bill of Rights of the United States Constitution in those areas where constitutional development has moved toward the creation of a single standard

[10] "Gitlow v. New York, 268 U.S. 652 (1925), initiated a series of decisions which today hold immune from state invasion every First Amendment protection for the cherished rights of mind and spirit—the freedom of speech, press, religion, assembly, association and petition for redress of grievances." Malloy v. Hogan, 378 U.S. 1, 5 (1964).

[11] In Torcaso v. Watkins, 367 U.S. 488 (1961), the Supreme Court held that Article 37, which requires public officeholders in Maryland to make a "declaration of belief in the existence of God," violated the "establishment of religion" clause of the First Amendment. Following this decision, the Court of Appeals of Maryland, in Schowgurow v. State, 240 Md. 121 (1965), held that the provision of Article 36 prescribing belief in the existence of God as a prerequisite to serving as a juror was unconstitutional.

for both state and federal action. The suggested language has received full attention by the state and federal courts. Thus an impressive body of judicial precedent is available to resolve problems of interpretation and application to new circumstances.

The alternative approach would be to attempt to specify in detail which state actions that are in some way beneficial to religious groups are acceptable, and which are not. The Commission believes that this alternative would be ill-advised and that to attempt to anticipate all future problems and questions would be fruitless.

Again the Commission was in substantial agreement as to the substance of the draft section, but there was considerable disagreement as to the language to be used in the second sentence of the draft section. All Commission members recognized that the principle of full and complete religious freedom precluded any statement of a "duty" to worship God or a requirement of religious belief as a condition of service as a witness, juror, or public officer, stipulations which are included in Articles 36, 37 and 39 of the present Declaration. The Commission's Committee on Elective Franchise and Declaration of Rights recommended adherence to the language of the First Amendment to the United States Constitution and suggested the following:

> No law shall be enacted respecting the establishment of religion. No person shall be restricted in the free exercise of religious profession and worship, nor shall any person be disqualified from holding public office or rendered incompetent as a witness or juror because of his opinion on matters of religious belief.

A minority of the Commission advocated the use of as much of the traditional language of the present Declaration as possible and suggested the following:

> No law shall be enacted respecting the establishment of religion.
>
> Every person shall have the right to worship or not to worship as he thinks most acceptable.
>
> No person shall by any law be molested in his person or estate on account of his religious persuasion or profession or for his religious practice or the lack thereof.
>
> No person shall be disqualified from holding public office or rendered incompetent as a witness or a juror because of his opinion on matters of religious belief.

In adopting the language of this draft section, the Commission was motivated by a belief that the principle of full religious freedom requires a stronger statement than the version suggested by the Committee on Elective Franchise and Declaration of Rights. With regard to the suggested alternative, it was felt that in view of the unconstitutionality of Article 36 of the present Declaration which requires a belief in God, it would be best to avoid an attempt to incorporate any of the present language in the draft section. The Commission included in the draft section a positive affirmance of the right not to worship, in recognition of the constitutional development of religious freedom commencing with *Cantwell v. Connecticut*,[12] under which state and federal governments are forbidden to favor one religion over another, or to favor those of religious persuasion over those who deny the existence of a deity.

[12] 310 U.S. 296 (1940).

Section 1.04. **Due Process.**

No person shall be deprived of life, liberty or property without due process of law, or be denied the equal protection of the laws, or be subject to discrimination by law or other governmental action because of religion, race, color or national origin.

Comment:

The Commission believes that the simple and direct statement in this draft section guaranteeing "due process of law" to all persons incorporates all the protections provided by Articles 19, 23, 24 and 32 of the present Declaration. Articles 19 and 23 use the phrase "by the Law of the Land" or "by the course of the law of the land" instead of the familiar "due process of law" of the national Bill of Rights. But as early as 1838 the Court of Appeals of Maryland interpreted the phrase "by the Law of the Land" in the 1776 Constitution to mean "by the due course and process of the law."[13] More recently, the Court of Appeals has observed that, "in construing the due process clause of the Fourteenth Amendment [Article 23] . . . the Supreme Court [of the United States] cases are 'practically direct authorities.' "[14] The Commission chose to use the terminology, "due process of law," because it wished to assure continued uniformity of interpretation with that concept in the federal Constitution, and because of the advantage which follows from the use of words which have been repeatedly construed by the courts.

The courts have not formulated a rigid definition of the phrase "due process of law," preferring instead to expand the term as future circumstances dictated. The phrase, however, has invariably been applied to the treatment of a person by the government or any of its agencies. The requirement of "due process" insures that no person shall be deprived of those rights which are "implicit in the concept of ordered liberty."[15] It is this clause which restrains governments from arbitrary and capricious action detrimental to one's life, liberty or property.

Attention is called to the fact that it is this draft section and not draft Section 1.09 of this article under which, in a proper case, an indigent person accused of crime will be entitled to have counsel (and perhaps other assistance) provided for him at the expense of the State to aid in his defense.[16] The exact limits of this right are not stated in this draft section but are left to be developed by the courts in expounding upon due process of law and in extending to all persons rights which are "implicit in the concept of ordered liberty."

The second clause of the first sentence of this draft section adds a guarantee of "equal protection of the laws," a protection not expressly stated in the present Declaration. The equal protection clause, in effect, insures that all persons in similar circumstances will be treated

[13] University of Maryland v. Williams, 9 Gill & J. 365, 412 (1838).

[14] Rafferty v. Comptroller of the Treasury, 228 Md. 153, 161 (1962).

[15] Palko v. Connecticut, 302 U.S. 319, 325 (1937).

[16] See commentary under draft Section 1.09 and footnotes 25, 26, 27, 28, 29 and 30. It should be noted that this draft section, unlike draft Section 1.09, is not limited to criminal cases but extends to property as well as life and liberty and therefore applies in civil actions.

alike by the government. The language used is again that of the Fourteenth Amendment to the United States Constitution.

The Commission's Committee on Elective Franchise and Declaration of Rights suggested that the full scope of the constitutional protection appropriate to the draft section was secured by the language, "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the law." A substantial majority of the members of the Commission, however, advocated including in the second sentence the explicit prohibition against discrimination even though the language might be deemed unnecessary. Although it was argued that the protection afforded by the explicit prohibition against discrimination is implicit in the equal protection clause, the Commission concluded that the principle deserved positive and independent expression. The added clause is in no way intended, however, as a limitation of any kind on the broad sweep of the phrase, "equal protection of the laws."

It should be observed that the language prohibiting discrimination refers guage to discrimination by law or other governmental action. This qualification is consistent with the Commission's position that the function of a Declaration of Rights is to state those personal rights which the people want protected from the exercise of the powers of government and that a constitution or Declaration of Rights should not be used as the means for protecting the rights of private persons against the actions of other private persons.

Section 1.05. **Eminent Domain.**

Private property shall not be taken for public use without just compensation.

Comment:

This draft section states in comprehensive terms the principle that no agency of the government shall take private property for public use without the payment of just compensation. The language used is that of the Fifth Amendment to the United States Constitution.

The power of the State to take private property for public use is termed the right of "eminent domain." In the present Constitution Sections 40, 40A and 40B of Article III, on the Legislative Department, limit, with rather detailed qualifications, the right to take private property by exercise of the right of eminent domain. Even if the Convention were to include in its proposal for a new constitution the present or similar detailed limitations on the power of the General Assembly to enact laws under which private property may be taken for public use, the Commission believes that the general statement of the inviolability of private property from a taking for public purposes deserves expression in the Declaration of Rights.

Section 1.06. **Jury Trial in Civil Cases.**

Every person shall have the right of trial by jury of issues of fact in civil proceedings at law in the courts of this State in which the amount or value in controversy exceeds such minimum as may be fixed by law.

Comment:

The Commission has included in this draft section the right to a jury trial in civil proceedings at law where the

amount or value in controversy exceeds a statutory minimum. This right, appearing in Articles 5 and 23 of the present Declaration of Rights and Article XV, Section 6 of the present Constitution, is firmly rooted in the Maryland tradition. The right to a jury trial was first adopted as part of the Maryland Declaration of Rights by the Constitutional Convention of 1776 and was included in the body of the Constitution itself in 1851.

This draft section gives to the legislature the right to establish a minimum jurisdictional amount as a prerequisite to a jury trial. In contrast, Article XV, Section 6 of the present Constitution preserves the right of trial by jury in civil proceedings at law where the amount in controversy exceeds the sum of five dollars. The Seventh Amendment to the United States Constitution provides for jury trial in suits at common law tried in federal courts where the value in controversy exceeds twenty dollars.

The Committee on Judicial Administration of the Maryland State Bar Association recently recommended that the provision in Article XV, Section 6 of the present Constitution be retained, but that the five-dollar minimum be raised to five hundred dollars. Seven states specifically provide in their constitutions for the right to a trial by jury without establishing a monetary minimum amount in controversy.[17] Five additional states specifically provide in their constitutions for the right to a trial by jury with a small monetary minimum amount in controversy.[18] Twenty-nine other states provide for the right to trial by jury in civil cases in various ways.[19]

The Commission realized that retention of the present minimum jurisdictional amount of five dollars would result in a right to a jury trial in every civil proceeding at law. The Commission feared that if a jury trial could be demanded in all civil proceedings at law, the recommendation of the Commission that there be a statewide court of limited jurisdiction where minor disputes could be expeditiously handled by judges sitting without juries would be subverted if any suit filed in the court of limited jurisdiction could be transferred to the court of general jurisdiction and tried again, by the losing party appealing and demanding a jury trial. Concern was voiced that such a situation would permit a party to file suit in a court of limited jurisdiction for the purpose of learning his adversary's evidence and arguments, but with the intention of appealing an adverse decision, requesting a jury trial and thereby obtaining a new trial by another court. There was also concern that the widespread use of juries in numerous small disputes which could be handled by judges without juries would impede the expeditious administration of justice.

The Commission was reluctant to specify a jurisdictional amount in the constitution since any such provision would likely become outdated, and a constitutional amendment would then be required to effect a change which might be desirable to shift from one court to another a case load caused by an increasing volume of litigation. By guaranteeing the right of jury trial but empowering the legislature to establish

[17] INDEX DIGEST 578.

[18] INDEX DIGEST 578.

[19] INDEX DIGEST 578.

a minimum jurisdictional amount, the ability of the legislature to resolve the problems of changing caseloads in the courts would be strengthened and the flexibility of the court system increased.

It must be remembered that the constitutional guarantee of a trial by jury extends only to the type of proceeding in which the right of trial by jury existed at common law and was recognized at the time of the adoption of the Constitution.[20] Therefore, where the proceeding did not exist at common law, the parties do not have the right to a jury trial. Furthermore, only in those cases arising "at law" and not in equity is there a right to a jury trial. For example, in an action for specific performance of a contract, a domestic relations matter, and in other similar proceedings in equity, there is no right of trial by jury.

It should also be noted that this draft section does not prescribe the number of jurors required to hear a civil suit, nor does it require a unanimous verdict of the jury as is required in criminal cases. Recognizing that the right to a jury of a specified number is not inviolable and that some states use juries of less than twelve jurors,[21] the Commission recommends that the determination of the size of the jury, and the manner in which a jury verdict should be reached, be left to the General Assembly.

Section 1.07. **Legal Limitations.**

No bill of attainder, or ex post facto *law, or law imparing the obligation of contracts shall be enacted, nor shall any conviction of crime work corruption of blood or forfeiture of estate.*

Comment:

This draft section incorporates in one section all the protections provided by Articles 17, 18 and 27 of the present Declaration, and adds an express prohibition of laws impairing the obligation of contracts. The Commission believes that this draft section sets forth these principles more simply and directly than does the present Declaration, and in language which is in accord with the constitutional traditions of the federal and state governments. Article I, Section 10 of the United States Constitution similarly provides that, "No State shall . . . pass any Bill of Attainder, *ex post facto* Law, or Law impairing the Obligation of Contracts. . . ."

Stated generally, a "bill of attainder" is an act of a legislative body declaring a person guilty of a crime and imposing a punishment. The stipulation that no conviction shall "work corruption of blood or forfeiture of estate" prohibits a punishment from being imposed which would prevent a person from inheriting property, from retaining property he possessed, or from passing property on to his heirs. The prohibition against legislative conviction of a crime and against this form of punishment has been included in all state constitutions.

The prohibition against *"ex post facto* laws" restrains the General Assembly from enacting legislation which would retroactively declare acts criminal which were not criminal when committed. Similarly, the prohibition would prevent legislation which would

[20] Commonwealth of Pennsylvania v. Warren, 204 Md. 467, 474 (1954).

[21] INDEX DIGEST 581.

increase the punishment or penalty for a crime beyond those which were in force at the time the crime was committed.

The prohibition against laws impairing the obligation of contracts restrains the legislature from enacting laws which would retrospectively limit, restrict, or abrogate contractual rights and liabilities.

Section 1.08. **Search and Seizure.**

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures and in their oral or other communications against unreasonable interceptions shall not be violated. No search warrant shall be issued except upon probable cause supported by oath or affirmation, and the place to be searched, the persons or things to be seized, or the communications sought to be intercepted shall be particularly described in the warrant.

Comment:

Except that a prohibition of unreasonable interception of communications has been added, the substance of this draft section is the same as that of Article 26 of the present Declaration. The language used, however, is patterned on the Fourth Amendment to the United States Constitution. The Commission believes that the language of this draft section, phrased as an affirmative statement, is preferable because of its simplicity and directness to that in the present Declaration.

The Commission's recommendation that the federal formulation of the right to be secure against unreasonable searches and seizures be adopted was also prompted by the decisions of the United States Supreme Court in *Wolf v. Colorado*, [22] and in *Mapp v. Ohio*,[23] which held that the Fourteenth Amendment to the United States Constitution had made the Fourth Amendment applicable to state action and, therefore, requires the states, in matters of searches and seizures, to adhere to standards which previously had been imposed on federal law enforcement agencies alone. Accordingly, a single standard has evolved to which all law enforcement agencies must adhere in making searches and seizures. Since the language of this draft section is similar to that in the federal Constitution, an established body of law will be available to guide in its interpretation.

The initial recommendation of the Commission's Committee on Elective Franchise and Declaration of Rights did not include the reference to interception of "oral or other communications." A substantial majority of the Commission advocated the inclusion of this express reference in order to make it absolutely clear that the draft section gives protection not only against unreasonable searches of persons and premises, but also against the increasingly sophisticated techniques of wire-tapping, electronic listening, and all similar forms of eavesdropping. The language used, however, is broad enough to cover devices or means which might be developed in the future and would not be electronic.

Although it has been argued that the language of the Fourth Amendment to the United States Constitution is broad enough to cover such invasions of privacy, the United States Supreme

[22] 338 U.S. 25 (1949).

[23] 367 U.S. 643 (1961).

Court has consistently ruled that surreptitious recording of oral communications does not constitute a search and seizure within the meaning of that amendment.[24] The Commission believes that this is an area in which the rewriting of the Declaration of Rights can add significantly to the historic protections offered by the federal Bill of Rights. It is the Commission's firm conviction that invasion by any means or device of the privacy ordinarily attendant upon private communications, without the safeguards provided by this section, should not be tolerated. Some members of the Commission did express some concern that this draft section might unduly hamper law enforcement.

The problems attendant upon electronic eavesdropping did not exist when the present Constitution was adopted 100 years ago. They are now a subject of public concern and the Commission urges a full study and consideration of the entire matter by the Convention.

Section 1.09. **Rights of Accused.**

A person accused of crime shall have the right to be informed of the charge against him in time to prepare his defense, to have the assistance of counsel in his defense, to be confronted with and to examine under oath or affirmation the witnesses against him, to have compulsory process for obtaining witnesses and to have a speedy and public trial in the jurisdiction where the crime is alleged to have been committed and before an impartial jury, without whose unanimous consent he shall not be adjudged guilty.

Comment:

This draft section presents a succinct statement of all those basic requirements necessary for the fair trial of one accused of a crime. The section incorporates all the protection provided by Articles 20 and 21 of the present Declaration and, in some respects, clarifies and enlarges that protection.

Originally, in England at common law an accused was not permitted to be represented by counsel on any indictment for treason or felony. This was not the rule generally accepted in the Colonies; but, nevertheless, the guarantee to every person accused of crime of the right "to be allowed counsel" contained in Article 21 of the present Declaration "was intended to do away with the rules which denied representation by counsel, but was not aimed to compel the State to provide counsel for the accused."[25] On the other hand, the United States Supreme Court has construed the similar provision of the Sixth Amendment to the Constitution of the United States that an "accused shall enjoy the right . . . to have the Assistance of Counsel for his defence," to require the appointment of counsel in all cases where an accused is unable to secure the services of an attorney and has not waived his right.[26] The United States Supreme Court had also held that this Sixth Amendment re-

[24] Olmstead v. United States, 277 U.S. 438 (1928); On Lee v. United States, 343 U.S. 747 (1952); Lopez v. United States, 373 U.S. 427 (1963). *But see* Berger v. New York, 87 Sup. Ct. 1873 (1967).

[25] Raymond v. State, 192 Md. 602, 607 (1949); Betts v. Brady, 316 U.S. 455, 466 (1942).

[26] Foster v. Illinois, 332 U.S. 134, 136-37 (1947); Johnson v. Zerbst, 304 U.S. 458, 467-68 (1938).

quirement of counsel was applicable only to the federal government and did not extend to the states.[27] In *Gideon v. Wainwright*,[28] however, the United States Supreme Court reversed its prior ruling and held that the Sixth Amendment's guarantee of counsel is one of those rights which is "fundamental and essential to fair trials" and is therefore made obligatory upon the states by the due process clause of the Fourteenth Amendment.[29]

The requirement of this draft section that every person accused of crime shall have the right "to have the assistance of counsel in his defense" is not intended to broaden the scope of the corresponding language of Article 21 of the present Declaration, nor to formulate a new rule requiring the State to provide counsel for a person accused of crime in every case in which he cannot himself provide counsel. On the contrary, it is intended in this draft section merely to restate the rule that every person accused of crime may, if he chooses, be represented by a lawyer. The obligation of the State to provide counsel to persons accused of crime who are unable to obtain counsel will continue to be based upon the due process clause of the Fourteenth Amendment to the United States Constitution and the similar guarantee in draft Section 1.04 of this article. The effect of each will be to require the State to provide counsel for indigent persons accused of crime in those cases where, and at such time as, "due process of law" requires such action, that is, where the right to be furnished counsel is, under the circumstances, "implicit in the concept of ordered liberty."[30]

This draft section reflects certain principles deeply rooted in our legal tradition, namely, that a person should not be deprived of life or liberty by secret testimony in clandestine proceedings; that it is the duty of the State to provide compulsory process to help an accused secure the presence of witnesses who may aid his defense; that a person should not be confined for an unreasonable period of time without a trial to determine his guilt or innocence; that the judicial system and procedure by which an individual may be deprived of life or liberty should operate under full public scrutiny; that an accused should not be removed for trial against his will to a place where it may be more difficult for him to defend himself; and that a unanimous verdict should be required for conviction of a crime by a jury. A substantial minority of the Commission was of the opinion that a unanimous verdict should not be required by the constitution and that the matter should be left to the General Assembly.

It should be noted that this draft section does not include mention of the right of the accused "to have a copy of the indictment or charge" since the Court of Appeals of Maryland has consistently held that this stipulation in Article 20 of the present Declaration does not require an indictment in every case. The Commission deemed sufficient the statement in the draft section that an accused "shall have the right to be informed of the charge against him in time to prepare his defense."

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[27] Betts v. Brady, 316 U.S. 455, 461-62 (1942); Foster v. Illinois, 332 U.S. 134, 136-37 (1947).

[28] 372 U.S. 335 (1963).

[29] 372 U.S. 335, 342-44 (1963).

[30] Palko v. Connecticut, 302 U.S. 319, 325 (1937).

Section 1.10. **Double Jeopardy; Self-Incrimination.**

No person shall be twice put in jeopardy of criminal punishment for the same offense or be compelled in any criminal case to be a witness against himself.

Comment:

Protection of persons against double jeopardy in criminal actions does not appear in the present Declaration. This protection does appear in the Fifth Amendment to the United States Constitution; although, the United States Supreme Court has held that this provision of the Fifth Amendment is not extended to the states by the Fourteenth Amendment.[31] The Commission recommends that a prohibition against double jeopardy be included in the draft Declaration in the belief that this protection is of basic importance and warrants constitutional expression. Certainly a citizen can experience no greater harassment than to be called upon to defend himself against a criminal accusation of which he has previously been acquitted. The word "criminal" was inserted before the word "punishment" to make it clear that this draft section does not prevent consequences in addition to criminal punishment attaching to conviction of a crime. One convicted of a felony, for example, may be fined or imprisoned and also rendered ineligible thereafter to engage in any business involving alcoholic beverages. Imposing such a legal disability on a convicted felon does not constitute double jeopardy.

The second clause of this draft section provides the same protection as is found in Article 22 of the present Declaration. The language is substantially the same as that in the present Declaration. It has been rephrased as a direct and affirmative statement of the traditional privilege against self-incrimination.

This privilege is one of those guaranteed by the Fifth Amendment to the United States Constitution which the United States Supreme Court has held is extended to the states by the Fourteenth Amendment. The Supreme Court stated in *Malloy v. Hogan*[32] that "the American system of criminal prosecution is accusatorial, not inquisitorial, and . . . the Fifth Amendment privilege is its essential mainstay. . . . Governments, state and federal, are thus constitutionally compelled to establish guilt by evidence independently and freely secured, and may not by coercion prove a charge against an accused out of his own mouth."

Section 1.11. **Unusual Punishment.**

Excessive bail shall not be required. Neither excessive fines nor cruel and unusual punishment shall be provided by law or be imposed by the courts.

Comment:

This draft section is designed to incorporate all the protection provided by Articles 16 and 25 of the present Declaration. The first sentence of this draft section is identical to the first clause of the Eighth Amendment to the United States Constitution and is virtually the same as Article 25 of the present Declaration.

Most state constitutions expressly provide for the right of the accused to

[31] Palko v. Connecticut, 302 U.S. 319 (1937).

[32] 378 U.S. 1, 7-8 (1964).

be released on bail.[33] This right is often qualified by a stipulation that release on bail is not permitted in certain specified cases.[34] Maryland constitutions have never included an express statement of the right to release on bail, but the Court of Appeals of Maryland has held that the right to release on bail in an appropriate case is a right which existed at common law and that this rule of the common law has remained in force in Maryland.[35] The "right" to be released on bail in an appropriate case is now granted by Maryland Rule 777. Similar provisions are found in Rule 46 of the Federal Rules of Criminal Procedure.

This draft section is intended to make clear that the restriction against excessive fines and cruel and unusual punishment applies not only to laws enacted by the General Assembly but also to judicial action. Thus the enactment by the legislature of a law prescribing an excessive sanction for a specified offense would violate this section, as would also the imposition by a court of excessive punishment for the commission of a crime for which no specific punishment was prescribed by statute.

This draft section omits the admonition in Article 16 of the present Declaration that "sanguinary Laws ought to be avoided as far as it is consistent with the safety of the State." In modern usage a "sanguinary law" is one providing for capital punishment. The Commission suggests that a law prescribing capital punishment for other than a most serious crime would be considered "cruel and unusual" by present day standards, and so would be prohibited by this draft section.

Section 1.12. **Habeas Corpus.**

The privilege of the writ of habeas corpus shall not be suspended and the provisions of this Constitution shall apply both in time of war and in time of peace.

Comment:

The Commission recommends that the right to the writ of habeas corpus be expressly recognized in the Declaration of Rights. This draft section does not alter the protections presently assured but merely consolidates the substance of Article 44 of the present Declaration with the prohibition presently found in Article III, Section 55 of the Constitution. The unqualified statement in this draft section makes the prohibition applicable against any agency of the State, as well as against the General Assembly.

Section 1.13. **Reserved Rights.**

This enumeration of rights shall not be construed to impair or deny others retained by the people.

Comment:

This draft section is identical to Article 45 which concludes the present Declaration. It reflects the idea expressed by the Maryland Court of Appeals as "the people's reserved powers of sovereignty."[36] The specific enunciation of certain rights, particularly chosen because of their fundamental importance, should not be construed to limit or impair in any way other rights and privileges held by the people.

[33] INDEX DIGEST 48.

[34] The usual exception is for capital offenses where the proof is evident or the presumption of guilt is great. INDEX DIGEST 48.

[35] Fischer v. Ball, 212 Md. 517 (1957).

[36] Board of Supervisors of Elections v. Attorney General of Maryland, ____ Md. ____ (April 14, 1967) (Daily Record, May 2, 1967).

ARTICLE II. SUFFRAGE AND ELECTIONS

Introductory Comment:

The recommendations of the Commission embodied in draft Article II are based upon the belief that suffrage should be extended to as many qualified residents in the State as possible while retaining such limitations as are necessary to prevent voting in state elections by transients; that in the case of elections for President and Vice President of the United States all persons who meet the most minimal residence requirement should be enfranchised; that persons residing in federal enclaves should be allowed to vote in both state and national elections; that municipalities ought to be permitted to impose a longer residence requirement and should also be permitted to allow voting by non-resident property owners; that a uniform system of voter registration should be required; and that providing the detailed machinery for carrying out elections should be a function of the General Assembly.

The Commission considered numerous proposals for provisions creating a right of initiative and a right of recall. The right of initiative would permit citizens to initiate by petition legislative proposals that would be voted upon directly by the people in a general election. The right of recall would permit a prescribed minimum number of persons to file a petition subjecting an elected state officeholder to a public referendum on the question of whether or not he should continue in office. The Commission recommends that there be no provision for either initiative or recall in the new constitution. However, both questions have been researched by staff members of the Commission and a monograph on provisions for each in other state constitutions has been prepared for the Convention.[37]

In draft Article II the Commission has assembled the provisions relating to voter eligibility, regulation of elections, and the referendum. This draft article contains those matters now in Articles I, XVI and XVII of the present Constitution, as well as some provisions now in articles which are principally concerned with other topics. The inclusion in one article of all provisions relating to suffrage and elections has eliminated the duplication and inconsistency in terminology which presently exists. Certainly, the recommended draft facilitates comprehension and application of these provisions.

The constitutional provisions on voter eligibility have been reduced to the absolute essentials. This draft article assigns to the General Assembly the responsibility for prescribing by law the detailed provisions relating to voter eligibility, voter registration and organization of elections.

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[37] Ralabate, "Direct Legislation," 1967 (monograph among unpublished papers of Maryland Constitutional Convention Commission in ENOCH PRATT LIBRARY, UNIVERSITY OF MARYLAND LIBRARY, MARYLAND STATE LIBRARY, JOHNS HOPKINS UNIVERSITY LIBRARY).

VOTERS

Section 2.01. **Eligible Voters.**

Every citizen of the United States who has attained the age of twenty-one years, who has been a resident of this State for six months and of the House of Delegates district in which he offers to vote for three months next preceding an election, and who is registered to vote, shall be qualified to vote at such election for all officers to be elected by the people and upon all questions submitted to a vote of the people. Removal from one house district to another in this State shall not deprive a person of his qualification to vote in the house district from which he has removed until three months after his removal.

Comment:

The two principal conditions for voting eligibility relate to age and period of residence.

AGE

This draft section retains the present age requirement of twenty-one years. Consideration was given to a proposal to lower the voting age to eighteen and there was a Commission hearing on the question, but there was no strong support voiced for such a change.[38]

Any decision as to voting age must be arbitrary, but it should have a sound theoretical basis. An age must be set at which it may be assumed that most if not all people have acquired a maturity of judgment and the good sense to think for themselves.

There are approximately 9,300,000 Americans between the ages of eighteen and twenty-one; and of these, 560,000 currently are serving in the armed forces. The latter compose approximately twenty-two per cent of all active military personnel. Under proposed draft law changes there will be many more young people between the ages of eighteen and twenty-one in the armed services in the near future than at present.[39]

Since 1942, sixty joint resolutions for amendment of the United States Constitution to lower the voting age have been presented in Congress. Although this legislation has received the bipartisan support of such notables as the late Presidents Franklin D. Roosevelt and John F. Kennedy, former President Dwight D. Eisenhower, President Lyndon B. Johnson and former Senator Barry Goldwater, it has for the most part been defeated in committee.[40]

The primary arguments for retaining the minimum age of twenty-one as a basic suffrage requirement are:[41]

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[38] XII PROCEEDINGS OF THE MARYLAND CONSTITUTIONAL CONVENTION COMMISSION 1966, Meeting of May 16, 1966; I PROCEEDINGS OF THE MARYLAND CONSTITUTIONAL CONVENTION COMMISSION 1966, Meeting of June 20, 1966 (unpublished papers of the Commission in ENOCH PRATT LIBRARY, UNIVERSITY OF MARYLAND LIBRARY, MARYLAND STATE LIBRARY, JOHNS HOPKINS UNIVERSITY LIBRARY).

[39] *A Special Message of Selective Service Sent to the Congress by the President,* House of Representatives Document 75, 90th Congress, 1st Session (1967).

[40] House of Representatives Journal, Resolution 486, 90th Congress, 1st Session (1967).

[41] XII PROCEEDINGS OF THE MARYLAND CONSTITUTIONAL CONVENTION COMMISSION 1966, Meeting of May 16, 1966; I PROCEEDINGS OF THE MARYLAND CONSTITUTIONAL CONVENTION 1966, Meeting of June 20, 1966 (unpublished papers of the Commission in ENOCH PRATT LIBRARY, UNIVERSITY OF MARYLAND LIBRARY, MARYLAND STATE LIBRARY, JOHNS HOPKINS UNIVERSITY LIBRARY).

1. It has long been the tradition in forty-six of the states.

2. The same reasons should apply in establishing the minimum age for voting as for establishing the legal age of majority, and in Maryland in the past few years the legal age of majority for most purposes has been standardized at twenty-one years.

3. Lowering the voting age would add to the voting population many persons whose idealism has not been tempered by practical experience in adult society.

4. Reducing the voting age would add to the voting population persons highly influenced by their parents, schools, television and special interest groups.

5. If the voting age were reduced to eighteen, many small college communities would find their municipal governments overrun by energetic college students.

Those who favor reducing the voting age to eighteen argue that the sweeping changes in modern society require the responsibilities of full citizenship at an increasingly earlier age, for the abundant, diverse and complex problems of today affect individuals at every age level. The right to vote is a means by which individuals influence the political decision-making process in order to solve their problems. The goal is to insure that all individuals capable of assuming the responsibilities of citizenship are duly represented in the political community.[42]

Those who favor reducing the voting age to eighteen also argue that:[43]

1. Persons in the eighteen to twenty-one year old group are better educated today than such persons were when the precedent of the twenty-one year old voting age was established.

2. Under the laws of some states, eighteen year olds can make wills, get married, pay income taxes, obtain licenses to operate automobiles, own firearms and be sued.

3. Eighteen year olds can be drafted and their lives endangered; yet they are denied the right of voting for the composition of that government they are asked to defend.

4. The national average age of the electorate is rising; however, the problems faced by the nation are felt increasingly by the young people. Unemployment is an example of a problem which acutely focuses on the eighteen to twenty-one year old group.

5. The sense of responsibility of persons in the eighteen to twenty-one year old age group would improve and broaden if they were given the right to vote. They would more easily become part of the political system, rather than its eternal gadfly.

6. To work for the federal government, the minimum age under the Civil Service laws is eighteen.

7. Since the advent of student participation in the civil rights movement, eighteen to twenty-one year old students have assumed responsibilities for the concerns of the nation by registering voters, tutoring disadvantaged children and youth, and assisting in the development of nations through the Peace Corps.

Eighteen to twenty-one year olds have been allowed to vote in the State

[42] REPORT OF THE PRESIDENT'S COMMISSION ON REGISTRATION AND VOTING PARTICIPATION (Dec. 20, 1963).

[43] LIEBERT, ON LOWERING THE VOTING AGE TO 18 (United States National Student Association pamphlet undated).

of Georgia since 1943[44] and in Kentucky since 1955.[45] Alaska allows voting at the age of nineteen,[46] and Hawaii at the age of twenty.[47] Officials in Georgia and Kentucky, including school officials, have uniformly endorsed their state laws conferring suffrage at the age of eighteen.[48]

After reviewing the reasons for and against a reduction in the minimum voting age, the Commission concludes that the arguments for lowering the voting age in Maryland are not persuasive. The Commission, therefore, recommends retention of the age of twenty-one years as the basic suffrage requirement.

RESIDENCE

This draft section reduces the present requirement of one year's residence in the State and six months' residence in the legislative district to six months' residence in the State and three months' residence in the House of Delegates district in which the individual offers to vote. The reduced period of residence conforms to an apparent trend in this direction as evidenced by some of the more recently adopted state constitutions.[49] The Commission believes this change highly desirable. It is apparent that modern communications media make it significantly easier for citizens to acquaint themselves with issues and candidates than was the case a century ago. The requirement of one year's residence in the State, although typical of state voting regulations in the middle of the nineteenth century, appears inappropriate for the mobile population of this century and decade. The Commission believes that there is no real advantage to the State in continuing the present requirement and that large numbers of citizens would be inconvenienced and deprived of the opportunity to vote by its continuance. A significant number of citizens who would otherwise be disenfranchised will be eligible to vote under this draft section.

This draft section uses the term "House of Delegates district" in lieu of "Legislative District of Baltimore City, or of the county . . ." which is the language used in the present Constitution to describe the place of residence requirement. The change in terminology was necessitated by the recent reapportionment of the State. It is intended that "House of Delegates district" refer to that district from which a delegate is elected to serve in the Maryland House of Delegates. This is the smallest of the election districts for state elections.

The final provision of this draft section protects the voting eligibility of persons moving from one house district to another within the State and is essentially the same as that found in

[44] GEORGIA CONSTITUTION article II, section 2-702.

[45] KENTUCKY CONSTITUTION section 145.

[46] ALASKA CONSTITUTION article V, section 1.

[47] HAWAII CONSTITUTION article II, section 1.

[48] DOLAN, REPORT TO THE PRESIDENT'S COMMISSION ON REGISTRATION AND VOTING PARTICIPATION ON LOWERING THE VOTING AGE TO 18, appendix V, page b (Jan. 1, 1964).

[49] Connecticut (1965) requires six months' residence in the town in which the individual offers to vote. Michigan (1964) requires six months' residence in the State in addition to meeting the requirements of local residence. New Jersey (1947) requires six months' residence in the State and 60 days in the county. Hawaii (1959), Alaska (1959), and Missouri (1945) retain the one-year residence requirement. Six months' residence in the State is also specified in Idaho, Indiana, Iowa, Kansas, Maine, Minnesota, Nebraska, Nevada, New Hampshire and Oregon.

Article I, Section 1 of the present Constitution. The provision is designed to ensure that no person shall lose his right to vote in state elections merely because of a change in residence within the State.

Section 2.02. **Eligible Voters in Presidential Elections.**

A person who has been a resident of this State less than six months next preceding an election, but who is otherwise eligible to vote under this Article, may vote for President and Vice President of the United States or presidential electors in that election.

Comment:

This draft section ensures that new residents of the State will be permitted to vote for President and Vice President of the United States even though they have not resided in the State for six months and cannot vote for state officers. This draft section represents a departure from the provision of the present Constitution, the validity of which under the United States Constitution was upheld by the United States District Court for the District of Maryland.[50] In its opinion the court noted, however, that there was a strong and growing body of respectable opinion holding that the one-year residence requirement applicable to voters in elections for national office was an undesirable restriction on the right of franchise. The court further called attention to the fact that both the National Conference of Commissioners on Uniform State Laws[51] and the Attorney General of Maryland[52] had suggested reducing the required residence period for voting in national elections.

The change made by this draft section follows recent similar changes in the state constitutions of California, Ohio and Oregon.[53] The Commission advocates the change because of its belief that persons moving to Maryland from other states can be presumed to be as well informed on national candidates and national issues as persons who have theretofore resided in Maryland. Provision can be made by statute to prevent new residents from voting for President and Vice President both in Maryland and in the state of previous residence.

It should be noted that the only condition of eligibility prescribed by draft Section 2.01 which is affected by this draft section is that referring to six months' residence in the State. Three months' residence in the house district is still required of those seeking to vote for President and Vice President. All states adopting comparable constitutional provisions have prescribed some minimum period of residence for voting in national elections to permit sufficient time for accomplishing registration of new voters.[54]

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[50] Drueding v. Devlin, 234 F. Supp. 721 (D. Md. 1964).

[51] HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONS ON UNIFORM STATE LAWS 261-64 (1962). See also 77 HARV. L. REV. 574 (1964).

[52] Drueding v. Devlin, 234 F. Supp. 721 (D. Md. 1964).

[53] CALIFORNIA CONSTITUTION article II, section 1½ (1958 amend.); OHIO CONSTITUTION article V, section 1 (1957 amend.); OREGON CONSTITUTION article II, section 8 (1960 amend.).

[54] CALIFORNIA CONSTITUTION article II, section 1½ (1958 amend.); OHIO CONSTITUTION article V, section 1 (1957 amend.); OREGON CONSTITUTION article II, section 8 (1960 amend.).

Section 2.03. **Voters in United States Enclaves.**

A person shall not be deemed ineligible to vote in national or state elections solely by reason of the fact that he resides on land over which the United States exercises exclusive jurisdiction.

Comment:

This draft section would add a new provision to the Maryland constitution. Federal reservations or enclaves located throughout the State are the residence of many persons who are present in the State for extended periods of time; persons who are required to pay state income taxes, sales and use taxes, gasoline taxes, and motor vehicle registration and operator's license fees; and frequently persons who claim no other residence in the United States. On the other hand such persons do not pay property taxes and hence do not contribute as much to the cost of local government as do other residents of the area not living in federal enclaves. By federal statute the residents of federal enclaves have been made subject to the state workmen's compensation laws and unemployment compensation laws, and by statutes the General Assembly of Maryland extended the divorce laws and adoption laws to the residents of federal reservations and opened the public schools to their children. However, the General Assembly has taken no such action with regard to voting rights, and former Attorney General Hall Hammond (now Chief Judge of the Court of Appeals) ruled in 1951[55] that a statute conferring the elective franchise on residents of federal reservations would be unconstitutional under Article I, Section 1 of the present Constitution. In any event, the Court of Appeals of Maryland has held[56] that residents of federal reservations are not residents of the State for voting purposes within the meaning of Article I, Section 1 of the present Constitution, although the court expressly refrained from deciding whether the legislature could confer the voting franchise on residents of federal reservations without an amendment of the Constitution.

The Commission recommends this draft section in the belief that there is insufficient reason for denying such persons the right to vote in state and national elections. Large numbers of these persons (doctors, teachers, administrators, scientists, technicians, etc.) are no more transient than many other segments of the population; nor are military or civilian personnel living on a government reservation more transient than their colleagues who choose to live off a federal enclave, although still federally employed. Since this draft section, by its terms, applies only to state and national elections, it renders inapplicable the common argument that persons who are residents of federal reservations are unfamiliar with, or have only a narrow interest in, local county and city matters.

Limiting the operation of the draft section to reservations over which the United States exercises exclusive jurisdiction is not too restrictive because only residents of land over which the United States has exclusive jurisdiction are deprived of the right to vote. Residents of other federal reservations are deemed to be residents of the State and are entitled to vote.[57]

[55] 36 Ops. Atty. Gen. 129 (1951).

[56] Royer v. Board of Election Supervisors, 231 Md. 561 (1963).

[57] Drueding v. Devlin, 234 F. Supp. 721 (D. Md. 1964).

Section 2.04. **Disqualification.**

The General Assembly shall by law establish disqualifications for voting by reason of mental incompetence or conviction of serious crime, and may provide for the removal of such disqualifications.

Comment:

Article I, Section 2 of the present Constitution provides for the automatic disenfranchisement of a person "under guardianship as a lunatic, or, as a person *non compos mentis.*" This draft section empowers the General Assembly to determine the conditions, methods and standards by which mental incompetence shall cause disenfranchisement. The present Constitution makes loss of franchise for mental incompetence dependent upon the existence of a guardianship, but a guardianship proceeding is only one of several indicia by which mental incompetence is determined. Under this draft section the General Assembly is free to deal with the problem in such manner as it determines best.

Article I, Section 2 of the present Constitution also provides for the automatic disenfranchisement of any person "above the age of twenty-one years, convicted of larceny, or other infamous crime." The vagueness of this language raises many questions. "Infamous crime" is a term of art, construed by the Court of Appeals of Maryland to mean those crimes which were "infamous" at common law and described as such by common law authorities.[58] It is entirely possible that some crimes classified as infamous crimes at common law might appear today to be insufficiently serious to warrant loss of elective franchise. Correspondingly, some acts which are crimes today were unknown to the common law, and yet are so seriously antisocial as to warrant disenfranchisement.

After extensive discussion and consideration, the Commission concluded that automatic disenfranchisement, linked to a vague standard of criminality, is not the preferable way to provide for disenfranchisement. It recommends this draft section which leaves to the legislature the power to designate and define the crimes, conviction of which shall carry the consequence of loss of the right to vote. This draft section, however, does not leave the matter completely to legislative discretion; disenfranchisement may only be imposed on those convicted of serious crime. The Commission believes that the designation of "serious crime" prevents the legislature from disenfranchising those convicted of acts which, although criminal, are nevertheless not regarded as of such enormity as to justify loss of the elective franchise. Moreover, substitution of the adjective "serious" in lieu of the adjective "infamous" frees the provision of the common law restrictions and connotations that have been attached to the term "infamous crime."

The Commission is of the opinion that the General Assembly is the body best equipped to determine the most workable standards and procedures for the restoration of the franchise. Certainly, if disqualification is to be provided by statute, then removal of the disqualification should also be provided by statute. The General Assembly can, for instance, take into account pardons granted by other states and federal

[58] State v. Bixler, 62 Md. 354, 360 (1884).

pardons. This draft section, therefore, authorizes the General Assembly to provide for the removal of the disqualification.

ELECTIONS

Section 2.05. **Election Procedure.**

The General Assembly shall by law define residence, establish a uniform system of permanent registration of voters, provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting and protect the integrity of the election process.

Comment:

The Commission recommends that the detailed provisions in Article II, Sections 3, 4 and 5 of the present Constitution be replaced by the more general provisions of this draft section which directs and empowers the General Assembly to provide by law appropriate machinery for elections, including absentee voting, and the necessary safeguards for the election process. All such details of the election process should be provided by legislation which can be patterned to meet changing conditions rather than by a constitution which is susceptible of change only by the cumbersome amendment process. The legislative process is a more appropriate manner of dealing with such detailed matters.

Section 2.06. **General Elections.**

A general election shall be held on the Tuesday following the first Monday in November in the year 1970, and on the same day every even year thereafter. The candidates receiving the highest number of votes shall be elected to the offices for which they were candidates.

Comment:

This draft section complements draft Section 2.05 by specifying when elections shall be held. Election dates prescribed by the present Constitution are not changed, but this draft section eliminates the need for what remains of Article XVII of the present Constitution, the so-called "Fewer Elections Amendment." With draft Section 2.05 this draft section covers all, or substantially all, of the matters now covered in Article III, Sections 42, 47 and 49; Article IV, Sections 11 and 12; Article V, Sections 2 and 8; and Article XV, Sections 4 and 7 of the present Constitution.

The second sentence of this draft section is recommended as a new provision to make clear that election is by plurality vote and that the vote of an absolute majority is not required for election.

Section 2.07. **Local Elections.**

Voting qualifications for local elections shall be as provided in Section 2.01 of this Article except that a municipal corporation may establish a period of minimum residence not exceeding one year and may extend the right to vote to nonresidents owning taxable property within its limits.

Comment:

The provisions of Article I of the present Constitution relating to elective franchise do not apply to elections held by political subdivisions or to any elections not specifically referred to in the

Constitution.[59] The Commission is of the opinion that it is undesirable and unnecessary to permit political subdivisions to have unrestricted control over the establishment of voting qualifications in local elections and that political subdivisions should not have unqualified power to exclude from local elections those persons who are eligible to vote in state elections.

The Commission recognizes, however, the necessity for municipalities to tailor voting requirements to special local situations. There are issues submitted to voters in municipal elections of particular importance to the non-transient voting population. This draft section gives a municipality the right to prescribe a longer period of residence for those seeking to vote in local elections than is required for participation in state elections. This draft section also recognizes the need of some municipalities, particularly in resort areas, to extend the right to vote in municipal elections to property owners who are not residents of the municipality. It should be noted that "municipal corporation" is defined in draft Section 7.01 and does not include Baltimore City.

REFERENDUM

Section 2.08. **Right of Referendum.**

If, within sixty days from the date on which a bill becomes law, a petition is filed with the office of the governor to refer the law to a vote of the people, the law shall be submitted to a vote at the next general election. If rejected by a majority of those voting on the question, the law shall stand repealed thirty days thereafter. If the petition is filed before the date on which the law is to take effect, then, unless the law is one passed by the affirmative vote of three-fifths of all the members of each house of the General Assembly, it shall not take effect until thirty days after its approval by a majority of those voting on the question in the election.

Comment:

The use of the referendum is a concomitant of the legislative process, but the right to vote on questions submitted to the people is exercised as a part of the elective franchise. The Commission, therefore, recommends that the provisions with respect to the referendum be included in the article on the elective franchise rather than in the article on the legislative branch.

This draft section and the following draft section are quite different from Article XVI of the present Constitution. The change is dictated in part by the provisions of the draft article on the legislative branch, but some of the changes have been made for other reasons, which should be described briefly.

In this draft section the attempt has been to state the principle of the referendum in the simplest and most comprehensible terms. This makes unnecessary a counterpart of Article XVI, Section 1 of the present Constitution which consists principally of an introductory general description of the principle of the referendum. Section 2 of the present Article XVI is a lengthy, detailed and complicated provision which sets out the basic referendum procedure, describes the laws which are not subject to referendum, prescribes the effective dates of all legislation, and describes and defines emergency laws. The basic procedure of the referendum

[59] Hanna v. Young, 84 Md. 179, 183 (1896).

is set out in this draft section and the designation of the laws which are not subject to referendum is set out in draft Section 2.10, but the Commission believes that the other two matters, if deemed desirable, would be more appropriately included in the article on the legislative branch.

Under Article XVI of the present Constitution, all laws other than emergency laws become effective on the first day of June following the session of the General Assembly at which the laws are passed and those desiring to petition a law to referendum have until that date to file a referendum petition with the required number of signatures. If more than one-half but less than the full number of signatures required for the referendum are filed with the petition, the time within which the remainder of the signatures may be filed is extended to June 30. Under this draft section a single sixty-day period for the collection of signatures and the filing of the referendum petition is permitted. This period begins to run from the date on which the bill becomes law. This is the date on which the bill is signed by the governor if approved by him, or the date the bill becomes law under draft Section 4.16 if the governor fails to approve it or veto it, or the date of final passage of the bill by the General Assembly if it is passed over the governor's veto. (See draft Section 4.17.) This change in procedure is necessary because the draft article on the legislative branch does not prescribe a general effective date for laws, and, accordingly, each law will prescribe the date on which it becomes effective.

It is important to keep in mind this distinction between the date a bill becomes law and the date it becomes effective as a law. The two dates may coincide, as is the case when a bill provides that it shall become effective immediately, but in most instances there will be an interval of time between the date a bill becomes law and the effective date.

This draft section is designed to permit a referendum on a law no matter how soon after enactment it becomes effective. If the petition for referendum is filed before the effective date of the law sought to be referred, then, unless the law was passed by a vote of three-fifths of the members of both houses of the General Assembly, it will not take effect until thirty days after its approval at the referendum. The law will not be suspended, however, if the petition for referendum is filed after the effective date of the law or if the law was passed by a three-fifths vote of the members of each house of the General Assembly. This means that the General Assembly by a bare majority vote can prevent a law from being suspended pending a referendum by prescribing that the law shall take effect immediately. The Commission does not think that this is a matter of serious concern.

The exception relating to laws passed by a three-fifths vote of the members of each house of the General Assembly is similar to the provisions in Article XVI, Section 2 of the present Constitution to the effect that an emergency law shall remain in force notwithstanding the filing of a referendum petition unless, and until, it is rejected on the referendum. The only difference is that under this draft section a law passed by an extraordinary vote of the General Assembly need not be designated an "emergency law."

Section 2.09. **Referendum Petition.**

A petition shall be sufficient to refer a law, or any part thereof, to a vote of the people if signed by a number of qualified voters equal to five per cent of the total number of votes cast for governor in the most recent gubernatorial election, provided that not more than one-half of such required number shall be voters residing in any one county.

Comment:

The Commission believes that the referendum is a useful device of popular government that should be preserved in a new constitution, but it also believes that it should not be used for frivolous or obstructive purposes, since such uses can impair the normal processes of representative government. The power to suspend the operation of laws duly passed by the elected representatives of the people should be available only upon a demonstration of concern by a significant number of the citizens of the State.

Article XVI of the present Constitution provides that a referendum petition shall be sufficient only if signed by three per cent of the number of voters voting for governor in the last gubernatorial election. The Commission's Committee on Elective Franchise and Declaration of Rights recommended that this requirement be retained but some members of the Commission thought that the requirement should be increased to six per cent. After considerable debate the Commission, by a divided vote, recommends in this draft section that the number of required signers be five per cent of the number voting for governor in the last gubernatorial election.

This draft section continues unchanged the present requirement that not more than one-half of the required number of signers shall be residents of Baltimore City or of any one county.

Section 2.10. **Referendum Restrictions.**

No plan for legislative districting or apportionment or congressional districting, no law imposing a tax and no law making an appropriation for maintaining the state government or for aiding or maintaining any public institution shall be subject to referendum.

Comment:

This draft section exempts from possible referendum certain types of legislation thought to be particularly unsuited for review through direct submission to a popular vote. The Commission is of the opinion that the possibility of the enumerated types of legislation being submitted to referendum would constitute an unwise impediment to the legislative process, and would serve only to undermine the effectiveness and efficiency of the General Assembly.

The Commission has removed matters of reapportionment and redistricting from the purview of the referendum because it believes that past experience has demonstrated that referendum petitions on these matters serve no purpose except to force the courts to do that which is properly the task of the legislature.

The Commission is further of the opinion that it is impractical to subject appropriation measures to referendum. The complexity of state fiscal matters

makes it unlikely that the average citizen can appreciate the issues involved. Moreover, appropriation measures are the result of complex budgetary studies, lengthy committee hearings, and detailed staff reports—all aimed at achieving a balance between expenditures and receipts. A member of the General Assembly who is called upon to vote on an appropriation measure has been exposed to all these sources of information so that it may be presumed that his vote is an informed one. Were such matters to be subject to referendum, so that a small number of people opposed to one small aspect of an appropriation measure could delay its effective date, the entire operation of state government could be halted.

The Commission believes the clear statements in this draft section to be an improvement over Article XVI, Section 2 of the present Constitution which, in rather complicated manner, prohibits certain types of legislation from being enacted as "emergency laws" in order to ensure that they will be subject to referendum, and excludes from referendum only those appropriations which do not exceed the appropriation for the same purpose in the previous fiscal year.

ARTICLE III. LEGISLATIVE BRANCH

Introductory Comment:

The draft article on the legislative branch is formulated upon the Commission's recommendation that the General Assembly of Maryland continue to be a bicameral body. This basic recommendation is advocated after extensive deliberation which ended with the Commission being almost evenly divided on the question of bicameralism versus unicameralism, with the final vote standing at 13 in favor of bicameralism and 12 in favor of unicameralism. Because of the closeness of the vote, the Commission is recommending an alternative draft article for the legislative branch based upon the General Assembly being a unicameral body.[60]

The Commission sponsored a meeting at which several authorities on the legislative process were invited to participate in a panel discussion of bicameral and unicameral legislatures.[61] This question was also discussed at a meeting with the Special Legislative Joint Committee to Cooperate with the Constitutional Convention Commission[62] and it is interesting to note that the members of the legislative liaison committee testifying on this question were also almost equally divided in opinion as between a bicameral and a unicameral legislature.

The discussion at these two meetings was transcribed and copies of the transcripts will be made available to the Convention and also placed in the depository libraries mentioned in Chapter I. A research monograph on this subject prepared by Dr. John H. Michener, entitled "The Structure of the Maryland Legislature," will also be available to the delegates to the Constitutional Convention.

No attempt will be made in this report to review in detail all the arguments made by proponents for bicameralism or unicameralism. The principal arguments for each can be succinctly stated as follows:

BICAMERALISM:

1. A bicameral legislature is embedded in the State's tradition and is well accepted by the people; it should be given a further opportunity to prove its merits under reapportionment.

2. Two houses provide a technical review and tend to minimize careless legislation.

3. A second house provides a check on hasty legislation and on legislation prompted by "popular passions."

4. A two-house system permits "graduation" from the lower house to the upper and thereby aids in developing a group of experienced and capable legislators.

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[60] The alternative draft of Article III, based upon a unicameral legislature, is set forth at the end of the commentary to Article III.

[61] Members of the panel were Dr. W. Brooke Graves, Mr. Delmar Kentner, Dr. John H. Michener, Dr. John P. Wheeler, Jr., and Dr. Clinton I. Winslow.

[62] The members of the Special Legislative Joint Committee to Cooperate with the Constitutional Convention Commission were as follows:

Members of the Senate: William S. James, ex-officio, Harry R. Hughes, Frederick C. Malkus, Jr., J. Albert Roney, Jr., J. Joseph Curran, Jr., and George R. Hughes, Jr.

Members of the House of Delegates: Marvin Mandel, ex-officio, John P. Moore, Meyer M. Emanuel, Jr., Elroy G. Boyer, Martin A. Kircher and C. Stanley Blair.

President of the Senate James and Speaker of the House Mandel were co-chairmen.

5. A bicameral legislature is more difficult to corrupt than a unicameral legislature.

6. With a bicameral system one would expect a larger legislature and the citizens might feel that this would increase the possibility that they would know someone in the legislature.

7. A bicameral system allows different representation in the two chambers of differing interests, such as rural and urban interests, and divergent economic interests.

8. The diffusion of power in a bicameral system reduces the inclination of the legislature to accumulate governmental power in its own hands.

9. A bicameral system permits the defeat of undesirable but popular legislation where outright opposition to the legislation would be politically dangerous.

UNICAMERALISM:

1. The reapportionment of state legislatures on the basis of the "one man, one vote" rule[63] eliminates the traditional reason for a two-house legislature in which one house is apportioned according to population and the other according to geography.

2. Membership in a unicameral legislature confers greater prestige than membership in a bicameral body, thus encouraging more highly qualified persons to seek legislative office.

3. The legislative process is more efficient and is conducive to a more thorough consideration of matters before the legislature.

4. The traditional rivalry between the two houses, which often has an undesirable effect on the course or content of legislation, is ended.

5. The responsibilities of individual legislators are clearer, for measures cannot be advocated by the members of one house with the expectation that the bill will subsequently be killed by the other house.

6. Opportunities for lobbying are reduced.

7. Reporting of legislative events is made easier and public awareness, interest and understanding of legislative operations and the progress of specific bills are increased.

8. There is no need for a conference committee, whose secret sessions often constitute a "third house," to settle differences between the two houses.

9. The cost of operating the legislature is reduced.

Complementary studies on the organization and operation of the General Assembly have been undertaken independently of the Constitutional Convention Commission. The first of these studies was initiated by the Young Democratic Clubs of Maryland and was carried on by a group called the Citizens' Commission on the General Assembly which issued a report in January, 1967.[64] The second study was initiated

[63] Reynolds v. Sims, 377 U.S. 533 (1964); Maryland Committee v. Tawes, 377 U.S. 656 (1964). For a general discussion of the subject of reappointment of state legislatures see BAKER, STATE CONSTITUTIONS: REAPPORTIONMENT (National Municipal League 1960); BOYD, CHANGING PATTERNS OF APPORTIONMENT (National Municipal League 1965). See also the National Municipal League Series on Reapportionment.

[64] CITIZENS' COMMISSION ON THE GENERAL ASSEMBLY, THE CITIZENS' COMMISSION ON THE GENERAL ASSEMBLY REPORTS TO THE LEGISLATURE AND THE PEOPLE OF MARYLAND (Jan. 1967).

by the Legislative Council of the General Assembly and is being conducted by the Eagleton Institute at Rutgers University.

Section 3.01. **Legislative Power.**

The legislative power of the State is vested in the General Assembly, which shall consist of two houses, the Senate and the House of Delegates.

Comment:

This draft section establishes the General Assembly as one of the three independent coordinate branches of the state government. It places all state legislative power in the General Assembly and establishes that branch as a bicameral body. This confers plenary legislative power upon the General Assembly except as otherwise limited by provisions of this constitution or the United States Constitution. This would not enlarge the existing power of the General Assembly which has plenary legislative power under the present Constitution.[65]

For historical reasons, the Commission recommends the continued use of the term "General Assembly" instead of "Legislature" and the retention of the designations of "Senate" and "House of Delegates" to denote the two houses.

DISTRICTS

Section 3.02. **Legislative Districts.**

The State shall be divided by law into districts for the election of members of the Senate and into districts for the election of members of the House of Delegates. Each district shall consist of compact and adjoining territory, and the ratio of the number of legislators in each district to the population of such district shall be as nearly equal as practicable.

Comment:

By this draft section the responsibility for districting the State for the election of members of both chambers is placed in the General Assembly. In this recommendation, the Commission departs from the prior system under which the Constitution based representation on the counties and the City of Baltimore and specified the number of delegates and senators to be elected from each. Recognizing the rapid growth and urbanization of the State and the impossibility of foretelling the future course of population growth, the Commission believes that the only practical solution is to assign to the General Assembly the power and obligation for districting, rather than to provide for it in the constitution. Further, the requirements of the "one man, one vote" rule can be expected to make impossible any rational districting that does not deviate from existing county lines. For example, it is already recognized that the smaller counties cannot each have its own senator. It is conceivable that a similar situation may exist in the future with respect to delegates.

By a vote of 15 to 10 the Commission rejected a proposal by its Committee on the Legislative Department to include in the draft constitution a requirement that the ratio of the number of legislators in each district to the population of each district for the House and

[65] First Continental Savings & Loan Assoc., Inc. v. Director, State Department of Assessments and Taxation, 229 Md. 293, 302 (1962); Maryland Committee v. Tawes, 229 Md. 406 (1962).

Senate individually not deviate from the ratio of the total number of legislators to total state population by more than five per cent. It was noted that the United States Supreme Court has not yet decided what, if any, maximum amount of deviation is permissible under the United States Constitution and, since the requirements of the United States Constitution would override any contrary provisions of the state constitution, the Commission recommends that no provision be included in the proposed constitution which would specify the extent to which deviation from the norm—absolute equality—would be permitted. Consequently, the recommended language is that representation "shall be as nearly equal as practicable."

Section 3.03. **Redistricting.**

Within three months after official publication of the population figures of each decennial census of the United States, the governor shall present to the General Assembly plans of congressional districting and legislative districting and apportionment. If the General Assembly is not in session, the governor shall convene a special session. The General Assembly shall by law enact plans of congressional districting and legislative districting and apportionment. If no plan has been enacted for any one or more of these purposes within four months prior to the final date for the filing of candidates for the next general election occurring after publication of such census figures, then the pertinent plan as presented to the General Assembly by the governor shall become law. Upon petition of any qualified voter, the Supreme Court shall have original jurisdiction to review the congressional districting and legislative districting and apportionment of the State and grant appropriate relief, if it finds that any of them does not fulfill constitutional requirements.

Comment:

To ensure periodic redistricting and reapportionment, this draft section directs the governor to present plans for congressional districting and legislative districting and apportionment to the General Assembly three months after each official United States decennial census. In developing plans to be submitted to the General Assembly, the governor is free to utilize a commission or to consult personally with any experts, voters, or other consultants as he sees fit.

The General Assembly is given the responsibility for adopting plans of districting and apportionment because of the Commission's opinion that the legislative branch of government can most appropriately deal with this issue. Under this recommendation the General Assembly must be convened in special session, if necessary, to consider plans of districting and apportionment, and it may either enact without change the governor's plans or any of them, amend them, or adopt wholly new plans. Should the General Assembly fail to act on any plan within the period specified, however, the governor's plan would become law.

The Commission further recommends that the Supreme Court of Maryland have original jurisdiction to review any plan upon the petition of any eligible voter and be empowered to grant appropriate relief. Thus, the Supreme Court could modify any plan of districting and apportionment, or it could develop a completely new plan. In this way there could be Supreme Court review of the constitutionality of any plans that be-

come law by legislative enactment or of the governor's plans which become law by reason of legislative inaction.

Original jurisdiction, rather than appellate jurisdiction only, is conferred on the state Supreme Court in all districting and apportionment cases so that prompt and final settlement of any constitutional issues involved can be made.

It should be noted that under draft Section 2.10 no plan for legislative districting or apportionment or congressional districting is subject to referendum.

Section 3.04. **District Representation.**

At least one senator, but not more than two senators, shall represent each senatorial district. At least one delegate, but not more than six delegates, shall represent each house district.

Comment:

Under this draft section the General Assembly is given the power to determine whether there will be single-member districts or multiple-member districts for the election of the members of each chamber. This draft section sets a limitation of six delegates from any one house district and of two senators from any one senatorial district. It might be desirable to establish a separate district for each delegate, but this has not proven to be feasible. However, it might be practicable for the General Assembly to provide for single-member districts in the future and this possibility should not be precluded.

LEGISLATORS

Section 3.05. **Qualifications of Legislators.**

To be eligible as a senator or delegate, a person shall be a qualified voter of the State of Maryland at the time of his election or appointment, and shall have been a resident of the State for at least two years immediately preceding his election or appointment. To be eligible as a senator, a person shall have attained the age of twenty-five years, and, to be eligible as a delegate, he shall have attained the age of twenty-one years, at the time of his election or appointment.

Comment:

This draft section sets forth the eligibility requirements of persons seeking election or appointment to the state Senate and the House of Delegates. It provides that a person must be a qualified voter of the State and must have been a resident of the State for at least two years immediately preceding his election or appointment, and that to qualify as a senator, a person must be at least twenty-five years old, and to qualify as a delegate, a person must be twenty-one years old, at the time of his election or appointment.

In the present Constitution the residence requirement for eligibility for election or appointment as a legislator is three years. The Commission's Committee on the Legislative Department recommended a residence requirement of one year, but, by a vote of 12 to 11, the Commission adopted a two-year residence requirement instead. The Commission believes that a residence requirement of two years is sufficient to restrict individuals with no immediate connection with the State and limited knowledge of Maryland affairs from

running for membership in the General Assembly.

It should be noted that under draft Section 2.01 "qualified voter" means an eligible voter who is registered to vote.

Although no requirement that a legislator be a resident of the district from which he is elected is recommended, it is anticipated that candidates will almost invariably be such residents, just as are candidates for seats in Congress. Nevertheless, a majority of the Commission is of the opinion that the electorate of a district should not be precluded from choosing any qualified Marylander whom the electorate believes can best represent it. Some members of the Commission, however, feel very strongly that only a resident of a district should be eligible to represent the district in the General Assembly, but, by a vote of 13 to 7, the Commission rejected this requirement.

As is the case in establishing voter eligibility, minimum age requirements are necessarily arbitrary. The minimum ages of twenty-five and twenty-one prescribed by this draft section are the same as those in the present Constitution and the Commission sees no reason to recommend a change. No one appearing before the Commission suggested any change in these age requirements.

Section 3.06. **Election of Legislators.**

A member of the General Assembly shall be elected by the qualified voters of the legislative district from which he seeks election, to serve for a term of four years beginning on the third Wednesday of January following his election.

Comment:

This draft section continues the present practice of electing both senators and delegates to four-year terms. The Commission is of the opinion that the experience of Maryland during the past eleven years has amply justified the provision of four-year terms for legislators. The Commission is convinced that a legislator who is elected only to a two-year term must give a disproportionate amount of his time, attention and energy to the problems of reelection. By contrast, a six-year term imposes too long a delay before changes in popular sentiment can be reflected in a change in representation.

The Commission's Committee on the Legislative Department recommended that provision be made for staggered terms whereby one-half of the members of each house would be elected to four-year terms every two years. This recommendation was patterned after Article III, Section 7 of the 1867 Constitution as originally adopted which provided for four-year staggered terms for senators. This provision, however, was eliminated by constitutional amendment in 1956. After debate, the Commission rejected the Committee's recommendation by a vote of 15 to 6 and recommends that the terms not be staggered. The principal arguments against staggered terms are that they disrupt the governor's administration and the harmony of his relations with the legislature serving with him; and they also tend to disrupt the legislature itself by requiring its reorganization every second year just as its members are becoming accustomed to working together in a cooperative spirit. The principal arguments for staggered terms are that they make each house more responsive to the electorate, they make a shorter ballot possible and they reduce the term for which vacancies are filled by appoint-

ment. The last advantage, however, has been gained by the recommendation in the next draft section that persons appointed to fill vacancies serve only until the next general election.

Section 3.07. **Vacancies.**

A vacancy in the General Assembly shall be filled by appointment by the governor; provided that the appointee to succeed a party member shall be a member of the same party. The person appointed to fill the vacancy shall serve only until the next general election held more than ninety days after the vacancy occurs, at which election any remaining portion of the unexpired term shall be filled.

Comment:

This draft section sets forth procedures to be used in filling vacancies in the General Assembly. The governor is given the authority to appoint successors with the requirement that a person appointed to succeed a party member must be a member of the same political party as was the incumbent. There is no comparable restriction on the governor in filling a vacancy in a seat theretofore held by an independent. The Commission rejected the suggestion that the governor be required to appoint an independent to succeed an independent, since it is an unwarranted assumption that the views and persuasions of any two independents would be alike.

Persons appointed by the governor to fill a vacancy serve only until the next biennial general election that follows more than ninety days after the vacancy occurs, or until the end of the term, whichever occurs first. It is the Commission's opinion that where the next biennial general election follows within ninety days of the occurrence of a vacancy, there is insufficient time for an orderly nomination of candidates and for them to conduct a meaningful campaign. Where a period longer than ninety days elapses between the vacancy and the next biennial election, the Commission thinks that there is no justification for having a district represented by an appointed rather than by an elected legislator.

The Commission's Committee on the Legislative Department recommended that vacancies in the legislature "be filled as provided by law," which would give the General Assembly the power to determine the method of filling a vacancy in either house. This recommendation was consistent with the philosophy of the Committee that the General Assembly be given as much responsibility as possible by the draft constitution.

The Commission, however, rejected the Committee's recommendation because it considered the composition of the legislative branch so fundamental as to require constitutional coverage.

Section 3.08. **Compensation of Legislators.**

The members of the General Assembly shall receive such salary and allowances as may be prescribed by law.

Comment:

This draft section assigns to the General Assembly the responsibility for establishing by law the compensation and expense allowances to its members. This is a departure from the provisions of the present Constitution, because although an effort was made to amend

the present Constitution to authorize the General Assembly to establish by law the compensation of its members, such amendment was not ratified by the electorate.

As originally adopted in 1867 the present Constitution provided in Article III, Section 15 that each member of the General Assembly should receive compensation of five dollars for each day he attended the session and should receive such mileage as might be allowed by law, not exceeding twenty cents per mile. Efforts were made from time to time to amend this provision of the Constitution so as to increase the per diem allowance of compensation, but all such efforts were uniformly unsuccessful.[66]

Efforts were also made to change the per diem compensation to an annual salary but these efforts were likewise unsuccessful prior to 1942.[67] In 1942, this section of the Constitution was amended to provide that each member of the General Assembly should receive an annual salary of one thousand dollars, with a deduction of fifteen dollars for each day of unexcused absence. There was no change in the provision with respect to the mileage allowance.

The next change became effective January 1, 1949. At that time this section was amended to increase the annual compensation to eighteen hundred dollars.

In 1962, the General Assembly proposed an amendment to increase the annual salary to three thousand dollars, but this was rejected by the electorate. The next amendment became effective January 1, 1965, when the annual compensation was increased to twenty-four hundred dollars. This provision is still in effect.

The most recent amendment, that proposed by Chapter 431 of the Acts of 1966, provided that the compensation of the members of the General Assembly should be as prescribed by law. This was rejected by the electorate in November, 1966.

Although the proposal was recently rejected by the voters, the Commission firmly believes in the soundness of the recommendation that the compensation of legislators be as prescribed by law. As has been noted elsewhere in this Report, the Commission recommends that all provisions in the present Constitution which prescribe salaries of public officials be deleted. The Commission sees no reason to make an exception in the case of the compensation payable to members of the General Assembly. Constitutional restrictions and limitations on the amount of salaries payable to public officials have been unsatisfactory. Not only does the freezing of salary in the Constitution present almost insuperable obstacles to the adjustment of such salaries to meet changing demands on time, changes in the cost of living, and changes in salary standards as reflected by salaries paid by business and industry generally, but such constitutional restrictions make it almost impossible to attract qualified persons to public service.

Those who oppose authorizing the General Assembly to fix the compensation of its own members attempt to draw a distinction between establishing by law compensation of members of the General Assembly and establishing by

[66] Acts of 1920, chapter 319, rejected Nov. 2, 1920; Acts of 1927, chapter 379, rejected Nov. 6, 1928; Acts of 1929, chapter 348, rejected Nov. 5, 1929; Acts of 1931, chapter 185, rejected Nov. 6, 1934.

[67] Acts of 1939, chapter 247, rejected Nov. 5, 1940.

law compensation of other public officials generally. However, this would seem to be a distinction without a difference. Flexibility in adjusting the compensation of legislators is indispensable if service in the General Assembly is to attract highly qualified individuals. For these reasons, the Commission believes the best solution is to authorize the General Assembly to prescribe by law the compensation payable to its own members. The fact that legislators must be reelected every four years provides an ample safeguard against abuse of the power of the General Assembly to set the salary of legislators.

In establishing the compensation of its own members, the General Assembly must act publicly. Not only are the proposed salaries set out specifically in the budget, but they must be prescribed by law. This law, of course, receives the full scrutiny of the public during the enactment process and it is subject to the governor's veto. These should be adequate safeguards against irresponsible or improper action by the General Assembly.

The Commission's Committee on the Legislative Department recommended that the compensation of members of the first General Assembly elected after the adoption of the new constitution be fixed by the Constitutional Convention by means of enabling legislation to be submitted with and adopted by the people at the same time the constitution is adopted. In conjunction with this recommendation, the Committee further recommended that this draft section provide that the General Assembly's power to establish by law the compensation and allowances to its members be limited so that an increase in compensation could be effective only as to future legislatures. It was thought that this would not only prevent members of the General Assembly serving at any time from increasing their own salaries, but would also prevent adjustment of legislative salaries more often than once every four years.

These recommendations were discussed fully, but were rejected by the Commission. The advantage, if any, in providing that the members of any given legislature cannot increase their own salaries is slight in view of the fact that ordinarily eighty to eighty-five per cent of the legislators are reelected. The only effect of the restriction, therefore, would be to delay the General Assembly from one to four years in making salary adjustments.

Section 3.09. **Appointment of Legislators to Other Offices.**

No member of the General Assembly shall, during the term of office for which he was elected or appointed, be appointed to any office which shall have been created, or the salary or profits of which shall have been increased, by the General Assembly during such term.

Comment:

This draft section, similar in effect to Article III, Section 17 of the present Constitution, forbids the appointment of a member of the General Assembly, during the term for which he was elected or appointed, to an office created or rendered more lucrative by the General Assembly during such term. It is also substantially the same as the corresponding provision of Article I, Section 6 of the United States Constitution. It should be noted, however, that in Article III, Section 17 of the present Constitution the prohibition applies to eligibility to an office, and would apply to an office

to which a member of the General Assembly could be elected as well as to one to which he could be appointed. This draft section applies only to offices to which a member of the General Assembly may be appointed, and the same is true in Article I, Section 6 of the United States Constitution.

The need for this historic prohibition is premised upon the thought that the judgment and conduct of legislators should not be affected by potential personal interest in the creation of new offices or in the increase in the compensation of an existing office from which they might personally benefit. The primary argument for not including such a provision in a draft constitution is that the General Assembly should be given the responsibility for policing the ethics and conduct of its own members. Moreover, the maximum effect of the restriction is to forbid a legislator from benefiting from his own legislative action for the duration of the term to which he has been elected or appointed.

The Commission, however, thinks it would be in the public interest to include this restriction in a new constitution since it would serve to curtail legislators from acting primarily for their own immediate benefit. Benefits which are contingent upon future possibilities and risks are not as likely to warp the conduct of legislators as are benefits within their immediate reach.

Section 3.10. **Immunity of Legislators.**

A member of the General Assembly shall not be liable in any civil action or criminal prosecution for any words used in any proceedings of the General Assembly.

Comment:

This draft section is essentially the same as Article III, Section 18 of the present Constitution and is preceded in our tradition by the English Bill of Rights of 1689, the American Articles of Confederation, and Article I, Section 6 of the United States Constitution. The provision guarantees to legislators freedom from liability in any civil action or criminal proceeding for anything said or written on the floor of either house of the General Assembly or in any committee meeting, legislative hearing, or other proceeding of the General Assembly. This grant of immunity is intended to protect members of the legislature from the coercive effect of the fear of a lawsuit, and is thought essential to promote full, free and open debate.

GENERAL ASSEMBLY

Section 3.11. **Size of General Assembly.**

The number of members of each house of the General Assembly shall be as prescribed by law.

Comment:

This draft section authorizes the General Assembly to determine by law the number of members of each house. It must be read in conjunction with draft Section 3.02 providing for districting, draft Section 3.03 providing for redistricting and reapportionment, and draft Section 3.04 prescribing the maximum number of legislators from each district. The four sections read together vest in the General Assembly the power to prescribe by law the legislative districts, the number of legislators to be elected from each district not exceeding the prescribed maximums, and the total number of members of each house.

This draft section represents a change from the practice followed in Maryland prior to 1966. The 1867 Constitutional Convention continued the number and apportionment of the Senate unchanged from the 1864 Constitution with the result that the present Constitution as originally adopted provided that each county and each of the three districts of Baltimore City should have one senator, providing for a Senate of 26 members. In contrast, the Constitution of 1867 specified the number of delegates from each county and from each of the three legislative districts of Baltimore City, for an aggregate of 86 members in the House of Delegates. It was further provided that the specified apportionment should continue only until the publication of the next national census, which was to occur in 1870, or until the enumeration of the population of the State. Thereafter, the House of Delegates was to be apportioned on a basis designed to place a limitation on the total representation that could be given to Baltimore City or to any county. This was to be accomplished by a weighted apportionment.[68] The temporary apportionment provided in the 1867 Constitution was basically the same as that provided by the interim apportionment of the 1864 Constitution, except that representation for smaller counties was doubled from one to two delegates, ending Baltimore City's equality in representation ratios.

Since that time there have been significant amendments to the 1867 Constitution insofar as apportionment is concerned. The constitutional amendments ratified in 1901 gave Baltimore City a fourth legislative district and in 1922 the City was given two additional legislative districts.

To prevent losses of relative strength of the more populous counties to Baltimore City, a constitutional amendment was adopted in 1950, freezing the House of Delegates in its existing size and apportionment as established under the 1940 census. This fixed the size of the House of Delegates at 123 members. The 1950 amendment marked a permanent intensification of the apportionment issue. In subsequent years the legislature repeatedly refused to enact any reapportionment measures; even a relatively mild proposal introduced in 1960 failed to pass either chamber.[69]

The issue finally reached the courts in 1960 with the institution of the suit of *Committee on Fair Representation v. J. Millard Tawes, Governor.*[70] This litigation continued through the Maryland courts for the next two years during which time the General Assembly enacted stop-gap legislation, the constitutionality of which was also contested in the pending litigation. The constitutionality of the apportionment of the Senate and of the stop-gap legislation reapportioning the House of Delegates was upheld by the Court of Appeals

[68] For each county not exceeding 18,000 population, 2 delegates.

For each county over 18,000 but less than 28,000 population, 3 delegates.

For each county of 28,000 but less than 40,000 population, 4 delegates.

For each county of 40,000 but less than 55,000 population, 5 delegates.

For each county of 55,000 or more population, 6 delegates.

For each legislative district in Baltimore City, no more delegates than the number held by the most populous county.

[69] Journal of Proceedings of the Senate of Maryland 220 (February Session 1960); Journal of Proceedings of the House of Delegates 282 (February Session 1960).

[70] Circuit Court of Anne Arundel County. The first opinion of the Court of Appeals is reported in 228 Md. 412 (1961).

and that decision was appealed to the United States Supreme Court.

In reversing the Court of Appeals of Maryland, the United States Supreme Court in 1964 held that the General Assembly of Maryland was malapportioned and that Article III, Section 5 of the present Maryland Constitution and the stop-gap legislation were both in violation of the United States Constitution.[71] Following this decision, the Court of Appeals of Maryland remanded the case to the Circuit Court of Anne Arundel County with instructions to that court to retain jurisdiction of the litigation and enter an appropriate decree in the event the General Assembly failed to enact a constitutionally valid apportionment scheme prior to the 1966 primary elections.

In its regular 1965 session the General Assembly passed no reapportionment legislation. The Governor then convened a special session for the purpose of complying with the mandates of the United States Supreme Court and the Court of Appeals of Maryland. In this special session, two alternate bills were enacted, Senate Bill 5 and Senate Bill 8. Senate Bill 8 contained a provision that if the bill were held constitutionally valid then the Senate Bill 5 should not become effective. Both bills were submitted to the Anne Arundel County Court in *Hughes v. Maryland Committee;*[72] and, on appeal, the Court of Appeals of Maryland held in 1966 that Senate Bill 8 was invalid and unconstitutional, but that Senate Bill 5 was constitutional and valid.[73] Senate Bill 5 is now codified as Article 40, Sections 42, 42A, 42B, 42C, 42D and 42E of the Maryland Code of Public General Laws.

It is this legislation, rather than the present Constitution, which today prescribes the number and apportionment of the members of the Senate and of the House of Delegates. Although the statute is in conflict with the present Constitution of Maryland, the validity of the statute has been upheld on the ground that, since Article III, Section 5 is invalid under the United States Constitution, there is no valid provision in the Constitution of Maryland prescribing the number and apportionment of members of the legislature. Accordingly, the General Assembly, having plenary power to legislate under the Maryland Constitution, has the authority to prescribe the number and apportionment of the members of the General Assembly.[74]

The decisions of the United States Supreme Court have made it clear that the United States Constitution requires that state legislatures be apportioned according to population, that is, pursuant to the "one man, one vote" rule. Since the relative populations of the various districts of the State are constantly changing, any scheme of apportionment must provide for periodic reapportionment. It seems obvious that necessary changes can more readily be made by statute than by constitutional amendment. It is for this reason that the Commission recommends that the power of apportionment and reapportionment be conferred upon the General Assembly.

The Commission's Committee on the Legislative Department recommended

[71] Maryland Committee v. Tawes, 377 U.S. 656 (1964).

[72] The proceeding was the same suit in the Circuit Court of Anne Arundel County, but Senator Harry R. Hughes and others were substituted as defendants.

[73] 241 Md. 471 (1966).

[74] Maryland Committee v. Tawes, 228 Md. 412 (1961).

that limitations on the size of both houses be prescribed in the constitution. It recommended that, after reapportionment following the 1970 census, the number of senators should not exceed 43 and the number of delegates should not exceed 150. Other similar restrictions were discussed by the Commission.

After deliberation the Commission rejected all the suggestions that a maximum size for either house of the General Assembly be prescribed. The optimum size of a house of elected representatives reflects a delicate balance between many factors, such as the size of the population represented, the number of divergent interests present in the electorate, the desirable number for effective debate in a deliberative body, and others. The balance between such factors changes over a period of time and the legislature should have the power to adjust the size of each house accordingly. The Commission recognizes the possibility that the advantages of relatively small houses may succumb to the pressure to increase the number of legislators when a required reapportionment would eliminate the seats of incumbent legislators, but it is of the opinion that reliance must be placed on the General Assembly to take whatever action is appropriate.

The Commission is further of the opinion that the Senate should be approximately one-third the size of the House of Delegates, but it does not believe that the relative sizes of the two houses should be prescribed in the constitution.

Section 3.12. **Legislative Sessions.**

The General Assembly shall convene in regular session on the third Wednesday of January of each year, unless otherwise prescribed by law, and may continue in session for a period not longer than seventy days; provided, however, that by the affirmative vote of three-fifths of all the members of each house a session may be extended for a period not longer than thirty days. The governor may convene a special session of the General Assembly at any time and must convene a special session upon the written request of three-fifths of all the members of each house.

Comment:

This draft section prescribes a date for the General Assembly to convene each year, but permits a different date to be prescribed by law from time to time so that no constitutional amendment is necessary if a change in the date should prove to be desirable. The date prescribed is the same as that now prescribed by Article III, Section 14 of the present Constitution. It should be noted that this is also the same date prescribed in draft Section 4.05 for the governor to take office.

This draft section provides for regular seventy-day annual sessions rather than for alternate short and long regular annual sessions, as was the case under Article III, Section 15 of the present Constitution as it existed between 1948 and 1964.

After considerable debate, the Commission recommends that the length of the regular session continue to be fixed at seventy days because it believes that seventy days is sufficient time for the General Assembly to conduct its business. This belief is reinforced by the recommended draft Article VII which provides that the General Assembly shall not enact local legislation.

It is possible that under unusual conditions a longer time might be needed and, therefore, the draft section pro-

vides that the General Assembly may extend its regular session for an additional period of not longer than thirty days by the affirmative vote of three-fifths of all the members of each house. The draft section is phrased to permit only one extension, even though it be for less than thirty days.

The constitutional limitation on the length of a session of the General Assembly provides an impetus for the prompt and efficient conduct of legislative affairs. In states without such a constitutional limitation, legislative sessions have been known to continue for months without action being completed on any critical bills under consideration. The constitutional limitation also encourages service as legislators by persons whose business pursuits will not permit an absence of indeterminate length.

This draft section authorizes the governor to convene the General Assembly into special session at any time. This provision is essential since critical problems requiring legislative action may arise at any time.

This draft section also provides that the governor must convene the General Assembly upon the written request of three-fifths of the members of each house. Thus, the independence of the General Assembly as a coordinate branch of the government is recognized by conferring upon it the power to convene itself without dependence upon the executive, or even against his wishes.

The Commission's Committee on the Legislative Department recommended that the General Assembly be a continuing body with no constitutional limit as to the length of its sessions. The Committee was of the opinion that the General Assembly itself should determine how long it should sit in order to transact its legislative business, and that such an approach would further tend to strengthen the General Assembly as an independent coordinate branch of the government.

After considerable debate the Commission, by a vote of 13 to 10, rejected this recommendation in the belief that the advantage of having the General Assembly as a continuing body is outweighed by its disadvantage, that it is in the public interest that there be a foreseeable end to each legislative session, that seventy days each year should be ample for the consideration and passage of all necessary statewide legislation, and that without the compulsion of a fixed date for a *sine die* adjournment, legislative action would proceed at a very dilatory pace.

While conceding that a legislature faced with a constitutional deadline for adjournment may have a spur to action, the Committee on the Legislative Department replied that forced action is often precipitous and unwise and pointed to examples of important legislation defeated in recent sessions of the General Assembly by *sine die* adjournment. The Committee therefore requested that an appropriate provision making the General Assembly a continuing body be drafted as an alternate to this draft section. The alternative language recommended by the Commission to accomplish this purpose is as follows:

> The General Assembly shall be a continuing body, meeting in regular annual sessions convening on the third Wednesday of January in each year and terminating as prescribed by law. The governor may convene a special session of the General Assembly at any time.

The Committee on the Legislative

Department had also recommended that there be a provision for a recess instead of *sine die* adjournment at the end of every second regular annual session. This would permit unfinished business of the session concluding with a recess to be considered at resumption of the session in the second year without the necessity of reintroducing bills upon which there had not been final action. The Commission also rejected this recommendation because of its belief that it would not be desirable to carry over a backlog of unfinished business from one session to another, even though this were limited to two-year periods.

Section 3.13. **Organization of General Assembly.**

Each house shall be the judge of the qualifications and selection of its members, as prescribed by this Constitution and the laws of this State. Each house shall elect its own officers and determine its rules of procedure, and may permit its committees to meet between sessions of the General Assembly. Each house may, by the affirmative vote of three-fifths of all its members, compel the attendance and testimony of witnesses and the production of records and papers either before the house as a whole or before any of its committees, provided that the rights and the records and papers of all witnesses, in such cases, shall have been protected by law. No person's right to fair and just treatment in the course of legislative and executive investigations shall be infringed. Each house may punish a member for disorderly or disrespectful behavior and may expel a member by the affirmative vote of three-fifths of all its members.

Comment:

This draft section follows established precedent in permitting each house to judge the qualifications and elections of its members. The constitutions of every state except two, and of the United States, contain similar provisions.[75] This kind of provision has been interpreted by the courts as vesting in legislatures exclusive jurisdiction to determine the elections and qualifications of their members, so that the courts would have no jurisdiction to determine election disputes with respect to members of the legislature.[76] However, the current validity of this proposition may be questioned in the light of a recent decision of the United States Supreme Court.[77]

The first sentence of this draft section is almost identical to the first clause of Article III, Section 19 of the present Constitution, the difference being that this draft section uses "selection" instead of "election," thus including appointment as well as election.

This draft section additionally recognizes the power of the General Assembly to organize itself for the conduct of its business, and specifically authorizes the General Assembly to permit its committees to meet between sessions. This latter provision would allow committees to make long-range detailed studies and to prepare complementary legislation at a time when the members are not fully occupied with the passage of legislation. The Legislative Council is presently intended to perform this function, but the inclusion of the recommended provision in this draft section would give the General Assembly the authority to continue its regular organization between sessions to discharge these duties.

[75] INDEX DIGEST 662.

[76] Bowling v. Weakley, 181 Md. 496 (1943); Price v. Ashburn, 122 Md. 514 (1914); Covington v. Buffett, 90 Md. 569 (1900).

[77] Bond v. Floyd, 385 U.S. 116 (1966).

This draft section also empowers the General Assembly to compel the attendance and testimony of witnesses, and the production of records and papers, either before the General Assembly as a whole or before any legislative committee. In drafting this provision the Commission attempted to strike an appropriate balance between the legislature's need for information and the need to prevent abuses of the subpoena and investigatory power. Thus, in order to exercise its power to compel the attendance and testimony of witnesses and the production of records, the General Assembly must first by public general law have provided an orderly procedure for the protection of the rights of witnesses and of their records and papers. The Commission believes that these requirements will ensure that the use of subpoenas in legislative hearings will be governed by laws of general applicability which will properly protect the rights of all persons. In the opinion of the Commission this represents the best balance between the need of the legislature to obtain information, and the right of all persons to be secure in their persons and effects from unwarranted legislative prying and snooping, or "fishing expeditions" used for purposes of harassment or intimidation.

Section 3.14. **Quorum.**

A majority of all the members of each house shall constitute a quorum for the transaction of business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may prescribe.

Comment:

This draft section provides that the quorum required for each house to transact business is a majority of all the members of the respective houses. This is similar to Article III, Section 20 of the present Constitution, except that the required quorum under the draft section is a majority of "all the members" instead of a majority of all the members elected, the difference being that in the draft section vacancies are not considered in determining a quorum.

Similar provisions are found in a substantial majority of state constitutions.[78] Such provisions are designed to assure that legislative action will not be taken by a minority which is unrepresentative of the legislature as a whole. At the same time, a number smaller than a quorum may adjourn from day to day, and may compel the attendance of absent legislators. This prevents a majority of the members of the General Assembly from paralyzing it into complete inaction by their absence.

LEGISLATION

Section 3.15. **Form of Laws.**

The style of every law of this State shall be, "Be it enacted by the General Assembly of Maryland"; and the General Assembly shall enact no law except by bill. Every law enacted by the General Assembly shall embrace only one subject, which shall be described in its title. No law, nor section of law, shall be revived or amended by reference to its title or section only; nor shall any law be construed by reason of its title, to grant powers or confer rights which are not expressly contained

[78] INDEX DIGEST 669.

in the body of the act. It shall be the duty of the General Assembly, in amending any article or section of the code or law of this State, to enact the article, section or law as it would read when amended.

Comment:

This draft section in substance is essentially the same as Article III, Section 29 of the present Constitution.

The purposes of the requirement that every law enacted by the General Assembly shall embrace but one subject which must be described in its title have been said to be: "To prevent the Legislature from the enactment of laws surreptitiously; to prevent 'log-rolling' legislation; to give the people general notice of the character of the proposed legislation, so they may not be misled; to give all interested an opportunity to appear before committees of the legislature and to be heard upon the advisability of the proposed legislation; to advise members of the character of the proposed legislation, and to give each an opportunity to intelligently watch the course of the proposed bill; to guard against fraud in legislation, and against false and deceptive titles."[79]

The Commission recognizes that there have been occasions when sound and desirable legislation has been invalidated by the courts because of a technical error in the title, and is also mindful of the fact that the drafting of titles for legislation has, because of this constitutional provision, become a major chore.[80] Nevertheless, the Commission believes that the reasons for requiring a single subject and a descriptive title are still valid and that the requirement is desirable. The absence of such a provision might in some instances make it necessary for a legislator to acquiesce in an undesirable bill in order to secure useful and necessary legislation.

The requirement of the last sentence of this draft section is desirable in order to inform legislators fully as to the effect on existing law of any proposed amendment.

Section 3.16. **Consideration of Bills.**

A bill may originate in either house of the General Assembly and be altered, amended, passed, or rejected by the other. Except during the first two days of a special session, no vote on final passage of a bill shall be taken until the bill shall have been printed in final form nor until the third calendar day after introduction.

Comment:

This draft section assures that any legislation may be introduced in either house and that the house in which legislation does not originate has complete freedom to act upon such legislation in whatever way it sees fit. This section closely follows Article III, Section 16 of the present Constitution.

In order to prevent legislation from being enacted hastily or without adequate public notice, this draft section would also prevent a final vote on a bill

[79] Painter v. Mattfeldt, 119 Md. 466, 473-74 (1913).

[80] Title of Acts of 1927, chapter 359, providing for construction of roadways, sewers, etc., in Chestertown, was held to be defective for failure to refer to the creation of a special commission. Culp v. Comm'rs of Chestertown, 154 Md. 620 (1928). Title of Acts of 1906, chapter 804, to authorize the Board of Public Works to collect the insurance upon certain state tobacco warehouses and to rebuild a modern warehouse, held insufficient. Christmas v. Warfield, 105 Md. 530 (1907).

until it has been printed in final form and until the third calendar day after it is introduced. The three-day requirement does not apply in the case of a special session because such a session is usually limited in duration and scope and is called to consider specific legislation. The calling of the special session and its purpose have been well publicized, and the legislators and the public generally are likely to be entirely familiar with the purpose of the session and the legislation to be considered. The elimination of the three-day requirement for a special session permits the General Assembly in such situations to act without delay and adjourn promptly.

Section 3.17. **Journal and Passage of Bills.**

Each house shall keep a current, daily journal of its proceedings which shall be open to public inspection at all times and shall be published as soon as practicable. No bill shall be enacted nor shall a resolution requiring the action of both houses be adopted, unless it is passed in each house by a majority of all the members of that house. A vote in joint session or by either house on any bill or resolution shall be taken only in public session. On final passage of a bill, including a bill proposing a constitutional amendment, or a resolution, the vote cast by each member shall be recorded in the journal of the house of which he is a member.

Comment:

This draft section incorporates some of the provisions found in Article III, Sections 21, 22 and 28, and Article XIV, Section 1 of the present Constitution, and adds other requirements not included in the present Constitution. The purpose of the section is to ensure that the proceedings of the General Assembly shall be conducted in public and that the essential acts of the General Assembly shall be duly recorded so as to be available for public inspection at all times.

A journal is required as the official record of the effective action of each house and is required to be open for public inspection and to be promptly published. The requirement that the votes cast by each legislator on final passage of every measure shall be recorded in the journal makes it possible for the electorate to know how its representatives voted.

This draft section also provides that the passage of every bill or resolution requires the favorable vote of a majority of the members of each house, thus disregarding vacancies in legislative membership in computing the required majority. This provision differs from Article III, Section 28 of the present Constitution which requires the affirmative vote of a majority of the whole number of members elected.

The Commission's Committee on the Legislative Department recommended that each house be authorized to enact measures upon the favorable action of a majority of those members present and voting when a quorum is in attendance. The Committee was of the opinion that the requirement that measures can only be enacted upon the favorable vote of a majority of the members of each house was too restrictive and would hinder the ordinary conduct of legislative business. This opinion was based upon the experience in the General Assembly of Maryland where the requirement of a "constitutional majority" has frequently been used to prevent the enactment of desirable legislation. The Committee noted that its recommendation con-

forms to the present legislative procedure of the United States Congress.

The Commission rejected the Committee's recommendations because it felt that the historic Maryland practice of requiring every measure to be enacted by a majority of all the members of each house has proven valuable in assuring the attendance of almost all members of each house at all legislative sessions. Although the Commission recognized that there may be occasions when only a bare majority of the membership of either house is assembled to transact business and that final action on any measure under these circumstances would require the favorable vote of almost every member present, the infrequency of such extraordinary occurrences does not justify changing the requirement for the vote of a majority of the entire membership for official legislative action.

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ALTERNATIVE DRAFT OF ARTICLE III FOR UNICAMERAL GENERAL ASSEMBLY

The following is the alternative draft article for the legislative branch based upon the General Assembly being a unicameral body. This draft is referred to in the last sentence of the first paragraph of the introductory comment on Article III.

The term "senator" is used throughout this draft article based upon a unicameral legislature to designate a member of the General Assembly.

It has been suggested that the General Assembly be called the Senate and it has also been suggested that a member of the body be called a representative, a legislator, a delegate or an assemblyman.

Section 3.01. *Legislative Power.*

The legislative power of the State is vested in the General Assembly, which shall consist of one house, the members of which shall be called senators.

DISTRICTS

Section 3.02. *Legislative Districts.*

The State shall be divided by law into districts for the election of members of the General Assembly. Each district shall consist of compact and adjoining territory, and the ratio of the number of senators in each district to the population of such district shall be as nearly equal as practicable.

Section 3.03. *Redistricting.*

Within three months after official publication of the population figures of each decennial census of the United States, the governor shall present to the General Assembly plans of congressional districting and legislative districting and apportionment. If the General Assembly is not in session, the governor shall convene a special session. The General Assembly shall by law enact plans of congressional districting and legislative districting and apportionment. If no plan has been enacted for any one or more of these purposes within four months prior to the final date for the

filing of candidates for the next general election occurring after publication of such census figures, then the pertinent plan as presented to the General Assembly by the governor shall become law. Upon petition of any qualified voter, the Supreme Court shall have original jurisdiction to review the congressional districting and legislative districting and apportionment of the State and grant appropriate relief, if it finds that any of them does not fulfill constitutional requirements.

Section 3.04. *District Representation.*

At least one senator, but not more than six senators, shall represent each legislative district.

SENATORS

Section 3.05. *Qualification of Senators.*

To be eligible as a senator, a person shall be a qualified voter of the State of Maryland at the time of his election or appointment, shall have been a resident of the State for at least two years immediately preceding his election or appointment, and shall have attained the age of twenty-one years at the time of his election or appointment.

Section 3.06. *Election of Senators.*

A senator shall be elected by the qualified voters of the legislative district from which he seeks election, to serve for a term of four years beginning on the third Wednesday of January following his election.

Section 3.07. *Vacancies.*

A vacancy in the General Assembly shall be filled by appointment by the governor; provided that the appointee to succeed a party member shall be a member of the same party. The person appointed to fill the vacancy shall serve only until the next general election held more than ninety days after the vacancy occurs, at which election any remaining portion of the unexpired term shall be filled.

Section 3.08. *Compensation of Senators*

The senators shall receive such salary and allowances as may be prescribed by law.

Section 3.09. *Appointment of Senators to Other Offices.*

No senator shall, during the term of office for which he was elected or appointed, be appointed to any office which shall have been created, or the salary or profits of which shall have been increased, by the General Assembly during such term.

Section 3.10. *Immunity of Senators.*

A senator shall not be liable in any civil action or criminal prosecution for any words used in any proceedings of the General Assembly.

GENERAL ASSEMBLY

Section 3.11. *Size of General Assembly.*

The number of members of the General Assembly shall be prescribed by law.

Section 3.12. *Legislative Sessions.*

The General Assembly shall convene in regular session on the third Wednesday of January of each year, unless otherwise prescribed by law, and may continue in session for a period not longer than seventy days; provided, however, that by the affirmative vote of three-fifths of all the senators a session may be extended for a period not longer than thirty days. The governor may convene a special session of the General Assembly at any time and must convene a special session upon the written request of three-fifths of all the senators.

Section 3.13. *Organization of General Assembly.*

The General Assembly shall be the judge of the qualifications and selection of its members, as prescribed by this Constitution and the laws of this State. The General Assembly shall elect its own officers and determine its rules of procedure, and may permit its committees to meet between sessions of the General Assembly. It may, by the affirmative vote of three-fifths of all the senators, compel the attendance and testimony of witnesses and the production of records and papers either before the General Assembly as a whole or before any of its committees, provided that the rights, and the records and papers, of all witnesses, in such cases, shall have been protected by law. No person's right to fair and just treatment in the course of legislative and executive investigations shall be infringed. The General Assembly may punish a senator for disorderly or disrespectful behavior and may expel a senator by the affirmative vote of three-fifths of all the senators.

Section 3.14. *Quorum.*

A majority of all the senators shall constitute a quorum for the transaction of business; but a smaller number may adjourn from day to day, and may compel the attendance of absent senators, in such manner, and under such penalties, as the General Assembly may prescribe.

LEGISLATION

Section 3.15. *Form of Laws.*

The style of every law of this State shall be, "Be it enacted by the General Assembly of Maryland"; and the General Assembly shall enact no law except by bill. Every law enacted by the General Assembly shall embrace only one subject, which shall be described in its title. No law, nor section of law, shall be revived or amended by reference to its title or section only; nor shall any law be construed, by reason of its title, to grant powers or confer rights which are not expressly contained in the body of the act. It shall be the duty of the General Assembly, in amending any article or section of the code or laws of this State, to enact the article, section or law as it would read when amended.

Section 3.16. *Consideration of Bills.*

Except during the first two days of a special session, no vote on final passage of a bill shall be taken until the bill shall have been printed in final form nor until the third calendar day after introduction.

Section 3.17. *Journal and Passage of Bills.*

The General Assembly shall keep a current, daily journal of its proceedings which shall be open to public inspection at all times and shall be published as soon as practicable. No bill shall be enacted, nor shall a resolution be adopted, unless it is passed by a majority of all the senators. A vote on any bill or resolution shall be taken only in public session. On final passage of a bill, including a bill proposing a constitutional amendment, or a resolution, the vote cast by each senator shall be recorded in the journal.

ARTICLE VIII. GENERAL PROVISIONS

Section 8.08. *Impeachment.*

The General Assembly shall have the sole power of impeachment of elected officials, judges, and any other state officers who may be designated by law, in cases of serious crime or serious misconduct in office. The affirmative vote of three-fifths of all the senators shall be required to impeach. Impeachments shall be tried by a special tribunal of ten

judges appointed by the Supreme Court from among the judges of the State. The concurrence of three-fifths of the judges of the special tribunal shall be required to convict. Judgment upon conviction shall be removal from office and may include disqualification from holding any office of public trust, as well as deprivation of pension rights and other privileges of office. A person tried upon impeachment, whether or not convicted, shall be liable to criminal prosecution and punishment according to law.

ARTICLE IV. EXECUTIVE BRANCH

Introductory Comment:

Early in its deliberations the Commission concluded that one of its guiding objectives should be the strengthening of each of the independent, coordinate branches of government. In keeping with this objective, the Commission, in the draft article on the executive branch, seeks to provide the State with an executive branch which is capable of effective and responsible leadership. The following statement from the report of the first "Hoover Commission" is representative of the Commission's viewpoint:

> "Responsibility and accountability are impossible without authority—the power to direct. The exercise of authority is impossible without a clear line of command from the top to the bottom, and a return line of responsibility from the bottom to the top."[81]

The establishment of an executive branch with responsibility, accountability and authority requires that primary attention be given to strengthening the office of governor. This draft article would create a strong, responsible chief executive by removing from the present Constitution a number of obstacles to effective executive control and by increasing the governor's administrative control over the principal policy-makers within the executive branch.

In effect, the present Constitution establishes a plural executive. The governor, comptroller and attorney general are all required to be popularly elected and each has constitutionally specified duties. The treasurer of the State is elected by the General Assembly and also has constitutionally specified duties. The governor, comptroller and treasurer constitute the Board of Public Works which is the principal administrative organization established by the present Constitution, although the Board's primary function today is to exercise those powers conferred upon it by statutes rather than those prescribed by the Constitution. The election of executive officials, either by popular election or by the General Assembly, and their membership on a board exercising the powers presently exercised by the Board of Public Works interfere both with the line of command and the line of responsibility between members of the executive branch, and weaken the authority of the governor as the chief executive.[82]

Former Governors William Preston Lane, Jr., Theodore R. McKeldin and J. Millard Tawes met with the Commission and each testified that in his opinion the comptroller should be appointed by the governor and should not be popularly elected. Governor McKeldin favored the election and Governor Tawes the appointment of the attorney general while Governor Lane did not express a preference.[83] Subsequently, Governor Tawes, while reaffirming his

[81] U. S. COMMISSION ON THE ORGANIZATION OF THE EXECUTIVE BRANCH OF GOVERNMENT, GENERAL MANAGEMENT OF THE EXECUTIVE BRANCH 1 (1949).

[82] "The greatest single impediment to executive unity lies in the constitutional designation of top officials who obtain office by popular election or by legislative election." RICH, STATE CONSTITUTIONS: THE GOVERNOR 13 (National Municipal League 1960).

[83] XIII(3C) PROCEEDINGS OF THE MARYLAND CONSTITUTIONAL CONVENTION COMMISSION 1966, Hearing of Feb. 24, 1966, 5, 8 (hereafter cited as "Testimony by Governor Lane") (unpublished papers of the Commission in ENOCH PRATT LIBRARY, UNIVERSITY OF MARYLAND LIBRARY, MARYLAND STATE

opinion that the office of comptroller should not be an elective office, publicly expressed some uncertainty as to whether the attorney general should be elected or appointed.

After full consideration, the Commission concluded that neither the office of attorney general nor the office of comptroller should be created by the constitution. It was the Commission's opinion that these or similar offices would no doubt continue to exist because of the importance of their functions, but that they should be created and their functions prescribed by statute.

Thereafter, in the course of its continued deliberations, the Commission held another hearing at which the present comptroller testified that in his opinion the chief fiscal officer of the State should continue to be popularly elected.[84] He said that this would ensure that at least one public official charged with responsibility for fiscal matters would be directly responsible to the voters, thus providing a system of checks and balances within the executive branch of government. The comptroller also presented to the Commission a prepared statement outlining his views in detail.[85]

The Commission, after studying the comptroller's statement and testimony and again weighing the arguments for and against retaining the office of comptroller as an elective office prescribed by the constitution, voted 14 to 2 not to do so.

In addition to his *ex officio* membership on numerous boards and commissions, the comptroller performs four principal classes of functions. First, as the person generally superintending the fiscal affairs of the State, the comptroller is required to perform many functions of a purely administrative character with respect to the management of the revenue, the support of public credit, the keeping of accounts, and the promulgation of standard forms. Second, he is a tax collector, not only directly collecting the taxes producing the largest revenue of the State, but also superintending the collection of taxes and other revenues by other collectors. Third, he authorizes the payment by the treasurer of all sums paid out of the treasury. Fourth, he supervises post-audit review by the state auditor.

It is quite clear that the first two of these primary functions should be exer-

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XIII(3B) PROCEEDINGS OF THE MARYLAND CONSTITUTIONAL CONVENTION COMMISSION 1966, Hearing of Feb. 24, 1966, 9, 10 (hereafter cited as "Testimony by Governor McKeldin") (unpublished papers of the Commission in ENOCH PRATT LIBRARY, UNIVERSITY OF MARYLAND LIBRARY, MARYLAND STATE LIBRARY, JOHNS HOPKINS UNIVERSITY LIBRARY).

XIII(3A) PROCEEDINGS OF THE MARYLAND CONSTITUTIONAL CONVENTION COMMISSION 1966, Hearing of Feb. 24, 1966, 10 (hereafter cited as "Testimony by Governor Tawes") (unpublished papers of the Commission in ENOCH PRATT LIBRARY, UNIVERSITY OF MARYLAND LIBRARY, MARYLAND STATE LIBRARY, JOHNS HOPKINS UNIVERSITY LIBRARY).

[84] XV(5) PROCEEDINGS OF THE MARYLAND CONSTITUTIONAL CONVENTION COMMISSION 1966, Hearing of Nov. 17, 1966, 7-23, 42-72 (hereafter cited as "Testimony by Comptroller Goldstein") (unpublished papers of the Commission in ENOCH PRATT LIBRARY, UNIVERSITY OF MARYLAND LIBRARY, MARYLAND STATE LIBRARY, JOHNS HOPKINS UNIVERSITY LIBRARY).

[85] XI PROCEEDINGS OF THE MARYLAND CONSTITUTIONAL CONVENTION COMMISSION 1966, Meeting of Dec. 3, 1966, 193-200 (unpublished papers of the Commission in ENOCH PRATT LIBRARY, UNIVERSITY OF MARYLAND LIBRARY, MARYLAND STATE LIBRARY, JOHNS HOPKINS UNIVERSITY LIBRARY).

cised under the direct authority of the chief executive, and there would seem to be little, if any, justification for having them performed by an elected official. The arguments in favor of having the third function performed under the direct authority of the chief executive are also strong; although, it can be argued that control of the actual disbursement of state funds should not be in the chief executive.

A strong argument can be made that the fourth function should not be performed by any person in the executive branch, but that it should be performed by an official who is completely independent of the executive branch. This does not mean, however, that such an official must be a person elected by and responsible only to the voters. To the contrary, reason would seem to dictate that, if the post-audit review function is to be separately performed, it should be performed by a person either appointed or elected by, and responsible only to the legislative branch.[86] In the federal government the United States Comptroller General, who performs the post-audit review function, is accountable principally to the Congress; although, he is initially appointed by the President with the approval of the Senate.[87]

The Commission recognizes the need for reorganizing the present administrative structure with respect to the fiscal affairs of the State. It believes that this reorganization can best be accomplished through legislation and should not be rigidly structured in the constitution.

In the early meetings of the Commission it was argued that the constitution should provide for the popular election of the attorney general to ensure his independence. It was argued to the contrary, however, that the prominence and prestige of the position of attorney general as the chief legal officer of the State and the professional reputation of the lawyer filling the office would be sufficient safeguards to ensure his independence.

Apparently, the fear that an appointed attorney general would lack independence arises from the fear that he would be so much a part of the executive branch of government that he could not impartially advise the members of the legislative branch; but if there is any real basis for such concern, the answer would seem to be for the legislative branch to provide for its own separate legal counsel, which it could do by statute.[88] In any event, the Commission believes that the advantages of having the attorney general appointed by the governor far outweigh any disadvantages.[89]

Some persons have argued that the constitution should provide for the elec-

[86] This is the procedure followed in several states; the person performing the function may be designated as either "auditor" or "comptroller." INDEX DIGEST 45, 102.

[87] 42 Stat. 25 (1921), 31 U.S.C. section 53 (1954); 42 Stat. 23 (1921), 31 U.S.C. section 42 (1954). However, he may be removed only by the Congress (subject to exception in the case of any person appointed after January 1, 1966, who prior to his appointment had been subject to the provisions of the Civil Service Retirement Act). 42 Stat. 23 (1921), 31 U.S.C. section 43 (1954), amended by, 80 Stat. 329 (1966), 31 U.S.C.A. section 43 (Supp. 1966).

[88] In the absence of any constitutional restriction against the employment of such counsel, and there is none in this draft constitution, the legislative branch would be acting within its inherent plenary legislative power in enacting such a statute. See draft Section 3.01 and commentary thereon.

[89] Several state constitutions provide that the governor shall appoint the attorney general subject to the advice and consent of the Senate. INDEX DIGEST 35.

tion of both the attorney general and the comptroller, and have argued against the Commission's recommendation that the governor and lieutenant governor be the only statewide officials whose election is prescribed by the constitution. In 1953 the Commission on Administrative Organization of the State ("Sobeloff-Stockbridge Commission"), Maryland's "Little-Hoover Commission," expressly recommended that the attorney general be appointed by the governor and impliedly indicated that the comptroller should be similarly selected. The summary and final report of that Commission expressly recommended that the attorney general should be appointed by the governor and that the comptroller and the treasurer should both be treated as a part "of the executive branch and should report to and be responsible to the governor, instead of being executive officers to a large degree independent of the chief executive."[90]

In Maryland, with three exceptions, the governors elected during the past fifty years had served previously either as attorney general or as comptroller.[91] Some have argued that by having to run for election on a statewide basis, both the comptroller and the attorney general are exposed to the electorate of the State before becoming candidates for governor, and that this has proven advantageous and desirable from the point of view of both the candidate and the electorate.

In some states the attorney general and the officer corresponding to comptroller are appointed; in others they are elected. The functions and duties of these officers vary widely from state to state, but a full description of the practice in each state may be found in the BOOK OF THE STATES.[92]

The Commission recommends that neither the office of attorney general nor the office of comptroller be provided for in the constitution. To the extent that either of these positions is provided for by statute and the holder of the position is designated as the head or chief administrative officer of a principal department within the executive branch (see draft Section 4.19), he will be appointed by and serve at the pleasure of the governor (see draft Section 4.20). This result will not follow if the offices of attorney general or comptroller, or similar offices, created by statute, should be assigned by the General Assembly to departments within either the judicial or the legislative branches.[93]

Although not recommended by the Commission, the State Law Department could be designated by the General Assembly as a principal department within the judicial branch. In this event, under draft Section 4.22 the attorney general, as the head of the department, would be either appointed or elected as might be prescribed by law.

Similarly, although it is most unlikely that any of the functions of the comp-

[90] TWELFTH REPORT OF THE [MARYLAND] COMMISSION ON ADMINISTRATIVE ORGANIZATION OF THE STATE 26, 30 (1953).

[91] The three exceptions are former Governors Harry W. Nice (1935-1939) and Theodore R. McKeldin (1951-1959), and present Governor Spiro T. Agnew.

[92] XVI COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES, 1966-67, 129 (1966) (hereafter cited as THE BOOK OF THE STATES).

[93] Draft Sections 4.20 and 4.22 do not require heads of principal departments within the legislative or judicial branches, as distinguished from those within the executive branch, to be appointed by the governor; rather, they provide that the General Assembly may prescribe by law for their appointment and removal.

troller except the post-audit review function would be placed anywhere except in the executive branch, it would, as pointed out above, be entirely logical to vest this function in some department included in the legislative branch. In such event, the head of the department would, under draft Section 4.22, be appointed and removed, or be elected, as prescribed by law.

By the same token, if the legislature believed that it should have its own separate legal counsel, it could provide for such counsel within the legislative branch by law and he would be subject to appointment and removal, or election, by the legislature as prescribed by law.

The import of the Commission's recommendation is that, to the extent the functions of either of these officials, or of their respective departments, are functions which are properly exercisable as a part of the executive branch of government, they should be exercised under the authority and direction of the governor as the chief executive; and the officials performing such functions should be subject to appointment and removal by the governor.

A system of checks and balances should operate between branches of government for the people's protection; a system of checks and balances within one branch of government is inappropriate for governmental efficiency. Neither the comptroller nor the attorney general is, in the exercise of his primary function, a policy-maker. The principal qualifications for both positions are technical ability and expertise. Of these the governor is in a better position to judge than the voters.

The draft article does not mention other elected or appointed officials or boards that are provided for in the present Constitution. These include the secretary of state (Article II, Section 22); treasurer (Article VI, Section 1); state's attorneys (Article V, Section 7); adjutant general (Article IX, Section 2); justices of the peace (Article IV, Section 42); sheriffs (Article IV, Section 44); coroners, elisors and notaries public (Article IV, Section 45); surveyors (Article VII, Section 2); county commissioners (Article VII, Section 1); Treasury Department (Article VI); and Board of Public Works (Article XII, Section 1 and Article III, Section 34).

Any of these officers who are heads of principal departments within the executive branch, as for instance, the secretary of state, will be subject to the provisions of draft Section 4.20; and any who are not heads of principal departments within the executive branch, or who are included within either the judicial or legislative branches, as for example, state's attorney, adjutant general, sheriffs, and notaries, will be appointed, or elected, as is prescribed by law. County commissioners, being officers of local government, are covered by draft Article VII.

The omission of these offices from the constitution will promote efficient organization and administration, increase the flexibility of the entire administrative arrangement, and permit effective administrative reorganization without constitutional amendment as the need arises. As a further result of these recommendations, the governor and lieutenant governor provided for in this draft article are the only statewide officers elected by popular vote.

Because of the importance of the Board of Public Works in the present administration of the executive branch, the Commission gave special attention

to the question of whether the Board should retain its constitutional status. The Board is created and its constitutional powers are defined in Article XII and in Article III, Section 34 of the present Constitution.

It should be noted that few, if any, of the constitutional functions of the Board under Article XII remain today. The "public works" or "works of internal improvement" referred to in Article XII were originally railroads, canals, turnpikes and similar public facilities owned and operated by private corporations, but in many instances supported either by means of substantial loans or by purchases of capital stock by the State. The State, therefore, had a large financial interest, either as stockholder or as creditor, in such corporations. The principal constitutional function of the Board of Public Works was that of safeguarding and protecting these investments of the State.

However, the State no longer has investments in private corporations operating "public works" or "works of internal improvement"; and, therefore, the only constitutional function still exercised by the Board of Public Works is that provided for in Article III, Section 34 of the present Constitution. This section deals with public debt and authorizes the Board in certain circumstances to borrow money in anticipation of the collection of taxes to meet temporary deficiencies in the treasury.

The Board of Public Works today, however, performs numerous other functions, such as:

1. To fix interest rates on and to sell state bonds.

2. To let contracts for the expenditure of state funds (except in connection with state highway projects).

3. To approve or disapprove leases.

4. To promulgate rules and regulations covering business administration in the various state agencies.

5. To sell real or personal property of the State.

6. To transfer property from one governmental agency to another.

7. To approve or disapprove the creation of new jobs not in the budget.

It should be emphasized that all of these functions are statutory. They could just as well be conferred upon a board of public works created by statute as upon a board of public works created by the constitution.

There may indeed be a justification for vesting these powers in a three-man board, two of the members of which are to some degree, at least, independent of the governor. It may also be argued that to vest such powers in an independent board is to impose an unwarranted restriction upon the governor as the chief executive of the State. However, the question need not be resolved in the constitution.

The General Assembly, under the Commission's recommendations, can provide by statute for these powers to be exercised by a board constituted as prescribed by statute, in the same manner as is today prescribed by statute with respect to the Board of Public Works. On the other hand, it is certainly true today that the vast majority of decisions made by the Board of Public Works is not of major importance.

The Board is called upon to give approval to literally thousands of small transactions with regard to which it is difficult for the Board to make informed decisions. It would appear that a high

level board of this character is not required for the purpose of making such decisions, and that an appropriate official or agency should have the authority to take final action. The present requirement of Board approval can act as a bottleneck. Since the number of items requiring attention is great, each item encounters considerable delay before being placed on the agenda.

The present comptroller stated to the Commission that in his opinion the Board should be retained in its present form; but former Governors Lane, McKeldin and Tawes all concurred in the opinion that consideration should be given to reorganizing the Board of Public Works. As pointed out above, reorganization is an executive and statutory function, the performance of which is facilitated by omitting from the constitution all reference to the Board of Public Works.

This draft article not only removes existing obstacles to effective administrative control, but it also gives the governor new management aids. First, there is a provision for the election of a lieutenant governor as an official assistant to the governor. The Commission recommends that the lieutenant governor run with the governor for election as a team, and that the lieutenant governor be delegated duties by the governor and by law. The provision for a popularly elected lieutenant governor will neither conflict with, nor reduce the governor's administrative control over the executive branch, but it will establish an official assistant to whom the governor may delegate some of his ever-increasing duties.

Second, there is a provision authorizing the governor to appoint and to remove the policy-making heads of most of the principal executive departments. Under this provision the governor will be able to appoint those persons to primary executive positions in whom he has full confidence, and he will be able to remove from such primary executive positions any persons whose performance is unsatisfactory to him. This provision is recommended because the governor is the person ultimately responsible to the electorate for the administration of every department within the executive branch.

Third, there is a provision empowering the governor to take the initiative in administrative reorganization. Although any proposed administrative reorganization would be subject to legislative approval, this authority would facilitate the implementation of needed reorganization of the executive branch.[94]

The Commission also considered whether the constitution should specify the governor's salary and place of residence while in office. Article II, Section 21 of the present Constitution provides that the governor shall reside at the seat of government and shall receive an annual salary of $25,000.

The Commission believes that a provision requiring the governor to reside at the seat of government serves little or no useful purpose and might occasion difficulties.[95] Governors will undoubtedly continue to reside in Annapolis because

[94] See draft Section 4.19.

[95] In Gallagher v. Board of Education, 219 Md. 192 (1959), it was argued that Theodore R. McKeldin, who sought to run for mayor of Baltimore City within one year of the expiration of his second term as governor, did not meet a ten-year residency requirement because Article II, Section 21 compelled him to abandon his legal residence in Baltimore City. The Court held that, notwithstanding Article II, Section 21, he had remained a legal resident of Baltimore City during his eight years as governor.

of tradition, the availability of Government House and because it promotes the expeditious handling of state business, particularly while the legislature is in session. The Commission recommends, however, that there be no provision in the constitution specifying a place of residence for the governor.

The disadvantages of placing a constitutional ceiling on the governor's salary are clearly indicated by the State's experience. Article II, Section 21 of the 1867 Constitution fixed the governor's salary at $4,500. This amount was continued as the prescribed salary in the Constitution until 1955—long after it had become grossly inadequate.

In 1955 the Constitution was amended to increase the governor's salary to $15,000. This amendment became effective in January, 1959. In 1966 the Constitution was again amended to increase the governor's salary to $25,000.

In accordance with its recommendation stated elsewhere in this Report that all provisions in the present Constitution which prescribe salaries of public officials be deleted, the Commission recommends that no salary for the governor be prescribed in the draft constitution.

Section 4.01. **Executive Power.**

The executive power of the State is vested in the governor, who shall be responsible for the faithful execution of the laws.

Comment:

This draft section establishes the executive branch as one of the three independent coordinate branches of the state government. It vests executive power of the State in the governor who has full responsibility for the exercise of this power and for the faithful execution of the laws. The language of the draft section is the traditional language of Article II, Sections 1 and 9 of the present Constitution.

Section 4.02. **Duties of Lieutenant Governor.**

There shall be a lieutenant governor who shall perform such duties as may be prescribed by law and such other duties as may be delegated to him by the governor.

Comment:

This draft section creates an office of lieutenant governor but does not specify the duties of the office. The lieutenant governor will be a popularly elected "assistant governor," performing those functions which the governor assigns to him or which are prescribed by law. It should be noted that this draft section does not provide that the lieutenant governor is to be an *ex officio* president of the Senate, as many state constitutions provide.[96]

The creation of the office of lieutenant governor will permit the orderly succession to the office of governor in the event of the death or disability of the incumbent governor. It will provide the governor with an official representative to whom he can delegate some of his ever-increasing duties. The office of lieutenant governor can provide an opportunity for political exposure to persons desirous of eventually seeking the office of governor in lieu of the opportunities which would be removed by not providing in the constitution for the election of an attorney general and a comptroller.

[96] INDEX DIGEST 659.

Former Governors William Preston Lane, Jr. and J. Millard Tawes each testified that in his opinion a lieutenant governor would be useful.[97]

The office of lieutenant governor last existed in Maryland between 1864 and 1867. The Constitution of 1864 created the office of lieutenant governor and prescribed that he should act as president of the Senate, cast the deciding vote whenever the Senate was equally divided, and succeed to the office of governor whenever a vacancy should occur in that office. The articulated reasons for creating the office of lieutenant governor in 1864 were to give the government an additional popularly elected figure and to emulate the majority of other states.[98]

GOVERNOR AND LIEUTENANT GOVERNOR

Section 4.03. **Governor.**

To be eligible for election as governor, a person shall have attained the age of thirty years at the time of his election, and shall have been a qualified voter in the State for at least two years immediately preceding his election. No person elected governor for two full consecutive terms shall be eligible to hold that office again until one full term has intervened.

Comment:

This draft section requires that a person must have attained the minimum age of thirty years to be eligible for election as governor. This requirement is the same as that in Article II, Section 5 of the present Constitution. It is also the same requirement which thirty-five other states have in their state constitutions.[99]

The Commission recommends that to be eligible for election as governor a person must have been a qualified voter of the State for at least two years immediately preceding his election. Under draft Section 2.01 a "qualified voter" means a registered voter, and under that same section, to be a registered voter one must be a citizen of the United States and must have been a resident of the State for at least six months. The two-year period overlaps the six months' period and the effect of the draft section, therefore, is to require that one seeking election as governor have been a resident of the State for at least two years. The Commission believes that this residency requirement is sufficient to assure that any person who seeks the office of governor has had an opportunity to become familiar with the State, its people and its problems.

This provision differs from the present Constitution which provides that the governor must have been a citizen of the State for ten years and a resident for five years immediately preceding his election. These requirements in the present Constitution were rejected by the Commission because they were considered too restrictive. The ten-year citizenship requirement is the longest imposed by any state, and was apparently placed in the Constitution of 1867 to prevent Negroes from being eligible for the office.[100] The Commission was of the

[97] Testimony by Governor Lane 5, 8. Testimony by Governor Tawes 12-13.

[98] THE DEBATES OF THE CONSTITUTIONAL CONVENTION OF 1864 OF THE STATE OF MARYLAND 1316-21 (1864).

[99] INDEX DIGEST 56.

[100] PERLMAN, DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1867, 179 (1923).

opinion that a ten-year residency requirement is too long in light of the increased mobility of today's population.

In addition, the concepts of "citizenship" and "residency" are difficult to define. The first sentence of the Fourteenth Amendment to the United States Constitution provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Residency poses a difficult question of fact. Because of the difficulty in defining "citizenship" and "residency," the Commission recommends that any residency requirement be defined in terms of the registration of a voter. Registration is a matter of public record and can be easily established.

This draft section prohibits a governor from serving three consecutive terms. This restriction is the same as that in Article II, Section 1 of the present Constitution, and dates from a 1948 amendment. This draft section permits any person who has served two consecutive terms as governor again to be elected governor after a full four-year term has intervened.

This draft section does not restrict a person quite as much as does the Twenty-Second Amendment to the United States Constitution, which provides:

> "No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. . . ."

The question of whether the number of terms to which a person may be elected governor should be prescribed in a constitution is a difficult one. Any prescribed limitation would restrict the people's choice of persons they could elect governor by eliminating from a gubernatorial contest any candidate who had just served two terms as governor. This would remove from the election the candidate who would be most familiar to the voters and deny them an opportunity to pass judgment at the polls on the immediate past governor's administration.

Conversely, political experience indicates that it is often difficult to defeat an incumbent governor who is seeking reelection even though he may not be the most qualified candidate. It has been argued that a two-term restriction upon a governor's tenure offers the best protection against "bossism."

Former Governors Lane, McKeldin and Tawes testified that they favored a two-term limitation upon a governor's tenure.[101]

After full deliberation, the Commission recommends that a two-term limitation be prescribed in the constitution.

[101] Testimony by Governor Lane 3-4. Testimony by Governor McKeldin 3-4. Testimony by Governor Tawes 4-5.

Section 4.04. **Lieutenant Governor.**

To be eligible for election as lieutenant governor, a person shall have attained the age of thirty years at the time of his election, and shall have been a qualified voter in the State at least two years immediately preceding his election. No person elected governor for two consecutive terms shall be eligible to hold the office of lieutenant governor until one full term has intervened.

Comment:

This draft section requires that to be eligible for election as lieutenant governor, a person must meet the same requirements as are specified in draft Section 4.03 for persons seeking the office of governor. The Commission recommends that since the purpose of the office of lieutenant governor is to have a person in a position to assume the office of governor if necessary, the qualifications for the office of lieutenant governor should be identical to those specified for the Governor.

The Commission recommends that no incumbent governor who is serving his second consecutive term be eligible to seek the office of lieutenant governor until one full term has intervened between his leaving office and the occasion of his seeking such election. This provision would prevent the circumvention of the limitation in draft Section 4.03 which denies incumbent governors the right to seek a third consecutive term of office. The omission of such a provision would permit an incumbent governor to seek election as lieutenant governor and, upon his election, become governor in the event of the resignation or disability of the person elected governor.

Section 4.05. **Election of Governor and Lieutenant Governor.**

The governor shall be elected to serve for a term of four years beginning on the third Wednesday of January following his election. In the event of a tie vote, the governor shall be elected from the candidates having received the tie vote by the affirmative vote in joint session of a majority of the combined membership of both houses as the first order of business after their organization. Each candidate for lieutenant governor shall run jointly in the general election with a candidate for governor and the votes cast for one shall be considered as cast also for the other. The candidate for lieutenant governor whose name appears on the ballot jointly with that of the successful candidate for governor shall be elected lieutenant governor.

Comment:

This draft section provides that the governor is to be popularly elected. It combines in substance Article II, Sections 2, 3 and 4 of the present Constitution. This draft section omits the detailed provisions dealing with qualifications of voters, counting the votes, and the date of the gubernatorial elections.

The most significant change made by this draft section is to prescribe that the governor is to take office on the third Wednesday in January, the same day prescribed by draft Section 3.12 for the members of the General Assembly to take office, unless otherwise prescribed by law. The present Constitution provides that members of the General Assembly shall take office on the third Wednesday in January and that the governor shall take office on the fourth Wednesday in January.

The Commission believes that the present one-week hiatus between the

legislators taking office and the governor taking office is potentially harmful because it affords an opportunity to the "lame-duck" governor to seek "last minute" legislation from a new General Assembly and to appoint persons to offices which require legislative approval. An additional problem arises from the possibility of an incumbent governor being elected to membership in a new General Assembly, in which case he might find it necessary to resign as governor in order to be sworn in as a legislator. For these reasons the Commission recommends that the governor and the members of the legislature take office on the same day.

This follows the suggestions made to the Commission by members of the legislative liaison committee. More recently, Senator William S. James, President of the Senate, has suggested that the governor should take office early in December.[102] Commenting on this suggestion, Governor Spiro T. Agnew said that he thought that a date early in January would be preferable to one early in December.[103]

By a joint resolution passed at its last session, the General Assembly called attention to the awkwardness of the present situation under which a newly elected governor takes office later than the newly elected General Assembly, and recommended that the Constitutional Convention give consideration to a provision under which a newly elected governor would take office thirty days after his election and the newly elected General Assembly would at the same time meet for one day to organize and select its presiding officers.[104]

This draft section also provides for the General Assembly to elect a governor from the candidates who were tied in the popular general election where no candidate has received a plurality. Although the Commission believes the likelihood of a tie to be remote, it recommends that the constitution contain a provision for such a contingency.

This draft section also provides that the governor and lieutenant governor shall run as a team in the general election and that each voter shall cast a single vote for any ticket of candidates for the two offices. This would adopt in the State of Maryland the same practice as is now followed in six other states[105] and the same as is traditionally used, but not constitutionally required, for the election of the President and Vice President of the United States.

Because of the Commission's recommendation that the lieutenant governor be available as an assistant to the governor, the Commission believes it desirable to assure that the governor and lieutenant governor will be members of the same political party. This provision also increases the likelihood that the lieutenant governor will be a person compatible with the governor.

[102] Letter from William S. James to H. Vernon Eney, Jan. 16, 1967.

[103] Letter from Spiro T. Agnew to H. Vernon Eney, Jan. 18, 1967.

[104] Joint Resolution No. 41, LAWS OF MD. 1967.

[105] The following states now provide for joint election of the governor and lieutenant governor: New York, Alaska, Connecticut, New Mexico, Michigan, Hawaii.

GUBERNATORIAL SUCCESSION

Section 4.06. **Failure of Governor to Take Office.**

When the governor-elect is disqualified, resigns or dies following his election, but prior to taking office, the lieutenant governor-elect shall succeed to the office of governor for the full term. When the governor-elect fails to assume office for any other reason, the lieutenant governor-elect shall serve as acting governor, but if the governor-elect does not assume office within the first six months of the term, the office shall be vacant.

Comment:

This draft section provides for the order of succession in cases where the governor-elect fails to assume office for any reason. If the governor-elect dies, resigns, or is disqualified, the lieutenant governor-elect succeeds to the office for the full term. When the governor-elect is temporarily unable to take office, the lieutenant governor-elect serves as acting governor from the beginning of the governor's term until the governor is able to assume his office, or until the expiration of six months, whichever occurs first. This draft section also provides that should the governor fail to take office during the first six months of his term, the office becomes vacant.

Section 4.07. **Lieutenant Governor as Acting Governor.**

When the governor notifies the lieutenant governor in writing that he will be temporarily unable to carry out the duties of his office or when the governor is disabled and thereby unable to communicate such inability to the lieutenant governor, the lieutenant governor shall serve as acting governor until the governor notifies the lieutenant governor in writing that he is able to carry out the duties of his office. If the governor does not notify the lieutenant governor in writing that he is able to carry out the duties of his office within six months from the time the lieutenant governor begins serving as acting governor, the office of governor shall be vacant.

Comment:

Although Maryland has apparently never had a governor who, because of disability, was unable to serve the entire term to which he was elected,[106] the experience of other states and of the federal government would suggest that provision should be made for cases where the chief executive may become disabled. The present Constitution provides for the election of a successor to the governor only in the event of the governor's death. There is no provision for instances where the governor may become disabled. The Commission recommends that the constitution contain provisions for the succession to the office of governor in the event of either death or disability.

Provision is made in this draft section for the lieutenant governor to succeed to the powers of the governor, either on a temporary basis as acting governor or, in the case where the office of governor becomes vacant, as governor.

This draft section permits the lieutenant governor to act as governor whenever the governor is temporarily disabled. This may occur at a time when the governor is to undergo surgery,

[106] Three governors, however, have resigned for other reasons: in 1809, Governor Wright, to run unsuccessfully for election as a judge; in 1874, Governor Whyte, upon being elected United States Senator; and in 1885, Governor McLane, to become United States Minister to France.

should he choose voluntarily to turn over his powers to the lieutenant governor by written notice. On the other hand, should the governor be unable to communicate his disability to the lieutenant governor because of the nature of his disability, the lieutenant governor would automatically succeed to the powers of the office of governor. In either situation, the governor can reclaim the powers of his office within six months merely by notifying the lieutenant governor in writing that he again is able to assume those powers. Should the governor not reclaim the powers of his office within six months, his tenure would be terminated and the office would become vacant.

Section 4.08. **Legislative Determination of Disability.**

The General Assembly may, by the affirmative vote in joint session of three-fifths of the combined membership of both houses, pass a resolution stating that the governor is unable to carry out the duties of his office by reason of a physical or mental disability. Upon the written request of a majority of the members of each house the General Assembly shall be convened by the presiding officers of both houses to determine whether such a resolution should be passed. If the General Assembly passes such a resolution, it shall be delivered to the Supreme Court which shall then have exclusive jurisdiction to determine whether the governor is unable to discharge the duties of his office by reason of a disability. If the Supreme Court determines that the governor is unable to discharge the duties of his office by reason of a disability, the office shall be vacant.

Comment:

This draft section sets forth a procedure by which a disabled governor may be officially declared disabled by the successive actions of the General Assembly and the Supreme Court. The General Assembly may adopt a resolution upon the affirmative vote of three-fifths of the combined membership of both houses declaring the governor to be unable to discharge the duties of his office due to physical or mental disability. Should the General Assembly not be in session at the time of the need for such a resolution, the presiding officers of the two houses may convene the General Assembly upon the written notice of a majority of the members of each house.

Upon the adoption of a resolution declaring the governor to be disabled, the question of the governor's disability must be reviewed by the Supreme Court, which is given exclusive jurisdiction to declare the office of governor vacant because of the incumbent's disability. The participation of the Supreme Court in this procedure is considered by the Commission to be very important since it may serve to protect the governor from irresponsible action by a hostile legislature.

This draft section does not attempt to define the term "disability." It is hoped that "disability" will be broadly defined, recognizing any condition which renders the governor unable to discharge the duties of his office. The determination of "disability" should be primarily a question of fact rather than a question of law.

The problem of a government's chief executive becoming disabled has recently been reexamined on the federal level. The Twenty-Fifth Amendment to the United States Constitution, recently ratified by the required thirty-eight states, provides that when the President

voluntarily wishes to vacate his office temporarily, he may send a written declaration of inability to the president of the Senate and the speaker of the House of Representatives. Thereupon, the Vice President, acting as President, may then discharge the duties of the office of President until the President reclaims his office by sending another written declaration to Congress.

If the President is unable to make or communicate his decision to relinquish the powers of the office of President because of his physical ailment, or if he is unable or unwilling to make such a decision because of his mental debility, the Twenty-Fifth Amendment empowers jointly the Vice President and a majority of the President's Cabinet or "such other body as Congress may by law provide" to initiate action to authorize the Vice President to "assume the powers and duties of the office as acting President."

Upon the transmission of the decision to Congress by the Vice President and a majority of the President's Cabinet that the President has become disabled, the Vice President will become acting President. The President may again assume the powers of his office upon sending his written declaration to Congress that he is again able to fulfill his responsibilities, unless such declaration is challenged by the Vice President.

The Congress, if not in session at the time of any challenge by the Vice President, must assemble within four days. Thereupon, Congress is required to act within twenty-one days. It may choose between the following alternatives: it may act and by the affirmative vote of two-thirds of both houses uphold the Vice President's challenge; it may act and by a one-third plus one affirmative vote in either house reject the Vice President's challenge; or it may fail to act within twenty-one days, whereupon the President will automatically be restored to his office.

Section 4.09. **Judicial Determination of Vacancy.**

The Supreme Court shall have exclusive jurisdiction to determine the existence of a vacancy under this Constitution in the offices of governor and lieutenant governor and all questions arising under this Article concerning the right to office or the exercise of the powers thereof.

Comment:

This draft section places exclusive jurisdiction in the Supreme Court to determine all questions arising as to the existence of a vacancy in the offices of governor or lieutenant governor, all questions with respect to the right of persons to hold these offices, and all questions concerning the right to exercise the powers of these offices. It is thought desirable that all questions concerning persons authorized to exercise the power of governor should be resolved expeditiously and that unnecessary litigation in the lower courts and consequent appeals should be avoided.

It should be noted that this draft section does not prescribe the procedures to be followed by the Supreme Court in cases of gubernatorial succession. All required procedures will be determined by the rules of the court.

Section 4.10. **Succession to Office of Governor.**

When a vacancy occurs in the office of governor, the lieutenant governor shall succeed to the office of governor for the unexpired term. If a vacancy exists in the office of lieutenant governor when the lieutenant governor is to succeed to the office of governor or to serve as acting governor, the president of the Senate shall succeed to the office of governor for the unexpired term or serve as acting governor. If a vacancy exists in the office of president of the Senate when the president of the Senate is to succeed to the office of governor or to serve as acting governor, the Senate shall convene and fill the vacancy.

Comment:

This draft section prescribes the line of succession to the office of governor. If the office of governor becomes vacant, the lieutenant governor will succeed to it, unless the office of lieutenant governor is also vacant, whereupon the president of the Senate will succeed to the office of governor. This section avoids the necessity for there ever being a special election to fill the vacancy in the office of governor. The line of succession is open-ended since the Senate always will have a president or the means by which to select one.

Some persons have questioned the advisability of placing a legislative official, elected from a single legislative district, in the line of succession to the office of governor since, unlike the governor and the lieutenant governor, he would lack a statewide constituency. Nevertheless, the Commission recommends this draft section as the best alternative solution available because there is, to some degree, a statewide endorsement of the president of the Senate through the people's elected representatives. In addition, the president of the Senate is likely to have extensive familiarity with the affairs of the State and this should qualify him to assume the powers of the office of governor in the event of his succession.

Some have suggested that members of the "governor's cabinet," who will probably be appointed, should follow the lieutenant governor in the order of succession to the office of governor; however, the Commission feels that it is more consistent with the democratic principles of government to provide that a legislative official will follow the lieutenant governor in the order of succession.

This draft section does not define the term "vacancy" except to the extent that a definition is implied from its use. Clearly, death, the disability of the governor for six months, or the failure of the governor-elect to take office within six months of the beginning of his term will create a vacancy. All other occasions of a vacancy are to be determined by legislative definition and judicial interpretation and decision.

Section 4.11. **Powers and Duties of Successor.**

When the lieutenant governor or the president of the Senate succeeds to the office of governor, he shall have the title, powers, duties and emoluments of the office; but when the lieutenant governor or the president of the Senate serves as acting governor, he shall have only the powers and duties of the office. When the president of the Senate serves as acting governor, he shall continue to be president of the Senate; but during his service as acting governor, his duties as president shall be performed by such person as the Senate shall select.

Comment:

This draft section clarifies the difference between service by the lieutenant governor or president of the Senate as acting governor and the succession by either to the office of governor. The last sentence of this draft section fills a possible gap in the succession provisions by insuring that a president of the Senate who is serving as acting governor due to the incumbent's disability will not be removed from the line of succession to the office of governor in the case where, upon the failure of the incumbent to resume his office within six months, the president of the Senate would become governor.

LEGISLATIVE RESPONSIBILITIES OF GOVERNOR

Section 4.12. **Messages to General Assembly.**

The governor shall inform the General Assembly of the condition of the State and may recommend measures he considers necessary or desirable.

Comment:

This draft section recognizes the governor's responsibility for annually reporting to the people of the State, through their elected representatives, on the condition of the State. It also recognizes the governor's leadership in designing and promoting a legislative program. The Commission considers the governor's direct involvement in the legislative process desirable both because of his statewide constituency which affords him a perspective of the entire scope of the State's problems and because, as the State's chief executive, he has sources of information not readily available to the General Assembly which may make him aware of the need for revision of existing laws. This draft section is very similar to Article II, Section 19 of the present Constitution.

Section 4.13. **Convening General Assembly.**

The governor may, on extraordinary occasions, convene the General Assembly or the Senate alone by proclamation, stating the purpose for which he has convened it.

Comment:

This draft section, similar to Article II, Section 16 of the present Constitution, empowers the governor, on extraordinary occasions, to convene the General Assembly or the Senate alone upon his own initiative. This provision is necessary because the General Assembly sits in sessions of limited duration and, with increasing frequency, situations arise between sessions of the General Assembly which require its immediate attention and action.

Provision is made for the governor convening the Senate into special session alone because of the possibility that the General Assembly may provide by law that, in the case of certain specified offices, the governor shall be authorized to appoint persons to those offices upon the confirmation of the Senate.

Although this draft section requires that the governor issue a proclamation stating the purpose for which he has convened the General Assembly into special session, the General Assembly is not restricted to the consideration of those matters contained in the proclamation. The Commission believes that on occasion an extraordinary session may be used efficiently to debate and act upon other matters of urgency before the State.

Section 4.14. **Veto by Governor.**

All bills passed by the General Assembly shall be subject to veto by the governor, except budget bills and bills proposing amendments to the Constitution.

Comment:

This draft section states the scope of the governor's veto power. Budget bills are excepted from the governor's veto because they originate with the governor, and the General Assembly is restricted in its power to modify them. The term "budget bill" is defined in draft Section 6.06 and refers to "a bill for all the proposed appropriations of the budget."

Bills proposing amendments to the constitution also are excepted from the governor's veto power because, pursuant to draft Section 9.01, they can be passed only upon the affirmative vote of three-fifths of all the members of each house of the General Assembly. This extraordinary vote is the same as that prescribed by both draft Section 4.17 and Article II, section 17 of the present Constitution to permit the General Assembly to override a governor's veto.

Section 4.15. **Item Veto.**

The governor may strike out or reduce any item in a supplementary appropriation bill and the procedure in such a case shall be the same as in the case of the veto of a bill by the governor.

Comment:

This draft section empowers the governor to veto or reduce any item in any appropriation bill except the budget bill. The term "supplementary appropriation bill" is defined in draft Section 6.10. This power complements the governor's power to veto all bills passed by the General Assembly since, unlike the budget bill, supplementary appropriation bills do not originate with the governor. The item veto permits the governor to reject certain proposed expenditures without vetoing all expenditures contemplated in a single supplementary appropriation bill.

Section 4.16. **Presentation of Bills to Governor.**

A bill subject to veto by the governor shall be presented to him within seven days after its final passage by the General Assembly. If the General Assembly is in session, the bill shall become law if the governor signs or fails to veto it within ten days of presentation. If the General Assembly adjourns **sine die** *before presentation or during such ten-day period, the bill shall become law if the governor signs or fails to veto it within forty-five days of presentation.*

Comment:

This draft section reverses the effect of Article II, Section 17 of the present Constitution that no bill becomes law unless signed by the governor except in the case where the governor fails either to sign a bill or to return the unsigned bill to the General Assembly within six days of its presentation to him if the General Assembly is still in session. Under this draft section a bill will become law either when signed by the governor or, upon his failure to sign, when a specified period of time elapses, whether or not the General Assembly is in session. Thus, this provision eliminates any possibility of a "pocket veto."

This draft section requires that bills subject to the governor's veto be presented to him for his signature or veto within seven days following their enactment. The governor will, therefore, no longer have the discretionary power to determine the time of presentation of bills. While the General Assembly is in session, the governor will have ten days from the date of presentation within which to sign or veto a bill. Should the governor fail either to sign or to veto a bill within the ten-day period, the bill will become law.

In the event that the General Assembly should adjourn prior to the presentation of any bill or during the ten-day period following the presentation of any bill, the governor is allowed forty-five days from the date of presentation within which to sign or veto a bill. Should the governor fail either to sign or to veto a bill within this forty-five day period, the bill will become law.

The Commission believes that this draft section allows the governor adequate time in which to consider all bills and that the provisions of this section will eliminate the difficulties which have arisen under the following provision of Article II, Section 17 of the present Constitution:

> "If any bill shall not be returned by the Governor within six days (Sundays excepted) after it shall be presented to him, the same shall be law in like manner as if he signed it, unless the General Assembly shall, by adjournment, prevent its return, in which case it shall not be law."

A literal reading of this language would indicate that the Constitutional Convention of 1867 apparently intended that, in order for a bill to become law, it had to be presented to the governor and, while the General Assembly was still in session, had to be either signed or left unsigned for six days. It was thought that this provision would compel the General Assembly to enact laws throughout its sessions rather than enacting the most important legislation before or at the very end of the session.[107]

Prior to 1880 governors did not attempt to sign bills into law after the General Assembly had adjourned. In 1880 several bills were presented to and signed by the Governor after the adjournment of the General Assembly. Thereafter, this became a general practice. The validity of this action was first judicially tested in 1890 and was upheld in a split decision of the Court of Appeals.[108]

Since 1890 the practice of governors of signing bills into law after the adjournment of the General Assembly has consistently been held to be valid.

This practice, nevertheless, raised an important question which has remained unresolved. Since Article II, Section 17 was not designed to permit a governor to sign a bill into law following the adjournment of the General Assembly, no time limit is set forth in that provision within which the governor must act. Most bills become law on the first day of June, under Article III, Section 31 and Article XVI, Section 2 of the present Constitution, and the governor has made it a practice in recent years to sign bills passed at a regular session of the General Assembly into law no

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[107] PERLMAN, DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1867, 188 (1923).

[108] Lankford v. Somerset Co., 73 Md. 105 (1890).

later than May 7. Nevertheless, it appears that the governor might be able to sign a bill into law at a date later than May 7. The Court of Appeals specifically left this question unanswered in *Richards Furniture Corp. v. Board.*[109]

Ostensibly, Article II, Section 17 of the present Constitution narrowly restricts the governor's ability to prevent a bill from becoming law by declining to sign it since, if he does not sign it within six days from the time of its presentation to him, it becomes law without his signature unless the General Assembly has adjourned in the interim. Again, it should be remembered that it was never contemplated that under this provision a governor could sign bills into law after the adjournment of the General Assembly and the original practice was that all bills enacted by the General Assembly were presented to the governor before the last six days of each session. In actual practice, however, the governor can effectively prevent most bills from becoming law through calculated inaction and, more importantly, can foreclose or at least postpone the possibility that the General Assembly will override his veto.

The governor's present "pocket veto" is partially a result of the judicial definition of "presentation." Article 41, Section 45 of the Maryland Code provides that:

> "[E]very bill, when passed by the General Assembly . . . shall, as soon thereafter as *practicable* . . . be . . . presented to the Governor for his approval." (Emphasis added.)

This section has been implemented by Rule 59 of the rules of both the House and the Senate, which provides that every bill is to be presented to the governor within seven days after final passage unless passed during the last ten days of a regular session, in which case it need not be presented until May 1.

Since the six-day period in the present Constitution begins to run at the time of presentation, it would seem that the statute and its supporting rule would prevent a "pocket veto" of any bill passed during the first fifty-seven days of a seventy-day session. However, the Court of Appeals has decided that "presentation" does not occur upon the mere delivery of a bill to the governor and that the governor need not permit a bill to be presented until it is *practicable* for him to consider it.[110]

The more or less unchecked power of the governor to control the time of the "presentation" of a bill has given rise to an administrative practice under which a bill received by the governor's office is immediately referred to the attorney general until the governor decides what action he wishes to take "Presentation" is then considered to occur on the same day that the governor either signs or vetoes the bill or a few days before then.

The important consequence of the governor's power to determine when a bill is presented is that it permits him to postpone the "presentation" of a bill passed early in a legislative session until after the General Assembly has adjourned, thus preventing the General Assembly from overriding his potential veto and permitting the governor to kill legislation by refusing to act altogether.

[109] 233 Md. 249, 261 (1963).

[110] Richards Furniture Corp. v. Board, 233 Md. 249, 261-62 (1963); Robey v. Broersma, 181 Md. 325, 341 (1943), *modifying on rehearing* 181 Md. 325 (1942).

The Commission believes that the governor, after being given a reasonable opportunity to consider actions of the General Assembly, should be required either to sign bills into law or to veto and return them to the General Assembly during the same session in which they were enacted. To accomplish this purpose the Commission recommends this draft section.

Section 4.17. **Return of Vetoed Bills.**

When the governor vetoes a bill, he shall return it to the General Assembly within ten days of presentation if the General Assembly is in session. A bill that is returned by the governor may be reconsidered by the General Assembly; and if, upon reconsideration, the bill is passed by the affirmative vote of three-fifths of all the members of each house, it shall become law.

Comment:

This draft section provides that the General Assembly will have an opportunity to override the governor's veto of any bill which is passed during the first fifty-three days of a legislative session, at that same legislative session. Under this draft section the governor is required to return each vetoed bill to the General Assembly for its reconsideration within ten days of its presentation to him if the General Assembly is still in session. The result will be that, during the first fifty-three days of each legislative session, all bills enacted either will be signed into law by the governor, will become law because of the governor's failure to either sign or veto the bill, or will be returned to the General Assembly upon the governor's veto.

This draft section omits any provision similar to that in the second paragraph of Article II, Section 17 of the present Constitution, which requires that any bill which is vetoed by the governor after the adjournment of the General Assembly be returned to the General Assembly at its next regular session for possible passage over the governor's veto. The Commission feels that such a provision is unnecessary as the governor will no longer have the power to postpone the presentation of bills to him for his signature. Under the procedure set forth in this draft article the General Assembly will be able to protect its interest in overriding potential gubernatorial vetoes by passing bills during the first fifty-three days of each session.

The provision of this draft section that upon the affirmative vote of three-fifths of all the members of each house the General Assembly may override a gubernatorial veto is the same as that in Article II, Section 17 of the present Constitution.

ADMINISTRATIVE ORGANIZATION

Section 4.18. **Organization of Principal Departments.**

All offices, agencies and instrumentalities of the legislative and executive branches of the state government exercising executive and administrative functions, powers or duties shall be allocated by law among and within principal departments. Regulatory and quasi-judicial agencies shall be assigned by law to either the legislative or executive branch and may, but need not, be established within a principal department. The head of each principal department shall be either a single executive or a board or commission. When a board or commission is at the head of a principal department, a chief administrative officer may be provided for it by law.

Comment:

Experts in the field of public administration have long advocated the following "principles" of administrative organization:

1. Concentration of authority and responsibility in the governor.
2. Functional integration of state agencies.
3. Undesirability of boards for purely administrative work.[111]

The present structure of the executive branch in Maryland fails to comply with these "principles." As former Governor Tawes indicated in a message to the General Assembly on March 22, 1966, there are 148 separate units within the administrative structure of the State; these separate administrative offices are concerned with many of the same problems; and many of the agencies and boards are unaffiliated within the administrative structure with the result that they are beyond the effective direction or supervision of the governor.[112]

The Commission considered for inclusion in a new constitution several provisions designed to remedy the deficiencies in Maryland's administrative structure. First, consideration was given to a provision which would set or limit the number of principal administrative departments which could exist at any one time. The National Municipal League suggests in its *Model State Constitution*[113] that the number be limited, and the constitutions of Alaska, Hawaii, Massachusetts, New Jersey and New York each establish the maximum number at twenty.

The Commission rejected the proposal either that there be a designated number or that a maximum limitation be set. Although the Commission recognizes the need for functional integration of the State's administrative activities into as few units as practicable, it does not believe that a constitutional limitation on the number of administrative departments would accomplish this objective. If the maximum number of administrative units is presently limited to a reasonable number, the limitation may prove too restrictive in the future; and if the maximum number of administrative units is set at a figure which is sufficiently high for future expansion, no purpose is served. The Commission recommends, therefore, that the number of principal departments be established by law.

Nevertheless, the Commission does recommend in this draft section that all offices, agencies and instrumentalities of both the legislative and executive branches of the state government which exercise executive or administrative functions, powers or duties be allocated by law to a principal department. Recognizing that the assignment of regulatory and quasi-judicial agencies to principal departments may raise jurisdictional conflicts, the Commission recommends that these agencies at least be assigned to either the legislative or executive branch by law.

The Commission also considered and rejected for inclusion in a new constitution a provision which would prohibit the establishment of policy-making boards to head principal departments. Although the Commission believes that

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[111] HEADY, STATE CONSTITUTIONS: THE STRUCTURE OF ADMINISTRATION 3 (National Municipal League 1961).

[112] 2 MESSAGES, ADDRESSES AND PAPERS OF J. MILLARD TAWES, GOVERNOR OF MARYLAND 53 (1967).

[113] NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION 71 (6th ed. 1963) (hereafter cited as MODEL STATE CONSTITUTION).

it will usually be preferable for departments to be organized under a single administrative head, it does not believe that having a policy-making board serve as the head of a principal department is always undesirable. The Commission recommends that the question of establishing policy-making boards at the head of principal departments should be determined by law, but that where such a board is the head of a principal department, a chief administrative officer also should be provided for by law.

This draft section, while not specifically structuring the administrative organization of the State, removes from the present Constitution the obstacles to reorganization. This draft section creates no administrative departments.

Section 4.19. **Reorganization of Principal Departments.**

The functions, powers and duties of the principal departments and of the agencies of the State within the legislative and executive branches shall be prescribed by law. The governor may reallocate the functions, powers and duties of the principal departments and of the agencies within the executive branch for efficient administration. Proposed changes in the allocations prescribed by law shall be set forth in executive orders which shall be submitted to the General Assembly within the first ten days of a regular session. A proposed change which is approved, or which is not specifically disapproved or modified by the General Assembly within fifty days after submission, shall become effective on a date designated by the governor and thereafter have the force of law.

Comment:

This draft section places upon the General Assembly the responsibility to prescribe by law the functions, powers and duties of each principal department and agency within either the executive or legislative branches. However, in the case of the executive branch this draft section also empowers the governor to take the initiative in implementing any recommendation for executive reorganization which he desires to make, those which have been made by the Commission for the Modernization of the Executive Branch of the Maryland Government,[114] and any others which may be thought desirable in the future.

When such reorganization requires changes in the allocations of functions, powers and duties which are prescribed by law, the governor must issue an executive order which sets out the proposed changes and must submit his order to the General Assembly within ten days of its next regular session. The General Assembly will then have fifty days within which either to approve, reject, or modify the governor's order. After this time the order will become effective on a date designated by the governor if not previously modified or disapproved by the General Assembly, or the order could become effective earlier if approved by the General Assembly.

Governor Tawes suggested in a message to the General Assembly on March 22, 1966, that the governor be empowered to reorganize the executive branch.[115] The Commission on the Mod-

[114] REPORT OF THE COMMISSION FOR THE MODERNIZATION OF THE EXECUTIVE BRANCH OF THE MARYLAND GOVERNMENT (1967) (hereafter cited as CURLETT COMMISSION REPORT).

[115] 2 MESSAGES, ADDRESSES AND PAPERS OF J. MILLARD TAWES, GOVERNOR OF MARYLAND 53 (1967).

ernization of the Executive Branch of the Maryland Government recommended in its report of January 10, 1967, that the governor be empowered to take the initiative in implementing executive reorganization. That Commission also recommended that gubernatorial proposals for reorganization be submitted to the General Assembly for its consideration and action within a specified period of time; however, that Commission thought that the legislative action on those gubernatorial proposals which were submitted should be limited to approval or rejection and should not include amendment or other modification.[116]

A similar provision for reorganization is suggested by the National Municipal League in its *Model State Constitution*[117] and another is incorporated in the Alaska Constitution.[118] A similar approach to executive reorganization has been followed in the national government and in the states of Michigan, Pennsylvania, and South Carolina as a result of authorizing legislation.[119]

Section 4.20. **Appointment and Removal of Administrative Officers.**

The governor shall appoint each executive serving as the head of a principal department and each chief administrative officer serving under a board or commission which is the head of a principal department, except the head or chief administrative officer of an institution of higher education, of the state public school system, or of a principal department within the legislative or judicial branches. Each gubernatorial appointee shall have the professional qualifications which may be prescribed by law and shall serve at the pleasure of the governor.

Comment:

The Commission recommends this draft section because it believes that the executive power of the State, with all its authority and responsibility, must be concentrated in the governor if there is to be efficient administration and if policy is to be controlled by the electorate. If the executive branch is to have direction, the governor must be able to influence those officials within the executive branch who are responsible to him for executing the administration's programs and policies. The Commission, therefore, recommends that the governor be empowered to appoint and remove at pleasure each executive or administrative head of a principal department within the executive branch.

There is significant support for this recommendation. The Commission on Administrative Organization of the State recommended that all executive and administrative agencies be made directly responsible to the governor.[120] The National Municipal League suggests in its *Model State Constitution* that the governor be given plenary power to appoint and remove department heads within the executive branch.[121] Former Governors Lane, McKeldin and Tawes each testified before the Commission that he favored the governor being given such appointive and removal power.[122]

[116] CURLETT COMMISSION REPORT 9.

[117] MODEL STATE CONSTITUTION 72.

[118] ALASKA CONSTITUTION article III, section 23.

[119] CURLETT COMMISSION REPORT 11-15.

[120] TWELFTH REPORT OF THE [MARYLAND] COMMISSION ON ADMINISTRATIVE ORGANIZATION OF THE STATE 29 (1953).

[121] MODEL STATE CONSTITUTION 72.

[122] Testimony by Governor Lane 7-11. Testimony by Governor McKeldin 7-12. Testimony by Governor Tawes 27-31.

This draft section excepts from its operation the head or chief administrative officer of an institution of higher education or of the state public school system. The Commission believes that public education occupies a unique position among the services rendered by the State. To further academic freedom in public education and to insulate it from the risk of political influence to the greatest practicable extent, the Commission recommends that the constitution not require that the heads of the public educational institutions be subject to appointment and removal by the governor but rather that the appointment and removal of these officials be as prescribed by law.

The Commission considered the danger of the governor using his broad power of removal for partisan purposes and concluded that to some degree a governor is entitled, under the party system, to appoint persons of his own party as chief lieutenants, but that there are also sufficient safeguards against an abuse of his power. First, there is the Maryland tradition against the wholesale removal of principal public officials when there is a change in the office of the governor. Second, this draft section authorizes the General Assembly to establish professional qualifications for the heads or chief administrative officers of principal departments who are subject to appointment and removal by the governor. Should the governor desire to make a change, he must appoint a person who meets the qualifications prescribed by law.

It should be observed that this draft section applies only to the head or chief administrative officer of a "principal department." The appointment and removal of the heads or chief administrative officers of sub-departments would be as prescribed by law.[128]

Section 4.21. **Appointment and Removal of Administrative Boards and Commissions.**

The members of each board or commission which serves as the head of a principal department, except the governing board of an institution of higher education, shall be appointed by the governor and their terms of office shall be prescribed by law in such manner that the governor, upon taking office following his election, shall be able forthwith to appoint at least one-half of them. Such members may be removed as prescribed by law.

Comment:

This draft section empowers the governor to appoint all members of any board or commission which heads a principal department of the executive branch, but not of any board or commission which heads a principal department within the legislative or judicial branches. It should be noted, however, that this power does not extend to appointments to boards which are only advisory.

The Commission recognizes that there are persuasive reasons for insulating some boards or commissions which are the heads of principal departments from an unrestricted power of appointment and removal by the governor. Accordingly, this draft section empowers the governor to appoint some of the members of such boards, but leaves the grounds for their removal to be prescribed by law. Presumably, where a board or commission serves a function which justifies giving it more independence, the General Assembly by law

[128] See draft Section 4.21.

could permit the removal of a member only upon the showing of just cause. On the other hand, it is not contemplated that the General Assembly would categorically deny to the governor the power of removal in the case of every board or commission which heads a principal department.

This draft section assigns to the General Assembly the power to prescribe the terms of office of the members of boards and commissions which head principal departments with the restriction that at least one-half of the membership of each board or commission must be subject to appointment by the governor upon his taking office. This assures that the governor will have the opportunity to appoint enough members to each of these boards upon taking office so as to make them responsive to him and his administrative program and thus, indirectly, responsive to the electorate.

At the same time, the General Assembly has considerable latitude in prescribing staggered terms. The governing boards of state colleges and universities are exempted from the application of this draft section.

Section 4.22. **Appointments and Removals Prescribed by Law.**

The members of the governing board of an institution of higher education, the head or chief administrative officer of an institution of higher education, of the state public school system, or of a principal department within the legislative or judicial branches, and the members of a regulatory or quasi-judicial agency which does not serve as the head of a principal department, shall be appointed and may be removed as prescribed by law.

Comment:

This draft section is the concluding and complementing section for the preceding four. It assigns to the General Assembly the responsibility for prescribing by law the procedure for appointing and removing the members of the governing board of any institution of higher education; the members of any regulatory or quasi-judicial agency which does not serve as the head of a principal department within the executive branch; and the head or chief administrative officer of an institution of higher education, of the state public school system, or of a principal department within either the legislative or judicial branches.

It should be noted that neither this draft section nor the preceding four make mention of the State's merit system. The Commission believes that the merit system for governmental employees below the level of primary policy-makers has become so ingrained in the State's administrative system that specific mention of it in the constitution is unnecessary. Its mention is also undesirable since inclusion would require considerable detail if such a provision is to have any value and this detail could hamper any necessary or desirable revision of the system in the future, thus reducing the flexibility of Maryland's state government under a new constitution.

Section 4.23. **Information from Administrative Officers.**

The governor may at any time require information, in writing or otherwise, from any officer of any executive or administrative department, office, or agency upon any subject relating to that department, office, or agency.

Comment:

This draft section empowers the governor to require information from any officer of any executive or administrative department, office, or agency, to enable the governor to administer the State's affairs with knowledge and to satisfy himself, pursuant to the responsibility placed upon him in draft Section 4.01, that the laws of the State are being faithfully executed. It should be noted that the coverage of this draft section includes any executive or administrative department, office or agency within either the executive, the legislative or the judicial branch. This would not permit the governor to request advisory opinions from any of the State's courts and would not permit the governor to force the disclosure of information by officers of the General Assembly or any of its committees which they otherwise do not desire to disclose; however, it would permit the governor to require information from the administrator of the various courts, the Bureau of Fiscal Research, the Department of Legislative Reference, and other such similar administrative officials and departments within either the legislative or the judicial branch.

This draft section would supersede the provisions of Article II, Section 18 of the present Constitution which requires that the governor semi-annually examine the treasurer and comptroller under oath and inspect their accounts. The present comptroller testified before the Commission that there is no longer compliance with this requirement of the present Constitution.[124]

CLEMENCY

Section 4.24. **Executive Clemency.**

The governor shall have power to grant reprieves and pardons, except in cases of conviction upon impeachment, and to remit fines and forfeitures for offenses against the State. He shall report to the General Assembly in writing, at least annually, of the instances of the exercise of this power.

Comment:

This draft section is essentially the same as Article II, Section 20 of the present Constitution; however, several changes have been made. First, the language of the present Constitution infers that the governor has the power to grant a *nolle prosequi*. Only one instance of the exercise of this power has been found.[125] This draft section does not empower the governor to grant a *nolle prosequi*. The Commission believes that the governor should not be authorized to intervene in criminal proceedings until the criminal prosecution has ended.

Former Governors Lane, McKeldin and Tawes testified before the Commission that they did not believe that a governor should have the power to grant a *nolle prosequi* and that they had not realized that the power existed in the governor under the present Constitution.

The requirement of newspaper publication of the governor's actions with respect to the granting of *nolle prosequi* and pardons is deleted because the Commission believes that the requirement that the governor report to the General Assembly on the exercise of his power to grant reprieves and pardons will afford sufficient publicity.

[124] Testimony by Comptroller Goldstein 71.

[125] Maryland v. Morgan, 33 Md. 44 (1870).

The Commission considered whether the governor should be authorized to delegate his power of clemency and concluded that such an authorization would not be desirable. The Commission believes that the governor alone should bear the responsibility for making the final decision as to the exercise of his power of clemency, although he will undoubtedly continue to receive expert advice in such matters.

ARTICLE V. JUDICIAL BRANCH

Introductory Comment:

The judicial process in Maryland, built upon the common law tradition, has its roots deep both in early Maryland history and in English history. Since the judicial practices of the State and many features of its judicial organization are outgrowths of historical precedent and constitutional provisions, a knowledge of the development of the State's judicial system would be helpful to an understanding of the present judicial structure. However, a complete review of the growth of the judicial branch, although desirable, would require more space than is here available. Accordingly, reference must be made to other sources for more detailed information.[126]

In the early years of proprietary government in Maryland, the governor, as the direct representative of the Lord Proprietary, performed all the judicial functions personally. This burden very quickly became too great and, as a result, county courts were established. The County Court of St. Mary's became the chief court in the Province and was known as the Provincial Court. As the need arose, counties, which were in essence judicial districts, were created from time to time and the number of county courts increased. A Chancery Court and an Admiralty Court also came into existence.

This sytem was in part continued and in part changed by the Constitution of 1776. That Constitution explicitly prohibited judges from holding any other governmental position, provided that they were to be appointed by the governor with advice and consent of a newly created five-member Advisory Council and that they could be removed only for misbehavior or by the legislature upon request of the governor. The Constitution of 1776 also established the Court of Appeals as a court separate from the trial courts. The Provincial Court was replaced by the General Court, composed of three judges, and having both original jurisdiction and some appellate jurisdiction. It was Maryland's single experiment with an intermediate court of appeals until 1966.[127]

Although county courts were recognized by the 1776 Constitution, the details of their organization were left to the General Assembly. In 1790, the General Assembly provided that the county courts would be composed of a chief judge and two associate judges who would hold their offices during good behavior. Only the chief judges were required to be trained in the law.

The Constitution of 1776 also provided that justices of the peace were to be appointed by the governor with the approval of the Advisory Council; and they could hear petty cases. Here it should be noted that under its new constitutional authority, the General Assembly abolished the old probate arrangement, consisting of the commissary-general and his county deputies, and assigned all probate duties to orphans' courts for each county. These

[126] BOND, THE COURT OF APPEALS OF MARYLAND, A HISTORY (1928); BYRD, THE JUDICIAL PROCESS IN MARYLAND (Univ. of Md. Bureau of Governmental Research 1961); HALL, BALTIMORE: ITS HISTORY AND ITS PEOPLE (1912).

[127] Acts of 1966, chapter 10, ratified Nov. 8, 1966.

courts have survived until the present time with a few organizational changes.

The Constitution of 1776 was amended in 1805 to divide the State into six judicial districts, two of which were situated on the Eastern Shore and four on the Western Shore. It was provided that each district should have three judges, each of whom was required to be a continuing resident of the district for which he was appointed. One of the three judges in each district was designated as chief judge, and the three judges together composed the several county courts for the counties situated in the particular district. Judges held their commissions during good behavior.

The 1805 amendment also provided that the six chief judges of the districts should collectively constitute the Court of Appeals. With the abolition of the General Court, the appellate jurisdiction which it formerly held was added to that of the Court of Appeals.

By 1851, much opposition had arisen to what was in effect life tenure for judges and to their selection by appointment. Tenure was limited in most states prior to such action in Maryland.[128]

The Constitution of 1851 abolished the appointive method of selecting judges and, for the first time, provided for the election of law judges. The state judges were elected for ten-year terms while inferior judges, such as those for the orphans' courts, were elected for shorter terms. The Court of Appeals was assigned only appellate duties. Four districts were created solely for the purpose of geographical representation on this Court and a judge was to be elected from each district. The chief judge was designated by the governor with the advice and consent of the Senate.[129]

The 1851 Constitution replaced the old 1805 district courts of general original jurisdiction with circuit courts, divided the State into eight judicial circuits for which one judge was to be elected for each circuit, except the fifth (Baltimore City) which was authorized to have additional judges. The judges of each circuit were directed to sit in each county of the circuit as the circuit court for the particular county. This has given Maryland its unusual, and to non-Marylanders, confusing system of county courts which are legally divisions of the circuit courts.

A new judicial organization was created for Baltimore City when it was separated from Baltimore County by the Constitution of 1851. The new structure included the Court of Common Pleas, the Superior Court, and the Criminal Court. The Orphans' Court and justices of the peace were also continued. The General Assembly was authorized to create an additional court for Baltimore City, which it did in 1853 by establishing the Circuit Court of Baltimore City with jurisdiction in equity cases.

The Constitution of 1851 also provided that each county and Baltimore City was to elect three judges of the Orphans' Court to serve four-year terms. These judges were not required to be lawyers, just as they are not required to be lawyers today.

The 1864 Constitution increased the term of office of appellate and general

[128] BYRD, THE JUDICIAL PROCESS IN MARYLAND 10 (Univ. of Md. Bureau of Governmental Research 1961).

[129] In 1944 the similar provision of the 1867 Constitution was amended to provide that the governor alone should designate the chief judge of the Court of Appeals. Acts of 1943, chapter 772, ratified Nov. 7, 1944.

jurisdiction judges from ten to fifteen years. The Court of Appeals was reorganized to consist of five judges elected from five judicial districts by the voters of the entire State. The eight judicial circuits were reorganized into thirteen circuits. Justices of the peace were no longer to be elected, but were to be appointed by the governor with the approval of the Senate.

The 1867 Constitution again made changes in the State's judicial system. Because of a feeling that the Court of Appeals had become too technical, that Constitution specified that the Court of Appeals should consist of eight judges, seven of whom should be the chief judges of the first seven of the judicial circuits and should thereby also serve as circuit judges. It was provided that the eighth member of the Court of Appeals should be a judge elected from Baltimore City who should not have any other duties.

The 1867 Constitution designated Baltimore City as the eighth judicial circuit and created in the City five courts in addition to another "court," called the Supreme Bench of Baltimore City, which was given special jurisdiction in certain matters. In 1888 the General Assembly created a second equity court for Baltimore City, called the Circuit Court No. 2, having concurrent jurisdiction with the Circuit Court.

The 1867 Constitution continued the tenure of judges of the Court of Appeals and the circuit and Baltimore City trial judges at fifteen years; however, it proscribed judges from serving after reaching the age of seventy except with the consent of the General Assembly. This authorization to the General Assembly to continue a judge in office after age seventy was later removed. The Constitution also made judges removable by the governor upon conviction in a court of law or upon address of the General Assembly.

The Constitution of 1867 conferred upon the governor the power to appoint a judge to fill a vacancy. The appointee was to serve until the next general election when his successor was to be elected. In 1881 an amendment was adopted providing for an election of judges every fifteen years beginning in 1882, but vacancies were to be filled by appointment by the governor as before. The fewer elections amendment of 1922 eliminated the special elections for judges every fifteen years and in 1944 another amendment provided that judges appointed by the governor to fill vacancies should hold office until the first biennial general election for Representatives in Congress after the expiration of the term of fifteen years (if the vacancy occurred in that way), or the first such general election after one year after the occurrence of the vacancy in any other way than through the expiration of such term. In consequence of these last two amendments, practically every judge is first appointed to the bench by the governor and in only a relatively few instances in recent years has a judge first ascended the bench as a result of being elected to that office.

SIMPLIFICATION OF COURT STRUCTURE

In July, 1938, the American Bar Association adopted a recommendation which goes to the core of efficient judicial administration:

> "[P]rovision should be made in each state for a unified judicial system with power and responsibility in one of the judges to assign judges to judicial service so as to relieve congestion

of dockets and utilize the available judges to best advantage."[130]

The simplification of court structure will provide a basic framework within which the overall administration of justice can most effectively function. This framework should include an appellate court of final resort, an intermediate court of appeals, a trial court of broad and general jurisdiction and a trial court of limited jurisdiction.

There is, of course, no single or uniform pattern of court integration and simplification. Proposals in some states go beyond those endorsed by the American Bar Association in its Model Judicial Article for State Constitutions.[131] In some states the trial courts, both general and subordinate, are being integrated into a single entity containing various levels or categories of judgeships and an internal distribution of functions accordingly.[132] Examples of this approach are the circuit courts of unlimited trial jurisdiction in Illinois[133] and the circuit court of unlimited trial jurisdiction recommended by the Judicial Study Commission in Indiana.[134] However, the prevailing trend appears to favor a two-level system of trial courts as exemplified in Connecticut, Wisconsin, Alaska, Hawaii and North Carolina.[135]

In recommending a unification and simplification of the judicial system for Maryland, the Commission has sought to maintain the independence of the judge, while at the same time providing an efficient system for dispensing justice. While the Commission realizes that an efficient judicial system requires the implementation of a modern system of "management," it also believes that the power of court management should be vested primarily in the judiciary in order to ensure the retention of these standards.

The Commission has also sought to utilize the advantages of unification, integration and specialization. Experience in other states indicates that these three objectives can be achieved and will work admirably together since they are not mutually exclusive. The Commission, therefore, recommends a system that functions as one unit, utilizes unified trial courts and provides ample opportunity for specialization. The proposed system, while clearly defined, is extremely flexible so that the basic structure in organization can expand to meet changing needs.

This draft article on the Judicial Branch is divided basically into three parts: the structure of the court system; the selection, tenure, and removal of judges; and the administration of the courts.

[130] 63 AMERICAN BAR ASSOCIATION REPORTS 523 (1938).

[131] AMERICAN BAR ASSOCIATION SECTION OF JUDICIAL ADMINISTRATION, THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE 119 (4th ed. 1961).

[132] AMERICAN BAR ASSOCIATION SECTION OF JUDICIAL ADMINISTRATION, THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE 7 (4th ed. 1961); KARLEN, JUDICIAL MODERNIZATION: WHAT OTHER STATES HAVE DONE 111 (The Institute of Judicial Administration 1964).

[133] ANNUAL REPORT OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS (1964).

[134] REPORT OF THE INDIANA JUDICIAL STUDY COMMISSION (1966).

[135] For a detailed discussion of extensive revision of a state's judicial system see THE JUDICIAL DEPARTMENT ACT OF 1965 (a series of explanatory articles from *Popular Government* reprinted by the North Carolina Courts Commission, 1966).

STRUCTURE OF THE COURT SYSTEM

This draft article recommends a unified judicial system consisting of four courts: the Supreme Court, the Appellate Court, the Superior Court, and the District Court. The types of cases which each court would hear and the extent of review which the initial decision in any given case would have would be determined by law. This concept would, the Commission believes, establish a judicial branch in the true sense of the word.

By eliminating the old concept of separate, autonomous courts, the administration of justice can be greatly improved while at the same time, the judges' traditional intellectual and judicial independence is preserved. The Commission believes that by closely linking the judges of both appellate and both trial courts into one working unit, many of the problems of the State's present judicial system can be eliminated.

The Court of Appeals, which the Commission recommends be renamed the Supreme Court, is firmly established as the final and highest appellate court in the State. The Commission recommends that the number of justices be prescribed in the Constitution and that the Supreme Court be given the rule-making power for the judicial system but that its jurisdiction be that prescribed by the General Assembly by law.

The Commission recommends the continuation of the Court of Special Appeals under the name the Appellate Court as the intermediate court of appeals. This court would have the jurisdiction prescribed by law and would be composed of no fewer than five judges; however, the number of judges would be left flexible so that changes can be made to meet the needs of the future. Provision has been made to allow this court to sit in panels of no fewer than three judges.

The Commission recommends that there be a statewide trial court of general original jurisdiction which is uniform throughout the State. It would be called the Superior Court and would have such number of judges as are necessary to conduct the business of the court, but the Constitution would assure that there would be at least one Superior Court judge resident in each county.

The Commission recommends that there also be a statewide trial court of limited original jurisdiction which is uniform throughout the State. The State would be divided into districts composed of one or more entire and continuous counties and this court would be called the District Court. Again, the number of judges is left flexible above the requirement that there be at least one district court judge resident in each district.

SELECTION OF JUDGES

At the close of its 1966 session, the General Assembly had pending before it proposals by the Maryland State Bar Association and the Maryland Judicial Selection Council for amending the State Constitution with regard to the method of selecting judges.[136] These proposals were embodied in a bill which was passed by the House of Delegates but was not passed by the Senate. Instead, the bill was returned by the Senate to its Committee on Judicial Proceedings so that the bill could be referred to the Constitutional Convention Commission for its study and consideration. The Commission's recommendations with respect to the proposals embodied in this bill will be discussed in

[136] House Bill 418 (1966).

detail under the draft sections on judicial selection, removal and tenure.

In an otherwise general draft article, a detailed procedure for the selection of judges is set forth. The governor is restricted in making judicial appointments to a limited number of nominees who will be nominated by a nonpartisan commission. This procedure, coupled with periodic non-competitive elections for continuation in office and power in the highest court to remove members of the judiciary for misconduct, is designed to obtain the best qualified persons for judicial service, to have them independent and impartial during their service, and to permit expeditious removal from office if and when necessary.

ADMINISTRATION OF THE JUDICIAL SYSTEM

The Commission debated at length whether the power to provide for the administration of the judicial system should be vested solely and exclusively in the judiciary or in the General Assembly or in both. The Commission believes that broad management powers should be firmly vested in the judges of the State but it recognizes that there are many other matters connected with the administration of the judicial system which should not be determined solely by the judges.

Budgetary matters, the determination of salaries and pensions of judges, clerks and other court officials, the acquisition and maintenance of law libraries, and similar matters must either be determined by the General Assembly or determined in such other manner as is prescribed by the General Assembly by law. Providing for physical accommodations for courts and court officials such as courtrooms, jury rooms, clerks' offices, sheriffs' offices and other facilities usually found in court houses is also not an appropriate function of the judicial branch. These facilities today are usually provided by the counties and the City of Baltimore but they may in the future be provided by the State.

In many ways the duties and functions of all three branches of government overlap in the administration of the judicial system but this has not occasioned any irreconcilable conflicts in the past and the Commission does not believe that it will result in insurmountable problems in the future. On the other hand, the Commission believes that it should be made clear that the final and ultimate responsibility for an efficient operation of the judicial system rests with the judiciary. For these reasons, the Commission recommends that the Supreme Court by rule and the General Assembly by law have concurrent power to prescribe regulations governing administration of the courts, officers of the judicial branch, and officers of the executive branch to the extent that their duties directly relate to the enforcement of judicial orders. In the event a law and a subsequent rule providing for such administration should conflict, then the rule controls.

Within the judicial branch the primary and overall responsibility for the administration of the judicial system is placed upon the chief justice of the Supreme Court, but the chief administrative officer of the entire system is the chief judge of the Superior Court who acts under the supervision of the chief justice of the Supreme Court and is assisted in the administration of the District Courts by the chief judge of the District Court.

Early in the life of the Commission the Maryland State Bar Association ap-

pointed a special committee to work with the Commission and representatives of this committee met regularly with the Commission's Committee on the Judicial Department to discuss the Commission's recommendations.[137] This Committee reported to the 1967 mid-winter meeting of the Maryland State Bar Association and recommended the endorsement of the Commission's recommended draft article on the judicial branch. With an almost unanimous vote the Maryland State Bar Association at that meeting endorsed the basic principles of this draft article.

The Maryland Judicial Conference also appointed a committee to work with the Commission.[138] Representatives of this committee met regularly with the Commission's Committee on the Judicial Department and representatives of the Commission made a report to the Maryland Judicial Conference at its semi-annual meeting in February. The Judicial Conference also approved in principle almost all of the recommendations of this draft article.

[137] Judge Joseph Sherbow was named chairman of a 35-member committee to study the Commission's recommendations on all proposals. This committee was known as the Committee on Maryland Constitutional Revision of the Maryland State Bar Association. Judge Sherbow in turn appointed Judge J. Dudley Digges as chairman of a subcommittee to give further attention to the Commission's recommendations on the judicial branch. This subcommittee was known as the Subcommittee on Maryland Judicial System of the Maryland State Bar Association.

[138] Judge Ralph W. Powers was named chairman of a six-member subcommittee to be a liaison with the Commission. This subcommittee was known as the Subcommittee of Judges for Liaison with the Committee on the Judiciary Department of the Constitutional Convention Commission.

The Court Clerks Association[139] and the Register of Wills Association[140] each appointed committees to study the Commission's recommendations with respect to the judicial branch. Representatives of each met on occasion with the Commission's Committee on the Judicial Department and with other representatives of the Commission to discuss the Commission's recommendations.

Although the Commission's Committee on the Judicial Branch has done a great deal of work, held extensive hearings, and had numerous meetings with interested groups, the Commission has not had the personnel or means to conduct a thorough-going investigation of the operation of the present judicial system of Maryland. At the request of the Commission, such a study has been undertaken by the Institute of Judicial Administration, Inc., financed by a grant from a private foundation.[141] This study is expected to be published by September 1, 1967 and will be made available to the Constitutional Convention.

THE ORPHANS' COURTS AND REGISTERS OF WILLS

This draft article does not provide for a continuance of the orphans' courts in the judicial system of the State nor does the Commission recommend the continuance of the registers of wills as officers provided for in the Constitution. It will be for the General Assembly to prescribe by law the court and the officials in the judicial branch who are to

[139] Maryland Court Clerks' Association, Frank W. Hales, President.

[140] Maryland Register of Wills Association, Thomas L. Adams, President.

[141] The necessary funds for this study have been made available by The William G. Baker, Jr. Memorial Foundation, a Maryland foundation.

perform the probate functions now performed by the orphans' courts and the registers of wills.

The Commission contemplates, however, that the General Assembly will provide by law that the judicial and administrative duties now performed by the orphans' courts will be performed by the Superior Court and the purely administrative functions now performed by the register of wills will be performed by the clerks of the courts. The Commission has purposely not recommended for inclusion in the constitution the details of such an arrangement because it believes that in broad outline the arrangement should be prescribed by law and the details left to be worked out by rule of the Supreme Court and by administrative practice.

Although the Commission does not recommend the continuance of the registers of wills as constitutional officers, it does not at all contemplate that the existence of the registers of wills as officers of the State performing valuable and necessary administrative and semi-judicial duties will cease. Neither does the Commission anticipate that the judges of the Superior Court will be called upon to perform the numerous administrative duties now performed by the judges of the orphans' courts. What no doubt will evolve is a system under which the registers of wills, under that or some other name, will continue as the heads of divisions of the clerks' offices, and the Superior Court will no doubt delegate to administrative assistants, similar to masters in chancery and perhaps called "masters in probate," most of the administrative functions and duties now performed by judges of the orphans' courts. This will leave to the judges of the Superior Court the performance of the duties and functions of the judges of the orphans' courts which are clearly judicial in nature.

Similarly, the Commission does not contemplate that the present registers of wills and their deputies will no longer be performing their important functions after the new constitution takes effect and after their present terms of office end. The present personnel, whose experience and knowledge of probate matters acquired over a long period of years are very great, will undoubtedly be continued in office. The Commission believes that the change recommended by it will result in the increased stature for the probate division of the judicial system which its importance deserves and requires.

The Commission's recommendation that no provision be made in the new constitution for orphans' courts or registers of wills, and that all the details be determined by legislation and rule of the Supreme Court is also in part a recognition of the fact that the administration of the probate system varies widely throughout the State. What may be required in Baltimore City and the large urban counties where the probate business is of tremendous volume will differ quite substantially from what may be needed in the rural or less populated counties of the State. By leaving these matters to be determined by legislation and by rule of court, the Commission seeks to achieve the desired and necessary flexibility.

Consolidation of the orphans' courts with the court of general trial jurisdiction has been urged and recommended for more than fifty years by every group which has ever studied the probate system of the State. Time and space do not permit a full discussion of the matter here, but it is desirable to review briefly

the history of the efforts to abolish the orphans' courts in the past twenty-five years.

In 1941, upon the request of the Maryland State Bar Association, Governor Herbert R. O'Conor appointed a Commission to consider the entire judiciary article of the Constitution. The Commission consisted of fifteen distinguished jurists and lawyers and its chairman was Carroll T. Bond, Chief Judge of the Court of Appeals. This Commission, popularly known as the Bond Commission, made a thorough and comprehensive study of the State's judicial system and recommended the adoption of certain amendments to the Constitution. Among other things, the Commission unanimously recommended that the orphans' court of the State be abolished and that their probate and administrative functions be transferred to the circuit courts in the counties and to the Superior Court of Baltimore City.

The State Bar Association endorsed the Bond Commission's recommendations regarding the orphans' courts and the proceedings of the Association throughout the ensuing years reflect continued approval of the recommendations of the Bond Commission. There was, in fact, awareness that the whole probate system was in need of study and re-evaluation. Thus, in 1945 a special advisory committee on improvement of probate statutes was appointed to cooperate with the special study being undertaken at that time by a committee of the American Bar Association.

In 1947 Chief Judge Ogle Marbury of the Court of Appeals delivered an address before the State Bar Association in which he traced the history of the orphans' courts and strongly urged their abolition.[142] Judge Marbury noted that the recommendations of the Bond Commission had twice been approved by the State Bar Association, and at the conclusion of his address said:

> "[A]ll lawyers know the danger, the delay and the added expense of having legal decisions made by laymen. The average individual does not realize how much easier, how much less expensive and how much more effective would be the administration of estates under the method proposed by the Bond Commission. The average individual, as a matter of fact, does not know anything about it. But when he is made to understand that at least 90 per cent of the orders signed by Orphans' Courts are merely matters of form which could be just as easily signed by the Register of Wills, he would see no reason for paying salaries to 72 extra state officials for doing this work. And when he understands that in the remaining cases important questions of law have to be decided by individuals who have no legal training, he will begin to wonder why we have kept this system so long. The reasons which caused its adoption no longer exist, and it will be changed as soon as the public realizes that it is kept solely to provide offices."[143]

One recurring objection to the proposal of the Bond Commission was that the circuit courts would be overburdened by a transfer to them of the judicial duties of the orphans' courts. In 1948 the final report of the State Bar Association Committee on Abolishing the Orphans' Courts contained an analysis of

[142] 52 TRANSACTIONS OF THE MARYLAND STATE BAR ASSOCIATION 241-58 (1947).

[143] 52 TRANSACTIONS OF THE MARYLAND STATE BAR ASSOCIATION 258 (1947).

the volume of work of the orphans' courts and of the *nisi prius* judges in the counties and in Baltimore City. The Committee recommended that the State Bar Association take such action as was necessary to bring about the abolition of the orphans' courts, noting that:

> "As every lawyer knows, the vast majority of the work of the Orphans' Courts is administrative in character and performed by the Register of Wills. The proposal to abolish those courts comprehends no change in that respect so the slight additional work which will fall upon the county circuit judges is patently most insignificant and, when added to their existing duties, will cause little impact. So far as your Committee is advised, not a single county judge entertains any contrary opinion."[144]

In 1951 a report of another committee of the State Bar Association said:

> "While your Committee strongly advocates such abolition [of the Orphans' Courts], we are satisfied that the failure of the Legislature to pass the necessary enabling legislation is based upon political considerations which would not be satisfied by any change in constitutional procedure for determining the number of circuit or appellate judges."[145]

In a report in 1950 the State Bar Association Joint Committee on the Abolition of the Orphans' Courts and One Sitting Judge for Each County said:

> "The abolition of the Orphans' Courts and the substitution therefor of the administrative and judicial machinery as proposed in the Report of the Committee on the Abolition of the Orphans' Courts heretofore made to this Association is highly desirable and should be pressed by this Association."[146]

Article IV, Sections 20 and 40 of the present Constitution were amended in 1964 so that orphans' court judges are no longer elected in Montgomery County, and since November 8, 1966, the Circuit Court for Montgomery County has exercised all the power, authority and jurisdiction formerly exercised by the Orphans' Court of Montgomery County.

In 1966 the General Assembly considered a bill which proposed an amendment to the Constitution to permit the General Assembly to transfer the functions of the orphans' court in any county (but not in Baltimore City) to the circuit court of that county. The bill, however, was not enacted into law.

Section 5.01. **Judicial Power.**

The judicial power of the State is vested exclusively in a unified judicial system composed of the Supreme Court, the Appellate Court, the Superior Court and the District Court.

Comment:

This draft section would for the first time bring all the courts of the State into a unified judicial system. Maintenance and support of the system would become the exclusive responsibility of

[144] 53 TRANSACTIONS OF THE MARYLAND STATE BAR ASSOCIATION 121, 128 (1948).

[145] 56 TRANSACTIONS OF THE MARYLAND STATE BAR ASSOCIATION 32, 37 (1951).

[146] 55 TRANSACTIONS OF THE MARYLAND STATE BAR ASSOCIATION 267, 268 (1955).

the State. The system would be under the administrative control of the Supreme Court and its chief justice.

At the present time, particularly at the level of trial magistrate courts, the responsibility for judicial salaries, staff and quarters is an extremely complicated combination of divided state and local responsibility. Even at the level of the present circuit courts, there is a practice of local supplementation of judicial salaries which precludes uniformity. The local disparities become even greater when the staffs are considered.

With centralized control under a unified system, it is expected that a more equitable and balanced system can be achieved and maintained. This goal was one of the strongest recommendations made to the Commission by the Maryland State Bar Association's special committee appointed to work with the Commission.

The proposed structure has four levels of courts: a highest appellate court, an intermediate appellate court, a trial court of general jurisdiction, and a trial court of limited jurisdiction. The two trial courts will each be a single, statewide court, divided into various divisions.

The Supreme Court will be comparable to the present Court of Appeals. The Appellate Court is comparable to the Court of Special Appeals which was created pursuant to a constitutional amendment adopted at the 1966 general election. The function of a court at this level is to hear and thereby reduce the large number of cases which would otherwise be appealed to the Supreme Court by reason of the increase in the number of appeals, particularly in criminal cases.

The Superior Court would be a consolidation into one statewide court of all the present circuit courts of the counties and all the courts which constitute the Supreme Bench of Baltimore City. At the present time there are three separate courts in Baltimore City exercising general jurisdiction in civil law cases, two separate courts exercising general jurisdiction in equity cases, and a third court exercising general jurisdiction in criminal cases. The judges at this level in Baltimore City also comprise a seventh "court", known as the Supreme Bench of Baltimore City, which has very limited jurisdiction. The effect of the present proposal is to consolidate these separate courts with the circuit courts of the counties into a single, statewide court.

The District Court, a court of limited jurisdiction, is the court at the level comparable to the trial magistrate system, the people's courts in certain counties, and the People's Court and Municipal Court of Baltimore City. The Commission recommends that all these courts be abolished and that jurisdiction at this level be exercised by full-time judges who are attorneys and who have tenure.

A court of limited jurisdiction is of unlimited importance. Chief Justice Charles Evans Hughes pointed out that, "justice in the minor courts—the only courts that millions of our people know—administered without favoritism by men conspicuous for wisdom and probity is the best assurance of respect for our institutions."[147]

The District Court recommendation of the Commission is, in all material

[147] Quoted in AMERICAN BAR ASSOCIATION SECTION OF JUDICIAL ADMINISTRATION, THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE 95 (4th ed. 1961).

respects, consistent with the proposal overwhelmingly endorsed by the Maryland State Bar Association at its 1966 annual meeting, and with recommendations of the Maryland Judicial Conference of Judges of Courts of Limited Jurisdiction.

The Commission recommends that the present jurisdiction of the orphans' courts, which includes the supervision of the administration of decedents' estates and of guardianships, be vested in the Superior Court. At present, judges of the orphans' courts are not required to be attorneys, and often are not. Many of the duties of these courts are ministerial. Because of the limited jurisdiction of the orphans' courts, the judges of the orphans' courts often cannot deal with many of the problems which arise in cases before them. The Commission's proposal recognizes the importance of the matters dealt with by orphans' courts and recommends that they be handled in the same manner as are other complicated legal issues.

The vesting of judicial power exclusively in the four courts is not intended to limit the conferral by law of quasi-judicial functions and powers upon administrative agencies.

The Commission deliberated at length about what names should be assigned to each of the four courts. It attempted to use names which would be descriptive of the functions of the courts. There were suggestions that the historical names be retained both because of custom, familiarity, and convenience and because it might prove to be awkward to change the name of the highest court, in particular, in citations. With regard to the Appellate Court it was argued that the name "Appellate Court" might be confused with the former name of the highest appellate court, the Court of Appeals.

On the other hand, those who advocated the new names pointed out that most states[148] use the name "Supreme Court" to denote the state's highest appellate court and that, as a consequence, most citizens throughout the nation tend to refer to Maryland's highest appellate court as the "Supreme Court." Indeed, the Commission's Committee on the Judiciary Department concluded that, because of the widespread usage of "Supreme Court" elsewhere and because the name is applied to the highest court of the United States, most Marylanders themselves believe that the name of the State's highest appellate court is already the "Supreme Court."

The name "Appellate Court" was advocated and selected because it is shorter than "Intermediate Court of Appeals" or "Court of Special Appeals" and is sufficiently distinct from the "Court of Appeals" as to avoid confusion with the former name of the State's highest appellate court.

The name "Superior Court" is advocated and selected to designate the general trial court, both because the name is used widely[149] throughout the nation with regard to such state courts of general jurisdiction, and because the Commission wants to emphasize the unification of the circuit courts. Moreover, the name "circuit" would no longer be appropriate for a single statewide court. A new name is thought most appropriate for this court since it will, in fact, be a new court.

A name for the statewide court of

[148] INDEX DIGEST 275.

[149] THE BOOK OF THE STATES 114.

limited jurisdiction posed the most difficult name-giving problem of all since this court will also be an entirely new court. By the process of elimination the name "District Court" was selected and is recommended for this statewide court.

THE SUPREME COURT

Section 5.02. **Jurisdiction of Supreme Court.**

The Supreme Court shall be the highest court of the State and shall have the jurisdiction prescribed by law.

Comment:

This draft section provides that the jurisdiction of the Supreme Court shall be as prescribed by law. The Commission first considered recommending that the court's jurisdiction be only appellate. However, the Commission proposes that original jurisdiction over reapportionment and other special cases be placed in this court, and the General Assembly may want to give it original jurisdiction in other special matters. In any event, the power to remove judges, given to the Supreme Court in draft Section 5.25 may be an exercise of original jurisdiction. Since the jurisdiction is flexible, it is thought necessary to insert a statement that the Supreme Court be the highest court of the State, so that the structure can not be inverted and provision be made by law for appeals from the Supreme Court to the Appellate Court.

Some persons suggested that the recommendation that jurisdiction be prescribed by law is unwise because it would allow the General Assembly to strip the Supreme Court of jurisdiction in all cases, except in one minor area. The Commission does not believe that this is a significant danger. Article IV, Section 14 of the present Constitution now provides that the jurisdiction of the Court of Appeals shall be "as prescribed by law." In any event, to prevent a divesting of jurisdiction, the constitution would have to include a conferral of appellate jurisdiction in enumerated cases. Such an enumeration creates greater difficulty than the problem it seeks to cure.

Section 5.03. **Composition of Supreme Court.**

The Supreme Court shall be composed of seven justices. Five justices shall constitute a quorum, and the concurrence of four shall be necessary for the decision of a case.

Comment:

This draft section prescribes that the Supreme Court shall continue to be composed of seven justices. A specific number is set in the constitution to prevent "packing." A quorum of the court is set at five, and the concurrence of four is necessary for a decision. These requirements mean that the concurrence of a majority of the entire court will be needed to decide any case. The Commission does not contemplate that a panel system will be used, but rather it believes that the tradition of argument before the full court, which prevailed before the present five-member panel plan was adopted, should be restored.

The Commission's research indicates that an express provision for the issuance of writs in aid of the court's jurisdiction is unnecessary since the power is inherent in the court.

Section 5.04. **Chief Justice.**

The governor shall designate one of the justices of the Supreme Court to be chief justice for the remainder of his service on the court, or until he resigns the office of chief justice. During a vacancy in the office of chief justice, or during a period, as determined by the Supreme Court, when the chief justice is unable to serve, the associate justice senior in service on the Supreme Court shall have the powers and duties of the office of chief justice.

Comment:

Since powers and duties are vested in the office of chief justice, it seems necessary to make specific provisions for the devolution of these functions in case of vacancy or incapacity. The question of incapacity is to be determined by the majority of the justices of the Supreme Court.

This draft section empowers the governor to appoint the chief justice from the ranks of those justices serving on the court. This method of selecting the chief justice is the same as that prescribed in Article IV, Section 14 of the present Constitution. Nine other states follow the same practice of authorizing the governor to select the chief justice. In nine states the chief justice is elected in a general election. In eight states the bench of the highest court selects its own chief justice. Four states authorize their general assemblies to elect the chief justice; while in nineteen states the constitution or law designates the chief justice in terms of some characteristic of his length of service on the highest court.[150]

The Commission has heard no suggestion that the means of selecting the chief justice be altered and it, therefore, recommends that the historical means of selection be continued.

THE APPELLATE COURT

Section 5.05. **Jurisdiction of Appellate Court.**

The Appellate Court shall have the jurisdiction prescribed by law.

Comment:

This draft section, like the constitutional amendment which was adopted at the 1966 general election to establish an intermediate court of appeals, merely authorizes the General Assembly to confer jurisdiction on the Appellate Court. It is anticipated that the General Assembly will initially confer the same jurisdiction on this court as is provided for the new Court of Special Appeals.[151] However, the jurisdiction could readily be changed by law.

The Supreme Court must remain the court entrusted with the final decision on all important questions of law. From this it naturally follows that certain questions of law—those clearly not of interest to the State as a whole, or those whose determination is of interest only to the litigants—should be left for final resolution in the Appellate Court.

A fair and equitable division of labor must be maintained between the two courts so that there will be a final disposition of all cases on appeal without delay. To achieve this goal, rigid juris-

[150] THE BOOK OF THE STATES 122.

[151] Acts of 1966, chapter 11.

dictional allocations of cases between the two courts by statute should be avoided, and authority should be vested in the Supreme Court to adjust case loads equitably by rule or by exercising its discretion.[152]

Section 5.06. **Composition of Appellate Court.**

The Appellate Court shall be composed of no fewer than five judges, as prescribed by law. The Appellate Court may sit in panels of no fewer than three judges in each case, as prescribed by rule.

Comment:

This draft section provides that the Appellate Court shall be composed of no fewer than five judges. This initial composition is the same as that of the Court of Special Appeals. The number of judges can be increased by law.

The provision for the use of panels is permissive. If panels are not used, a majority of the entire court would be needed for decision. Since panels, however, are expressly permitted without qualification as to the number needed for a decision by a panel, a majority of a panel can render a final judgment. The provision for a panel means not only that as few as three judges may sit in any case at any time, but also that the court may be divided on a regular basis into panels which serve specific geographic areas, or which hear cases involving specific subject matters.

The Commission recommends that the determination of whether, and to what extent, panels should be created should be determined by rule of the Supreme Court, following the general approach that matters of internal administration should be left to the rule-making power of the Supreme Court.

THE SUPERIOR COURT

Section 5.07. **Jurisdiction of Superior Court.**

The Superior Court shall have original jurisdiction in all judicial proceedings, except as otherwise prescribed by this Constitution or by law, and shall have such other jurisdiction as is prescribed by law. Jurisdiction of the Superior Court shall be uniform throughout the State.

Comment:

This draft section provides that the Superior Court shall be the repository of original general jurisdiction in all "judicial proceedings," which include not only general civil and criminal cases and controversies, but also probate proceedings.

It is necessary to except jurisdiction "as otherwise provided by this Constitution or by law" to complement the allocation of original jurisdiction to the Supreme Court in reapportionment and removal cases and to enable the General Assembly to confer original jurisdiction on the District Court in specified types of cases. The Commission also believes that it is desirable to provide that the Superior Court shall have such other jurisdiction as may be prescribed by law since the Superior Court will undoubtedly be vested by law with jurisdiction in cases which are not an exercise of

[152] See REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION, 70 TRANSACTIONS OF THE MARYLAND STATE BAR ASSOCIATION 244 (1965). For a detailed discussion on the establishment of a new intermediate court of appeals and its jurisdiction, see also REPORT OF THE COURTS COMMISSION TO THE NORTH CAROLINA GENERAL ASSEMBLY (1967).

original jurisdiction, such as appeals from the District Court and appeals from certain administrative agencies. In addition, it is unclear whether the power to review and revise criminal sentences, which may be placed in the Superior Court, is an exercise of original jurisdiction.

The requirement of uniform jurisdiction complements a similar provision for the District Court, discussed in the comment to draft Section 5.09.

Section 5.08. **Composition of Superior Court.**

The Superior Court shall be composed of the number of judges prescribed by law and the number shall be allocated among the counties by law. There shall be at least one Superior Court judge resident in each county.

Comment:

This draft section provides that the number of judges for the Superior Court shall be prescribed by law. The Commission considered and rejected a suggested provision which would limit the power of the General Assembly to create additional judgeships to instances where this was recommended by the Supreme Court or by a judicial council. The Commission believes that the creation of a unified, statewide judicial system, vested with the power to adopt its own rules of administration, makes unnecessary the adoption of a restriction upon the power of the General Assembly to create judgeships.

This draft section requires that there be at least one resident judge of the Superior Court in each county. This provision was strongly urged by the Maryland State Bar Association committee and represents the culmination of a step-by-step process in Maryland which has resulted in a resident judge of the present circuit courts in each county.

Each judgeship in the Superior Court will be allocated to a particular county in order to determine eligibility for nomination and appointment under draft Section 5.13, and the area from which the judicial candidate stands for election under draft Section 5.21. Draft Section 5.28 provides that there will be a clerk of the Superior Court in each county. Thus, in appearance, the Superior Court will be very similar to today's circuit courts in the counties.

THE DISTRICT COURT

Section 5.09. **Jurisdiction of District Court.**

The District Court shall have the original jurisdiction prescribed by law. Jurisdiction of the District Court shall be uniform throughout the State.

Comment:

This draft section provides that the jurisdiction of the District Court, both exclusive and concurrent, shall be as prescribed by law. It is contemplated that this jurisdiction will initially be very similar to that now conferred on the trial magistrates and people's courts.

The requirement of uniformity of jurisdiction is new. At the present time, particularly in the area of civil jurisdiction, the dollar amounts which may be claimed in cases tried before trial magistrates or judges of the people's courts vary widely.[153] Since the proposed court will be a unified one, the jurisdiction should be uniform.

[153] REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION OF THE MARYLAND STATE BAR ASSOCIATION 10-11 (1966).

The Commission considered a proposal that only exclusive jurisdiction be uniform, so that the General Assembly could make local variations in the jurisdiction which would be concurrent with that of the Superior Court, on the theory that a higher jurisdictional amount might be desirable in metropolitan areas. This proposal failed by a vote of 9 to 10.

Arguments advanced in support of the majority position were that a number of the judges of courts of limited jurisdiction saw no basis for the distinction and that, since litigants will have the option of using the District Court or the Superior Court where jurisdiction is concurrent, the same result can be achieved by setting a uniform high limit on concurrent jurisdiction.

Section 5.10. **Composition of District Court.**

The District Court shall be composed of the number of judges prescribed by law. The State shall be divided by law into districts. Each district shall be composed of one or more entire and adjoining counties. There shall be at least one District Court judge resident in each district.

Comment:

This draft section prescribes that, as in the case of the Superior Court, the number of judges is to be determined by law, but that each district of the State shall have at least one resident judge. It should be noted that the composition of this court is not oriented to the counties, but to the districts to be created by law, and to consist of one or more entire and adjoining counties. The Maryland State Bar Association study concluded that there may not be sufficient judicial business at this level to justify a full-time judge in each county,[154] and that it may be necessary to combine counties in some areas in the formation of districts. Since there is some question as to the need or desirability of having a district judge in each county, the Commission recommends that a new constitution not require that there be a district judge resident in each county, and that the General Assembly be vested with the authority and responsibility to determine the formation of judicial districts from time to time.

Section 5.11. **Commissioners.**

There may be commissioners of the District Court in the number and with the qualifications prescribed by rule. Commissioners in a district shall be appointed by and serve at the pleasure of that judge of the District Court who shall be designated by rule to appoint commissioners therein. Commissioners may exercise powers only with respect to arrest, bail, collateral and incarceration pending hearing, and then only as may be prescribed by rule.

Comment:

The Commission recommends that the office of commissioner be created to supplement the manpower of the judges of the District courts in their duties of issuing arrest warrants and taking other action pending grand jury or court action. In some areas there may be enough judges of the District Court so that there will be no difficulty in dealing quickly with these matters. However, since these functions must be performed at any time, it is necessary that there be minor judicial officers to

[154] REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION OF THE MARYLAND STATE BAR ASSOCIATION 16 (1966).

serve sections of the State in which there may not be a district judge readily available. The Commission believes that there should be constitutional authorization for these officers since their functions may be considered judicial, and all judicial power is allocated by the draft article on the judicial branch.

This draft section prescribes that the number and qualification of commissioners be determined by rule. The number of commissioners would be determined in relation to the number of hearings involved and the number and proximity of district court judges who are available in the particular locality. The rule provision permits flexibility in this determination.

The Commission is hesitant to suggest that commissioners be required to be members of the bar since there may be areas of the State in which a sufficient number of commissioners could not be obtained from among the members of the bar. Nevertheless, such a requirement might be desirable in the future, and leaving the qualifications to be determined by rule allows the Supreme Court to determine when it is appropriate to require all commissioners to be lawyers.

The Commission recommends that commissioners be appointed by a judge of the District Court since they will work directly under the supervision of judges of the District Court. The determination of which district court judge will appoint commissioners in a given area is also left to rule because it is viewed as a matter of internal administration. Since the districts are created and can be changed by law, this will give flexibility.

Restricting the commissioners' power to issuing arrest warrants, setting bail and such related matters is a deliberate limitation of their powers. Some suggestions were made that the commissioners should be empowered to hold preliminary hearings to determine if there is sufficient evidence against an arrested person to hold him for trial, and to issue search warrants. Both the Commission and those who consulted with it believe that the conduct of preliminary hearings and the issuance of search warrants are of such a serious nature as to be best left to a judge.

The express statement that commissioners may exercise powers "only as may be prescribed by rule" is recommended out of an abundance of caution to preclude any contention to the contrary.

SELECTION, TENURE AND REMOVAL OF JUDGES

Section 5.12. **Judicial Circuits.**

The State shall be divided by law into circuits of the Supreme Court and into circuits of the Appellate Court.

Comment:

This draft section assigns to the General Assembly the responsibility for dividing the State into circuits of the Supreme Court and circuits of the Appellate Court. The sole function of such circuits is to provide a geographical basis for a residency requirement for those persons appointed judges of the Supreme Court or of the Appellate Court.

The Commission debated at length the question of whether there was any reason for recommending the establishment of judicial circuits for the Supreme Court and the Appellate Court before

voting 11 to 5 in favor of recommending this draft section providing for judicial circuits. It considered the fact that forty-two states do not have appellate court circuits[155] and the argument that without circuits the members of the court may be selected from the most qualified members of the state bar regardless of their place of residence. The Commission concluded, on the other hand, that the historical precedent for appellate judicial circuits is strong, that the unevenness of the State's population distribution makes such judicial circuits desirable to ensure fairness in opportunity for membership on the appellate courts, and that judicial circuits are necessary to ensure that the appellate courts will represent and understand the people of the entire State.

It should be noted, however, that as a compromise, the Commission recommends that a new constitution be silent on the number of judicial circuits which should be provided. The Commission does not contemplate that there would necessarily be a circuit established for each judge. On the other hand, the term "circuits" is used in the plural form in this draft section to indicate that there should be at least two circuits.

Section 5.13. **Eligibility for Appointment as Judge.**

To be eligible for nomination and appointment as judge, a person shall be a citizen of the State and shall have been a member of the bar of the State for at least five years immediately prior to his nomination, and shall be a resident of the circuit where the Supreme Court or the Appellate Court vacancy exists, a resident of the district where the District Court vacancy exists, or a resident of, or have his principal office for the practice of law in, the county where the Superior Court vacancy exists.

Comment:

Three alternative statements of qualification for judicial selection were considered by the Commission. They were as follows:

ALTERNATE 1:

To be eligible for nomination and appointment to the office of judge, a person shall be a citizen of the State and have been a member of the bar of the State for no fewer than five years next prior to his nomination.

To be eligible for nomination and appointment to the Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in, the county where the vacancy exists. To be eligible for nomination and appointment to the District Court, a person shall be a resident of the district where the vacancy exists.

ALTERNATE 2:

To be eligible for nomination and appointment to the office of judge, a person shall be a citizen of the State and have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of the Supreme Court and into circuits of the Appellate Court. To be eligible for nomination and appointment to the Supreme Court or to the Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to the Superior Court or

[155] THE BOOK OF THE STATES 122.

to the District Court, a person shall be a resident of the county or district, respectively, where the vacancy exists.

ALTERNATE 3:

To be eligible for nomination and appointment to the office of judge, a person shall be a citizen of the State and have been a member of the bar of the State for no fewer than five years next prior to the nomination.

The State shall be divided by law into circuits of the Supreme Court and into circuits of the Appellate Court. To be eligible for nomination and appointment to the Supreme Court or to the Appellate Court, a person shall reside in, or have his principal office for the practice of law in, the circuit where the vacancy exists.

To be eligible for nomination and appointment to the Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in, the county where the vacancy exists. To be eligible for nomination and appointment to the District Court, a person shall be a resident of the district where the vacancy exists.

Under each alternate the only required professional qualification for judicial appointment is five years of practice at the bar. Article IV, Section 2 of the present Constitution requires no minimum period of practice. The Commission believes that a requirement that a person have practiced law five years before qualifying for appointment as a judge is desirable, but points out that the key to the appointment of qualified persons as judges will lie in the careful screening of nominees by the nominating commission, and in the increased willingness of capable persons to accept appointment to judicial office because of the noncompetitive election feature. The Commission is of the opinion that a requirement that such persons be distinguished for wisdom and integrity, as is provided in the present Constitution, is of little significance.

The differences between the four plans which were considered by the Commission were the residence requirements. Under all four plans an appointee to the District Court must at the time of his appointment reside in the district to which the judicial office is allocated. Under the Commission's proposed draft section, which was adopted by a vote of 14 to 9, an appointee to an appellate court must at the time of his appointment reside in the particular appellate judicial circuit where the vacancy exists. However, under this draft section an appointee to the Superior Court may at the time of his appointment either reside in the particular county where the vacancy exists, or he may have his principal office for the practice of law there. The latter provision is new and is designed to permit capable persons to qualify for appointment to judicial office in an urban area where they have practiced law and have established their professional reputation, even though they may reside in a neighboring suburban county. Opponents of this provision assert that it violates the concept of the "resident judge" who lives among the people whose cases he adjudicates.

One of the alternative plans which was considered and rejected by the Commission omits any residence qualification for the two appellate courts, primarily to permit the selection of the most capable persons as judges without placing artificial limitations of residence upon the governor's choices. Proponents of this approach assert that the "resident

judge" concept is not fully applicable to appellate decision-making, while opponents maintain that it is desirable to require a geographical distribution of the members of an appellate court since knowledge of local variations in practice is important to appellate decision-making.

Another of the alternative plans which was considered and rejected by the Commission omits at the Superior Court level the recommended "principal office" provision which the Commission recommends as an alternate to the residence requirement.. Yet another of the alternative plans extends the "principal office" alternate requirement to the two appellate courts.

Section 5.14. **Nomination and Appointment.**

A vacancy in the office of judge shall be filled by the governor from a list of no fewer than two nor more than five eligible persons nominated by a judicial nominating commission. The commission shall make nominations to fill a vacancy not more than thirty days prior to nor more than sixty days after the occurrence of the vacancy. If the governor fails to make the appointment within sixty days after receiving the list of nominees, his power to make the appointment shall end and the chief justice of the Supreme Court shall appoint one of the nominees.

Comment:

The Commission recommends the adoption of the "Missouri Plan" of judicial selection and retention.[156] The plan's principal features are the appointment of judges by the governor from a restricted list which is proposed by a nonpartisan nominating commission and subsequent ratification by a noncompetitive election. This basic approach also has been recommended by the American Judicature Society,[157] by the American Bar Association[158] and by the National Municipal League in its Model State Constitution.[159] In Missouri the plan is now applicable to the highest court, the three intermediate courts of appeal, and to certain of the trial courts in St. Louis and Kansas City.

The plan is also in effect in Alaska, Colorado, Iowa, Kansas and Nebraska; and in Birmingham, Alabama; Dade County, Florida; and Tulsa, Oklahoma. Approval of the plan is pending in Florida and Vermont.

The noncompetitive election feature of the plan is in effect in California and Illinois. Appointment by the governor from a list of nominees has beeen voluntarily used in Colorado, Pennsylvania and New York City.[160]

The "Missouri Plan" has been recommended for adoption in Maryland by the Maryland State Bar Association and by the Maryland Judicial Selection Council, Inc. It has become known in Maryland as the "Niles Plan."

Article IV, Section 5 of the present Constitution provides for judicial selec-

[156] The plan is the same as the "American Bar Association Plan," but has become known as the "Missouri Plan" since its provisions were first adopted in that State in 1940. AMERICAN BAR ASSOCIATION SECTION OF JUDICIAL ADMINISTRATION, THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE 33 (4th ed. 1961).

[157] 62 JOURNAL OF THE AMERICAN JUDICATURE SOCIETY 280-82 (1962).

[158] AMERICAN BAR ASSOCIATION SECTION OF JUDICIAL ADMINISTRATION, THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE 123 (4th ed. 1961).

[159] MODEL STATE CONSTITUTION 13, 86.

[160] 52 AMERICAN BAR ASSOCIATION JOURNAL 539-42 (1966).

tion by appointment of the governor. The governor's choice is not restricted by law; although, there has been a recent practice, not without exception, of the governor making each appointment from a list of persons recommended by a bar association. The appointed judge then serves until the first biennial general election for representatives in Congress after one year after the termination of his predecessor's tenure. At this election a successor is elected to serve a full fifteen-year term. Candidates must first run in a party primary in which cross-filing is permitted and then in a general election in which party labels are prohibited.

This draft section prescribes that when a judicial vacancy occurs, it shall be filled by the governor from a list of nominees submitted by a judicial nominating commission. The list may contain the names of no fewer than two nor more than five eligible persons. This amount of flexibility is recommended because the plan is applicable to all courts of the State. Since it is conceivable that in some areas of the State there may be at times very few lawyers whom a commission could conscientiously recommend as qualified for judicial appointment, it is recommended that the minimum number of nominees required be set at two. On the other hand, a maximum number of five nominees is recommended since a list of nominees would diminish in quality as it becomes longer.

This draft section provides that should the governor fail to appoint someone to fill a vacancy within a reasonable period of time, the power to fill the vacancy is transferred to the chief justice. The Commission believes that this provision is desirable; although, it thinks it highly unlikely that such a situation will arise.

The selection of judges must be directed towards placing on the bench men with the highest possible qualities of character, integrity, judicial temperament and learning. Lawyers seeking to serve in the judiciary must be selected on their merit. The public must have confidence that justice is not denied as a result of political bias or pressure. A strong and independent judiciary is a bulwark of democracy.

In the process of their selection, as well as in their work and tenure, judges must be free of all collateral influence and partisan political pressures. Of course, no method of selecting judges is completely free of politics and, indeed, should not be. However, popular election of judges in a campaign between political parties seems the least desirable method of attaining the goal of a strong and independent judiciary. The selection of judges in a partisan political election does little to ensure the selection of the best qualified persons.

In its report of March, 1967, the Special Committee on the Constitutional Convention of the Association of the Bar of the City of New York stated that "changing New York's present method of selecting judges would, even if no other action were taken, bring enduring distinction to the Constitutional Convention of 1967."[161]

[161] REPORT OF THE SPECIAL COMMITTEE ON THE CONSTITUTIONAL CONVENTION OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, SELECTION OF JUDGES 1 (1967).

Section 5.15. **Appellate Courts Nominating Commission.**

Nominations to fill a vacancy on the Supreme Court or on the Appellate Court shall be made by the Appellate Courts Nominating Commission. The commission shall be composed of six lay persons, six lawyers, and the chief justice of the Supreme Court. The terms of the non-judicial members shall be four years.

Comment:

The Commission recommends that the composition of nominating commissions be based upon a formula of an equal number of laymen and lawyers, and one judge. In recommending the "Missouri Plan" for judicial selection in the past, the Maryland State Bar Association has specifically voted to recommend that a judge be included on each nominating commission.

Some persons have indicated to the Commission that many lawyers feel strongly that the presence of a judge on a nominating commission will result in the domination of the deliberations by the judge. The Commission, however, believes that by establishing the number of members of the Appellate Courts Nominating Commission at thirteen, and the minimum number of members of a trial courts nominating commission at five, the influence of the judicial member will be minimized. Also, the provision of draft Section 5.20 which authorizes each commission to elect one of its members as chairman, should have the same effect. The Commission also believes that the advantage of having on the commission a judge, who has had the opportunity of observing the largest number of lawyers, far outweighs any possible disadvantage.

This draft section creates a single nominating commission, statewide in composition, for both appellate courts. The membership of the Appellate Courts Nominating Commission is fixed at thirteen because this number is considered sufficiently large to be representative of the entire State and because stabilizing the number will tend to prevent "packing."

This draft section sets the terms of the non-judicial members at four years. The Commission recommends that the initial terms be staggered by the schedule to a new constitution. The Commission does not believe it necessary to require districting for the members of this nominating commission. Political factors will compel the governor to appoint to the nominating commission lay persons who reside in different areas of the State, and districting could be required by rule for lawyer members.

Section 5.16. **Trial Courts Nominating Commission.**

Nominations to fill a vacancy on the Superior Court and on the District Court shall be made by a trial courts nominating commission. The number and composition of trial courts nominating commissions and the terms of their members shall be prescribed by law, but each commission shall have no fewer than five members and shall be composed of an equal number of lay and lawyer members, and a judge. Each commission shall make nominations to fill vacancies on the Superior Court in one or more counties, or on the District Court in one or more districts, or both, as prescribed by law.

Comment:

This draft section authorizes the creation of such number of trial courts nominating commissions as may be prescribed by law. The trial courts nominating procedure is of necessity more flexible. Since the Superior Court is oriented to the counties, it may be desirable to have a nominating commission for a single county, or for a group of counties or, on the other hand, it might be desirable to have the same nominating commission for the entire Superior Court.

Similarly, it may be desirable to have a nominating commission for a single district of the District Court, or it may be desirable to have a nominating commission for more than one district. Since the boundaries of District Court districts must coincide with county boundaries, the General Assembly may conclude that it is desirable for the same nominating commission to serve both a district or districts for the District Court and a county or number of counties for the Superior Court.

A trial courts nominating commission must be composed of at least five persons, including an equal number of lawyers and laymen, and one judge. A low minimum membership is recommended because of possible difficulty in securing the services of capable persons in the less populous areas of the State due to their hesitancy to accept appointment to a commission by virtue of which they would be disqualified under draft Section 5.20 from being appointed to any public office during, and for six months after, service on the nominating commission.

For the same reason, the term of membership on trial courts nominating commissions is left for determination by statute. Thus, the terms may be shorter in some areas than in others in order to attract the most capable persons.

Section 5.17. **Lawyer Members of Nominating Commission.**

Lawyer members of the Appellate Courts Nominating Commission shall be elected by lawyers throughout the State. Lawyer members of each trial courts nominating commission shall be elected by the lawyers of the area for which such commission is established. Eligibility and elections of lawyer members of nominating commissions and eligibility of their electors shall be governed by rule.

Comment:

This draft section prescribes that the lawyer members of the Appellate Courts Nominating Commission shall be elected by the lawyers throughout the State and that the lawyer members of each trial courts nominating commission shall be elected by the lawyers of the area for which a particular commission is established. The Commission recommends that the determination of the eligibility of lawyers for membership on a nominating commission, the eligibility of their electors, and all details in regard to the required electors be governed by rule of the Supreme Court.

Section 5.18. **Lay Members of Nominating Commission.**

Lay members of the Appellate Courts Nominating Commission shall be appointed by the governor from the qualified voters of the State. Lay members of each trial courts nominating commission shall be appointed by the governor from the qualified voters of the area for which such commission is established.

Comment:

This draft section provides that lay members of nominating commissions shall be appointed by the governor. This provision gives the governor the power to appoint almost half of each commission and it recognizes the importance to the general public of judicial appointments by placing on each commission persons who in no way represent the bar.

Section 5.19. **Judicial Member of Nominating Commission.**

The judicial member of a trial courts nominating commission shall be selected in the manner prescribed by law.

Comment:

This draft section prescribes that the General Assembly shall determine the method by which the judicial member of a trial courts nominating commission is to be selected. It should be noted that draft Section 5.15 provides that the chief justice of the Supreme Court shall be the judicial member of the Appellate Courts Nominating Commission.

Section 5.20. **Rules Governing Nominating Commission.**

A nominating commission may act only upon the concurrence of a majority of its members. Each commission shall elect one of its members as chairman. A non-judicial member of a commission may not hold any state or local public office of profit or office in a political party while a member of a commission and for six months thereafter. A member of a commission shall receive no compensation for his service.

Comment:

This draft section requires that the selection of judicial nominees be determined upon the concurrence of a majority of the members of a nominating commission. This would preclude the nomination of a person for judge by either of the non-judicial groups of members acting alone.

The Commission believes that the prohibition against a member of a nominating commission holding any public office of profit, or office in a political party, until the seventh month after termination of his commission membership is desirable to protect the integrity of a commission. The prohibition is designed to discourage the making of an arrangement by which a member of a nominating commission is given a political appointment in exchange for his vote to nominate a particular person for a judicial office. The National Municipal League suggests that the length of the disqualification period should run as high as five years.[162] The Commission considers its recommendation of six months to be the shortest that would serve any real deterrent value.

The provision of this draft section prohibiting salary or compensation for service on a nominating commission is not intended to prohibit the payment of actual out-of-pocket expenses.

[162] MODEL STATE CONSTITUTION 84-85.

Section 5.21. **Term of Office of Judge.**

At the next general election following the expiration of two years from the date of appointment, and every ten years thereafter so long as he retains his office, each judge shall be subject to approval or rejection by the electorate. Each justice of the Supreme Court and each judge of the Appellate Court shall be subject to approval or rejection by the electorate of the entire State. Each judge of the Superior Court and of the District Court shall be subject to approval or rejection by the electorate of the county or district, respectively, for which the office then exists. Provision may be made by rule for the taking of a poll of the lawyers of the area in which the judge is required to stand for election as to whether he should be retained in office for a full or additional term, and for publication of the results thereof. In the event of the rejection of a judge by the electorate, the office shall be vacant.

Comment:

This draft section prescribes that upon his appointment, each judge will serve a "probationary" term of from two years to just less than four years before standing for election. During this "probationary" term the bar and general public can evaluate the performance of the new judge and determine whether he should be retained in office.

As indicated in the comment to draft Section 5.14, an essential feature of the plan of judicial selection and tenure recommended by the Commission is the noncompetitive election in which the judge runs "against his record" but has no opponent. The question of competitive versus noncompetitive elections for judges was debated at length by the Commission and the recommendation for a noncompetitive election was approved by a vote of 19 to 3. The overwhelming majority of the Commission believe that the noncompetitive election is necessary in order to attract the best qualified persons to service on the bench.

The Commission recommends that a new constitution establish a uniform elective term of ten years for all judicial offices. The present Constitution provides the following terms of office: of judges of the Court of Appeals, circuit courts, and of the Supreme Bench of Baltimore City, fifteen years; of judges of the orphans' courts, four years; of judges of the People's Court of Baltimore City, eight years; of judges of the Municipal Court of Baltimore City, ten years; of trial magistrates, two years.

The term of office of fifteen years which is now provided by the Constitution for members of the Court of Appeals, circuit courts and the various courts of Baltimore City is the second longest term of years provided in any state constitution in the country in which judges are elected.[163]

The Commission deliberated at length on the question of the most desirable length for judicial tenure before adopting the recommendation by a vote of 15 to 8 that a new state constitution provide a uniform ten-year term for all judges. The Commission rejected a proposal that the term of office for judges be established at fourteen years. A later motion to reconsider the question of judicial tenure was defeated by a substantial margin.

Tenure is a significant factor affecting the attractiveness of judicial office. In

[163] For general information on the term of judges of the several courts of the fifty states, see THE BOOK OF THE STATES 114.

the federal courts and in a few states, judges hold office for life or during good behavior. However, there is no ideal duration for judicial tenure. As a general principle, tenure should be long enough to safeguard the independence of the judiciary and to attract highly qualified personnel. Only when a judge is confident of his position for a reasonably long period of time can the people expect a successful lawyer to give up a profitable law practice in order to ascend the Bench. It is an unfortunate fact that those who do give up their law practices to ascend the Bench must make a substantial financial sacrifice. The price of unswerving devotion to justice ought not to be exacted from the judge alone. On the other hand, it is probably unwise to establish an indefinite period of judicial tenure, since judges, like other humans, sometimes fail to recognize their own limitations and desire to continue serving the public long after their capacities have declined. More importantly, judicial tenure should be limited to give voice to the will of the electorate. Judges who do not perform their functions adequately should be removed.

The "Missouri Plan" for judicial selection is thought to satisfy these considerations to a large extent. The appointed judge is subject to approval or rejection by the electorate at the next general election following the expiration of "three years" from the date of appointment and every ten years thereafter so long as he retains his office.[164]

The proponents of a judicial term of fourteen years contend that any reduction from the fifteen-year term will significantly reduce the number of persons willing to accept appointment to judicial office since it will discourage the most capable persons from accepting judicial appointment. The proponents of a fourteen-year term believe that even a noncompetitive election presents a big risk to a judge since an organized and militant minority in the community can secure the defeat of a judge with the result that this risk restricts the independence of a judge in deciding a case which involves a local issue of wide public interest.

The Commission believes, however, that a noncompetitive election is tantamount to re-election for most judges unless a particular judge does not deserve to be retained. The Commission also believes that it is meaningless to provide for judicial elections by the people and at the same time provide judicial terms which are so long that, considering the age at which a person is usually appointed to the Bench, the appointment in most cases means appointment for life.

This draft section also provides that the Supreme Court may provide by rule for a poll among the lawyers of the area in which a judge is required to stand for election as to whether he should be retained in office for a full or additional term, and for the publication of the results. Such a procedure has worked well in Alaska and Missouri. Since the lawyers within the jurisdiction of a particular court would be the ones most familiar with the performance of a judge of that court, the Supreme Court may deem it desirable, as a matter of public education, to require such polls and the publication of the results. However, the Commission is hesitant to recommend that such polls be made mandatory because of the lack of experience in Maryland with similar procedures.

[164] AMERICAN BAR ASSOCIATION SECTION OF JUDICIAL ADMINISTRATION, THE IMPROVEMENT OF CRIMINAL JUSTICE 124 (4th ed. 1961).

This draft section provides that the electorate of the area in which a trial court judge is required to reside (or practice) when appointed, is the electorate entitled to vote on his retention or rejection. On the other hand, although the residence requirements for judges of the two appellate courts are in terms of judicial circuits, their election is provided to be by the voters of the entire State. The Commission believes it desirable for the entire electorate of the State to decide whether to retain those judges whose decisions will make statewide law.

Section 5.22. **Retirement of Judge.**

Each judge shall retire at the age of seventy. The chief justice of the Supreme Court, with the approval of a majority of the members of that court, may authorize a retired judge temporarily to perform judicial duties in any court.

Comment:

This draft section prescribes compulsory retirement for judges at the age of seventy but permits the temporary use of retired judges. Article IV, Section 3 of the present Constitution now requires compulsory retirement for judges at age seventy and the present Constitution does not permit the temporary use of retired judges, even on a selective basis.

Compulsory retirement has been criticized by some as automatically depriving the State of the services of some of its most capable judges when they are fully able to continue rendering valuable judicial service. On the other hand, opponents of the temporary use of retired judges contend that there should be a point in time when judges should step aside and give an opportunity to younger men to take office. They also assert that there is a tendency on the part of judges of long service to become set in their ways and to resist trends toward modernization in judicial administration, in trial techniques and in the evolution of the law itself. They object to permitting the temporary use of retired judges even for special cases since they, the opponents, believe that the chief justice would be reluctant to tell a former colleague, who may be urging his appointment for limited service, that he is no longer capable of trying and deciding cases.

The Commission believes its recommendation to be a desirable compromise between these two positions. The mandatory retirement is retained. However, there is authorization for the use of retired judges on a selective and individual basis. The authority may be exercised only with the approval of the majority of the Supreme Court. This provision is designed to insulate the chief justice from the problems which might arise from his personal relationship with a retired judge.

Although the chief justice is given broad power to assign judges throughout the unified judicial system, the Commission believes that the power to use retired judges may be a useful tool in judicial administration to help relieve temporary court congestion without the necessity of creating additional judgeships.

The Maryland State Bar Association, by a relatively close vote, has recommended the use of retired judges to sit only as appellate judges. The Commission rejected a similarly limited proposal by a vote of 13 to 9.

Section 5.23. **Compensation of Judge.**

Each judge shall be compensated for his judicial service solely by the State and his salary shall not be reduced during his continuance in office. A pension payable to a retired judge or his surviving spouse pursuant to provisions in effect during his continuance in office shall not be reduced. All judges of the same court shall be paid the same compensation, including any pension based upon length of service, except that a uniform reduction in compensation may be made applicable to all judges of the same court appointed after the effective date of the reduction.

Comment:

As has been noted elsewhere in this Report, the Commission recommends that no salaries of public officers be fixed in the constitution, but instead that these be left to be prescribed from time to time by the General Assembly by law. The same is true as to pensions. For this reason, this draft article does not contain any provision fixing the amount of judicial salaries or pensions. To preserve the complete independence of the judiciary, the Commission does recommend that there be included in this draft section a provision that a judge's salary shall not be reduced during his continuance in office and that a pension payable to a retired judge or his surviving spouse pursuant to provisions in effect during his continuance in office shall not be reduced. This is in accord with the last sentence of draft Section 6.07 which provides that the compensation of a public officer may not be decreased during his term of office.

This draft section provides that each judge shall be compensated for his judicial service solely by the State. This recommendation embodies the view of a majority of the judges, and the nearly unanimous view of all interested persons other than judges, that the practice of supplementation of judicial salaries by local governments should be discontinued and hereafter prohibited.

The Commission's recommendation is in keeping with the first two principal recommendations of the Judicial Salary and Pension Review Board which was appointed in 1966 by Governor J. Millard Tawes pursuant to Joint Resolution 67, passed by the Maryland General Assembly at its 1966 session. Specifically, these two recommendations of the Judicial Salary and Pension Review Board are:

1. A uniform statewide salary and pension system should be established for the judges of the Court of Appeals, Court of Special Appeals and the circuit courts for the various counties and the courts of Baltimore City.

2. These salaries and pensions should be paid exclusively by the State with an express prohibition against supplementation of either salaries or pensions by local political subdivisions.

The present salaries of judges of the circuit courts and of the courts of Baltimore City, and the amount of local supplementation are set forth in a table in the report of the Judicial Salary and Pension Review Board.[165]

The last sentence of this draft section requires the payment of uniform salaries and pensions to all judges of the same court; that is to say, for instance, that each of the judges of the Supreme Court shall be paid the same compensation as

[165] REPORT OF THE MARYLAND JUDICIAL SALARY AND PENSION REVIEW BOARD 7 (1967).

other judges of the Supreme Court, but not necessarily the same compensation as should be paid to judges of the Appellate Court, the Superior Court, or the District Court. The same rule would apply to pensions based upon length of service.

As written, this draft section would prevent the payment to a chief judge of a salary larger than that paid to the associate judges of the same court. It has been the practice in Maryland in some instances to compensate the chief judge of a court at a higher rate than the associate judges of the same court, but none of the former chief judges with whom the Commission consulted recommended the continuation of this custom.

Also, it is probable that the general trend of judges' salaries, as with all other salaries, will be upward, but a major depression could make it necessary for the State to reduce the salaries paid to its judges and other officers and employees. The salary of a judge cannot be reduced during his continuance in office, but this should not prevent the General Assembly from reducing the salaries payable generally to judges not then appointed. To make this possible notwithstanding the requirements of uniformity of judges' salaries, the last clause has been added to this draft section.

Section 5.24. **Restriction of Non-Judicial Activities.**

No judge shall engage in the practice of law, or run for elective office other than the judicial office he then holds, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive any remuneration for his judicial service except as provided herein. No retired judge while engaging in such activities shall be paid any pension for his judicial service.

Comment:

This draft section places severe restrictions upon the non-judicial activities of judges. Most of these restrictions are in keeping with the Canons of Judicial Ethics promulgated by the American Bar Association.[166] Their purpose, of course, is to make certain that the judge is completely free of the pressures of partisan politics and can give his undivided attention to the performance of his judicial duties.

The Commission gave consideration to the inclusion in this draft section of additional specific restrictions on non-judicial activities of judges, but decided not to do so. The Commission believes, that the Canons of Judicial Ethics will be a sufficient safeguard against participation by judges in improper non-judicial activities.

The Commission also discussed at some length the necessity for the restriction embodied in the last sentence of this draft section, and the view was expressed by a substantial minority of the members of the Commission that a retired judge should be free of all restrictions and that his pension was compensation for services previously rendered and should not be conditioned upon his nonparticipation in activities prohibited to a judge. A majority of the Commission, however, believed that the tradition in Maryland was that a retired judge should not receive a pension while he engages in the practice of law or participates in partisan political activities, particularly if he may be subject to recall for temporary service on the bench.

[166] 4 MARTINDALE-HUBBELL LAW DIRECTORY 189A (1967).

Section 5.25. **Removal of Judge.**

The Supreme Court shall have power, after hearing, to remove any judge from office upon a finding of misconduct in office or persistent failure to perform the duties of his office, or to retire any judge upon a finding of disability seriously interfering with the performance of his duties which is, or is likely to become, of a permanent character. A justice shall not sit in any hearing involving his own removal or retirement. Implementation and enforcement of this section may be by rule or order of the Supreme Court. A judge retired under this section shall have the rights and privileges prescribed by law for other retired judges. A judge removed under this section, and his surviving spouse, shall have the rights and privileges accruing from his judicial service only to the extent prescribed by the order of removal.

Comment:

Article IV, Section 4 of the present Constitution was amended in 1966 by adding Sections 4A and 4B to create a Commission on Judicial Disabilities to review cases of judicial misconduct in office, persistent failure by a judge to perform the duties of his office, judicial conduct which prejudices the proper administration of justice, or the disability of a judge which seriously interferes with the performance of his duties. After completing its review, the Commission on Judicial Disabilities makes its recommendations for the removal or retirement of a judge to the General Assembly which is required to review the record of the proceedings on the law and the facts. The removal or retirement of the judge may then be ordered by joint resolution of the General Assembly passed by a two-thirds vote of the members elected to each house.

This amendment was based upon a recommendation of the Maryland State Bar Association[167] which, however, had proposed placing the power of removal or retirement in the Court of Appeals. This draft section vests the power to remove or retire a judge in the Supreme Court rather than in the General Assembly.[168] It also vests in the Supreme Court the Power to provide by rule or order for the implementation and enforcement of this draft section. This latter provision is purposely made broad in order to give the widest possible latitude to the Supreme Court to provide by rule applicable generally in all cases, or by order applicable in a specific case, all the details necessary to implement the provisions of this draft section.

Although the power of removal is vested solely in the Supreme Court and any judge sought to be removed is entitled to a hearing before the Supreme Court, the Commission nevertheless contemplates that the Supreme Court will by rule establish a commission of some sort for the purpose of receiving and reviewing preliminary complaints against judges and with the responsibility for recommending formal removal proceedings should the evidence justify such a recommendation. A commission of this sort could be composed of other judges or of lawyers and judges, or could even include laymen. It could function in somewhat the same manner as does a

[167] 69 TRANSACTIONS OF MARYLAND STATE BAR ASSOCIATION 401-407 (1964).

[168] For a review of a similar procedure in another state, see REPORT OF THE SPECIAL COMMITTEE ON THE CONSTITUTIONAL CONVENTION OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, REMOVAL OF JUDGES (1967).

grievance committee of a bar association.

The Commission recommends that upon an order for the removal of a judge, the Supreme Court be authorized to determine to what extent, if at all, any accrued pension should be paid to the judge or to his spouse. The present constitutional provision requires that upon the removal of a judge there be an absolute termination of all retirement benefits. The Commission believes that this automatic forfeiture may be too harsh in some cases, particularly upon the spouse, and recommends that the determination of pension rights should be left to the discretion of the Supreme Court to be exercised on a case-by-case basis.

ADMINISTRATION

Section 5.26. **Administrative Functions of Chief Justice.**

The chief justice of the Supreme Court shall be the administrative head of the judicial system. He shall designate one Appellate Court judge, one Superior Court judge and one District Court judge as chief judges of their respective courts. Each shall serve as chief judge at the pleasure of the chief justice. The chief justice shall have the power to assign any judge to sit temporarily in any court.

Comment:

The chief justice of the Supreme Court is the administrative head of the entire judicial system under this draft section. It and the three draft sections which follow provide the key to the efficient functioning of the judicial system and the powers which they confer are intentionally very broad.

The Commission was advised that although Article IV, Section 18A of the present Constitution contains words of similar import, there has been some question in the past as to the extent of the power intended to be conferred upon the chief judge of the Court of Appeals. However, after extensive discussion with persons who have been directly involved with the problems of judicial administration in Maryland for a number of years, the Commission concluded that by designating the chief justice as the administrative head of the courts and by giving complete administrative rule-making power to the highest court for the first time, the chief justice will be ensured having the necessary tools for effective judicial administration.

Although there may be an "uncharted area" in delineating between which decisions the chief justice can make as administrative head and what decisions require the adoption of a rule by the concurrence of a majority of the justices of the Supreme Court, the Commission believes that such a problem is more theoretical than real since in cases where the chief justice is in doubt as to the extent of his power or when he ventures into an uncharted area, he will undoubtedly consult with the entire court and rules will be promulgated.

This draft section also authorizes the chief justice to assign any judge to sit temporarily in any court. Power to assign judges to sit temporarily in any court is a power allocated to the chief judge of the Court of Appeals by Article IV, Section 18A of the present Constitution. However, the creation of the District Court broadens the scope of this power.

The American Bar Association has advocated for many years that a single judge be authorized to assign the other judges to judicial service. In 1938 the American Bar Association recommended:

> "[P]rovision should be made in each state for a unified judicial system with power and responsibility in one of the judges to assign judges to judicial service so as to relieve congestion of dockets and utilize the available judges to best advantage."[169]

The power which this draft section allocates to the chief justice is broad enough to enable the chief justice to assign a judge of the Superior Court to sit temporarily in the District Court. The Commission believes that such power is a necessary consequence of the unification of the judicial system with its concomitant elimination of the trial magistrates system and the creation of a full-time District Court. However, the Commission believes that the occasions when a judge of the Superior Court would be assigned to sit temporarily on the District Court would be very rare.

This draft section also confers upon the chief justice of the Supreme Court the power to designate the chief judges of the Appellate Court, the Superior Court and the District Court, each of whom serves as chief judge at the pleasure of the chief justice. This provision further serves to implement the first sentence of this draft section which makes the chief justice the administrative head of the entire judicial system. As such administrative head he should be responsible for the efficient administration of the system. He cannot properly be held responsible unless he has the complete power to designate, and to remove at pleasure, his chief subordinates in the administration of the judicial system. A similar philosophy with respect to the organization of the executive branch is discussed in the introductory comment to draft Article IV and the comment to draft Section 4.20.

Section 5.27. **Administrative Functions of Chief Judges.**

The chief judge of the Appellate Court shall assist the chief justice in the administration of the Appellate Court. The chief judge of the Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice. The chief judge of the District Court shall assist the chief judge of the Superior Court in the administration of the District Court.

Comment:

As administrative head of the judicial system the chief justice of the Supreme Court will directly administer the Supreme Court. He cannot, however, personally administer each of the other courts under his jurisdiction and, accordingly, this draft section provides that he shall be assisted in the administration of the Appellate Court by the chief judge of the Appellate Court and in the administration of the judicial system as a whole by the chief judge of the Superior Court. In turn the chief judge of the Superior Court will be assisted by the chief judge of the District Court in the administration of the District Court.

This recommendation of the Commission contemplates that the chief

[169] 63 AMERICAN BAR ASSOCIATION REPORT 523 (1938).

administrative judge of the entire judicial system will be the chief judge of the Superior Court. His duties as such will no doubt require his full time and attention and he will probably not be able to devote time to the trial of cases or the performance of other judicial duties. Because of the great volume of cases which the District Court will probably handle and because of the difference in administrative problems in the administration of the District Court and the Superior Court, the Commission recommends that there be a separate chief judge of the District Court directly responsible for the administration of that court, but acting under the supervision and direction of the chief judge of the Superior Court.

With one chief judge for the Superior Court in the entire State it is obvious that it will be necessary to make provision for local administration by a designated judge in those areas where there is more than one Superior Court judge. The Commission contemplates that the Supreme Court will by rule provide for a designated judge to perform such function in each area where there are more than one or two judges. Such designated judge may be called the "president judge," the "presiding judge," the "senior judge" or given some other designation. The Commission contemplates that there will be some such designated judge in Baltimore City and in each of the populous urban counties. The Commission believes, however, that all such details can best be regulated by rule of the Supreme Court.

The Commission discussed at length the question of whether the chief judge of the Superior Court should be a judge in fact or a career administrator and concluded that the administrative judge should be selected from the ranks of the trial judges since a person who has actually sat as a trial judge and has the title of chief judge is more likely to command the respect of the other trial judges. Other states have also concluded that the administration of the courts should be in the hands of an experienced judge.[170]

The administrative judge should be responsible for all the "housekeeping" or non-judicial operations of the judicial system. Thus, other judges would be freed from such burdensome tasks as the recruitment, training and supervision of personnel such as clerks, secretaries, court reporters, bailiffs, and the like. The administrative judge will manage the financial affairs of the judiciary including the preparation of the budget for the judicial branch and the supervision of expenditures. The physical facilities of the judiciary will be his domain and this is by no means an unimportant item. Many courts have found themselves outgrowing available space as new judges are added or visiting judges assist in tackling large backlogs of cases. The administrative judge will be responsible for anticipating such growth and for securing appropriations for new facilities.[171]

In keeping with the Commission's recommendation that the State's judicial system be operated exclusively by the State, the Commission recommends that there be a single budget prepared annually for the entire judicial system, with full payment of the costs by the State. The Commission's research leads it to believe that the cost to the State

[170] INDEX DIGEST 198.

[171] Under draft Section 6.05 the chief judge of the Superior Court will certify the budget for the judicial branch. The Commission contemplates that the budget will be prepared under his supervision.

of operating a unified judicial system will not greatly exceed its present expenditures for the judicial branch. This recommendation is similar to that which has been made to the present Constitutional Convention in New York State by the Special Committee on the Constitutional Convention of the Association of the Bar of the City of New York.[172]

Section 5.28. **Clerks of Court.**

The chief justice of the Supreme Court and the chief judges of the Appellate, Superior and District courts shall each appoint a chief clerk of his court who shall serve at the pleasure of the appointing judge. There shall be a clerk of the Superior Court in each county and of the District Court in each district. Their appointment and terms shall be governed by rule.

Comment:

This draft section would effect a substantial change in the manner of selecting clerks of courts. Clerks of the circuit courts are now elected. The clerks of the present Court of Appeals and of the Court of Special Appeals are appointed by and serve at the pleasure of the respective courts. Clerks of the people's courts and persons performing the functions of clerks for trial magistrates are generally appointed.

This draft section provides that the chief judges of each court shall appoint a chief clerk for his court who shall serve at the pleasure of the appointing judge. All other clerks are to be appointed in accordance with a rule adopted by the Supreme Court. These recommendations are based upon the policy that since a clerk of the court is an arm of the court which he serves, he should be responsible to the judiciary of that court.

The Commission recommends that there be a chief clerk of each of the statewide trial courts in addition to the clerks prescribed for each of the Appellate Courts. In addition, this draft section provides that the Superior Court shall have a clerk in each county and the District Court shall have a clerk in each district.

Clerks' offices are an integral and very important part of the judicial system. There must be a clerk's office in each local jurisdiction where there is a court and the head of each of these clerk's offices must have a large measure of autonomy in the operation of his particular office. At the same time, the concept of a statewide court requires that there also be one statewide clerk with control over the operation of each of the clerk's offices so that he can effect a uniform system of management and record keeping. The Commission believes the achievement of both of these objectives can be obtained by having a chief clerk for each statewide court and by having a clerk of each court resident in each county or in each district as the case may be.

Of course, each of the clerks will be assisted by deputy clerks, the number of which will vary depending upon the volume of business handled by the respective clerks' offices. These deputy clerks should, and probably will be under the merit system and the Commission has deliberately not undertaken to spell out in detail all the arrangements as

[172] REPORT OF THE SPECIAL COMMITTEE ON THE CONSTITUTIONAL CONVENTION OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, COURT STRUCTURE AND MANAGEMENT 1, 9 (1967).

to the control of the clerks' offices, the expenditure of the funds by them, the collection of fines, and other numerous details. Nor has the Commission deemed it necessary to provide explicitly which of these details shall be prescribed by law and which by rule. Instead, under draft Section 5.29, the General Assembly by law and the Supreme Court by rule will have concurrent power to prescribe these details. The Commission anticipates no difficulty in the actual application of this recommendation.

Section 5.29. **Rule-Making Power.**

Except as to matters specifically provided to be prescribed by rule, the Supreme Court by rule and the General Assembly by law shall have concurrent power to prescribe regulations governing practice and procedure in all courts, governing the admission of persons to practice law in this State and the discipline of persons so admitted, and governing administration of the courts, officers of the judicial branch and officers of the executive branch, to the extent that their duties directly relate to the enforcement of judicial orders. In the event a rule and a law prescribing a regulation of any of the three foregoing classes conflict, the rule, if adopted or readopted after the enactment of the law, shall take precedence over the prior law to the extent of the conflict. "Rule" as used in this Article means a rule adopted by the Supreme Court.

Comment:

An efficient judicial system in Maryland will require some degree of centralized administrative control at the state level. This is particularly true where rules of procedure are involved. Certainly, procedure should be uniform throughout the State.

The Commission believes that the highest court of a state is without a doubt in the best position to evaluate the procedural needs of the whole system and it is best able to call upon expert assistance and to coordinate research, consultation, drafting and, with the help of the Bar, the public relations activities essential to effective rule-making. Furthermore, the highest court speaks with authority sufficient to carry forward needed reforms of procedure. Other jurisdictions which have adopted the integrated judicial system and which have established an administrative office of the courts have found that the rule-making function is best suited to the state's highest court.

The American Bar Association has stated that:

> "[P]ractice and procedure in the court should be regulated by rules of court, and
>
> ". . . to this end the courts should be given full rule-making powers."[178]

The goal of all reform of judicial administration is the prompt and just disposition of cases on the merits, both at the trial and appellate levels. The most important single device for achieving this objective is a simplified, reasonably flexible system. Without it, other judicial reforms, no matter how well conceived, will in all likelihood founder in the bog of procedural complexity. On principle and precedent the power to establish rules of practice and procedure should be allocated to the courts.

Despite the evident logic of entrusting to the courts control over their own

[178] 63 AMERICAN BAR ASSOCIATION REPORTS 523 (1938).

practice and procedure, the wisdom of judicial rule-making is by no means universally accepted by legislators, who often believe that rules of practice and procedure should be determined by the state legislatures. With characteristic simplicity, Judge Cardozo summed up the inherent weakness of legislative rule-making:

> "The Legislature, informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, catches the fabric here and there, and mars often when it would mend."[174]

This draft section recognizes that as a matter of policy both the legislative and judicial branches have an interest in determining practice and procedure, regulation of the Bar and administration of the courts. It also recognizes the practical necessity of allocating power both to the General Assembly and the Supreme Court since it is almost impossible to draft legislation which is purely substantive and which is no way procedural.

Under this draft section as well as under Article IV, Sections 18 and 18A of the present Constitution, relating to procedural rules, a rule of the Supreme Court could repeal a statute or a statute could repeal a rule, theoretically in an infinite chain. In the few instances in the past where the General Assembly has proposed or enacted a law relating to practice and procedure which conflicted with a rule adopted by the Court of Appeals, the conflict has been resolved in favor of the rule by consultation and agreement between the two branches of the government.

The Commission believes that judicial administration, in the broadest sense, is primarily the responsibility of the courts and, therefore, the paramount power to resolve issues relating thereto should not be placed in the General Assembly. At the same time, public interest and convenience can be deeply involved in these matters and are better expressed by the General Assembly.

As a result, the Commission recommends that the assignment of concurrent power be continued as to rules of practice and procedure, rules governing admission to the Bar, and rules of judicial administration. The Commission believes that the system of concurrent power has worked satisfactorily in Maryland in the past and that there is little reason to believe that it will have difficulty in working well in the future. However, the Commission recommends that in the event a statute and a subsequent rule conflict, the rule shall control.

The Commission contemplates that rules will provide for particular divisions of the trial courts to hear special types of cases, such as criminal, traffic, domestic relations, juvenile, general equity, administrative appeals and so forth. Other rules would lay down the standards regulating the hours of court, the length of judicial vacations, the conduct of the clerks' offices, the way in which records are to be kept and requirements relating to the keeping of statistical information and the form of reporting. The rules would undoubtedly provide for the adoption of supplemental local rules by the administrative divisions of the Superior Court and the District Court.

[174] Quoted in AMERICAN BAR ASSOCIATION SECTION OF JUDICIAL ADMINISTRATION, THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE 52 (4th ed. 1961).

The Commission recommends that the office of sheriff not be included in a new state constitution as a constitutional office. Article IV, Section 44 of the present Constitution prescribes the duties of sheriff as those "fixed by law." Since these duties vary with the locality and often include law enforcement, it seems undesirable either to define the duties of sheriffs in a constitution or to require that such officers be solely within the State's judicial department. This draft section provides that officers who execute judicial orders, be they sheriffs, constables, or police officers, shall be subject to the rules of the Supreme Court to the extent that their duties relate to judicial orders. Whether sheriffs or similar officers are to be elected or appointed will be prescribed by law.

ARTICLE VI. STATE FINANCES

This draft article in draft Sections 6.01 and 6.02 deals with state debts and gifts and in draft Sections 6.03 to 6.10, inclusive, deals with budget and appropriations. Because the historical development of each of these two matters is quite different, there will be a separate introductory comment for each of the two groups of sections, followed by a section-by-section analysis and commentary as to each group of sections.

STATE DEBTS AND GIFTS

Introductory Comment:

The pertinent provisions of the present Constitution with respect to state debts and gifts are contained in Article III, Section 34 which imposes detailed restrictions on the creation of debt and the extension of credit by the State. The corresponding provision with respect to the creation of debt and the extension of credit by a county is contained in Article III, Section 54 of the present Constitution which requires the passage of an enabling act by the General Assembly before any county of the State may contract any debt or obligation in the construction of any railroad, canal or other work of internal improvement, or give or lend its credit to or in aid of any association or corporation. The pertinent provisions with respect to the creation of debt and extension of credit by Baltimore City are contained in Article XI, Section 7 of the present Constitution which requires the passage of an enabling act by the General Assembly, an ordinance by the City Council, the approval of the voters at a referendum and, in addition, imposes other restrictions similar to those imposed upon the State by Article III, Section 34.

With respect to the creation of debt and the extension of credit by the State, by Baltimore City and by any county of the State, the Commission is recommending provisions which are quite different from any of those contained in the present Constitution. In order to explain the reasons for these recommendations, it is necessary to review in some detail the history and present status of each of the provisions of the present Constitution mentioned above.

COUNTY DEBTS AND GIFTS

Draft Sections 6.01 and 6.02 of this draft article deal only with the creation of debt and extension of credit by the State and this article is not at all concerned with the creation of debt or extension of credit by Baltimore City or any of the counties of the State. However, it will be desirable to make a brief comment at this point as to the recommendation of the Commission with respect to constitutional limitations on the creation of debt and extension of credit by Baltimore City and the counties of the State.

Under draft Section 7.01, Baltimore City is to be considered for all purposes of the draft constitution as a county and draft Section 7.13 will therefore be applicable to Baltimore City and to each of the counties of the State. It will be noted that draft Section 7.13 deals only with a gift or loan of assets or credit of a county (including Baltimore City), a representative regional government or an intergovernmental authority; and with respect to a gift or loan of assets or credit of such units of local government, the provisions of draft Section 7.13 are closely analogous to the provisions of draft Section 6.02 dealing with a gift or loan of assets or credit of the State. However, there is no provision in the

draft constitution with respect to the creation of debt by a county (including Baltimore City), a representative regional government or an intergovernmental authority.

Under draft Section 7.05 powers are vested in a regional government either by the counties within the region, or by the General Assembly by law withdrawing specified powers from the counties within a region and conferring such powers upon the regional government, or by the General Assembly by law delegating powers of the State to the regional government. Under draft Section 7.06 powers may be conferred upon an intergovernmental authority either by the General Assembly or by a popularly elected representative local government such as a county or Baltimore City. Accordingly, a regional government or an intergovernmental authority would have the power under the draft constitution to create a debt or to make a gift or loan of its assets only if such power were conferred upon it in one of the manners stated, and the exercise of such power would, in addition, be subject to such limitations and restrictions as were placed upon it by the law conferring such power.

Under draft Section 7.07, however, a county may exercise any power other than judicial power not denied to it by the Constitution, by its charter or by public general law or which has not been transferred exclusively to another governmental unit. Accordingly, unless the power to do so is withdrawn from it in one of these manners or limited by public general law, a county (including the City of Baltimore) has unlimited power to create a debt and its power to make a gift or loan of its assets or credit to a private person or corporation is subject only to the limitations of draft Section 7.13.

This does not mean that the Commission recommends that the counties (including Baltimore City) be completely free of all restrictions whatsoever in the creation of debt and be subject only to the limitations of Section 7.13 in the gift or loan of assets or credit. What it does mean is that the Commission believes that such restrictions as are felt to be desirable should be imposed either by public general law enacted by the General Assembly or by the charter of a county or Baltimore City. If the restriction is one imposed by public general law, it would, of course, necessarily be applicable to all counties or to all counties of a class. If the restriction is imposed by charter, it would, of course, be applicable only to the county in whose charter the restriction was contained.

The Commission believes that these provisions will be sufficient to provide entirely adequate safeguards against the improvident creation of debt, or the making of improvident gifts or loans of assets or credit by any local governmental unit.

HISTORICAL DEVELOPMENT OF ARTICLE III, SECTION 34

The predecessors of Article III, Section 34 of the present Constitution were the product of public reaction against the nearly disastrous extent to which the General Assembly had loaned the credit of the State to rapidly expanding railroad and canal companies during the period of internal development and westward expansion in the United States from 1820 to 1850. Extraordinary appropriations were made by the General Assembly to such companies, notably the Chesapeake and Ohio Canal Company and the Baltimore and Ohio Railroad, generally by means of subscription to the securities of the companies in order to finance their construction programs.

Payment of the appropriations was often made by the transfer to the corporations of long-term state bonds, issued upon the faith and credit of the State. The corporations were entitled to sell the bonds; they did so, usually at substantial discounts, thus effectively raising needed expansion capital by pledging the credit of the State.

By 1840 almost fifteen million dollars in state debt had been incurred in order to make such appropriations. The bubble burst when many of the railroad and canal companies, particularly the Chesapeake and Ohio Canal Company, failed to produce the expected revenues to enable them to pay even the interest on the state bonds. The entire obligation was thrown upon the State which had not provided any funds for the purpose. An effort by the General Assembly to pay the State's debts by selling the State's interest in the railroad and canal companies was unsuccessful because purchasers for those investments could not be found. Finally, in 1846, the General Assembly saved the State's credit only by imposing additional real estate and personal property taxes to meet these overdue and accruing obligations.[175]

THE CONVENTION OF 1850

Article III, Section 22 of the Constitution of 1851 provided as follows:

> "No debt shall hereafter be contracted by the legislature, 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, and the taxes laid for this purpose shall not be repealed or applied to any other object until the said debt and the interest thereon shall be fully discharged, and the amount of debts so contracted and remaining unpaid shall never exceed one hundred thousand dollars. The credit of the State shall not, in any manner, be given or loaned to or in aid of any individual, association, or corporation, nor shall the General Assembly have the power, in any mode, to involve the State in the construction of works of internal improvement, or in any enterprise which shall involve the faith or credit of the State, or make any appropriations therefor. And they shall not use or appropriate the proceeds of the internal-improvement companies, or of the State tax now levied, or which may hereafter be levied, to pay off the public debt, to any other purpose, until the interest and debt are fully paid, or the sinking fund shall be equal to the amount of the outstanding debt; but the legislature may, without laying a tax, borrow an amount, never to exceed fifty thousand dollars, to meet temporary deficiencies in the treasury, and may contract debts to any amount that may be necessary for the defence of the State."

Review of the debates of the Constitutional Convention of 1850 leaves no doubt that Section 22 was drawn in the wake of the State's acute financial embarrassment because of its wholesale extension of credit to the railroad and canal companies. The debates abound with references to the difficulty of marketing state bonds due to the depressed condition of the State's credit and with elaborate expressions of regret that extraordinary taxes had to be levied in order to meet the debt, with the result that the people of that era were being

[175] HANNA, A FINANCIAL HISTORY OF MARYLAND (1789-1848) 70-105 (1907).

heavily taxed to pay for the follies of the immediate past.[176]

Although there was virtual unanimity among the delegates as to the necessity for imposing some restrictions on the power of the General Assembly to contract public indebtedness, a substantial number of the delegates appear to have been opposed to an absolute bar against a loan of the State's credit to finance "works of internal improvement." A majority of the delegates, however, their attention fixed on the sorry experience of the State in aid of the railroad and canal companies, wrote into the Constitution the prohibitions against the extension of the State's credit to any individual, association or corporation, the involvement of the State in the construction of works of internal improvement and the granting of aid thereto which involved the faith or credit of the State.

THE CONVENTION OF 1867

Article III, Section 22 of the 1851 Constitution, unchanged in any significant respect, became Article III, Section 33 of the 1864 Constitution. The Constitutional Convention of 1867 added the following proviso to the prohibition against aiding "works of internal improvement":

> "[E]xcept in aid of the construction of works of internal improvements in the counties of St. Mary's, Charles and Calvert, which have had no direct advantage from such works, as have been heretofore aided by the State; and provided, that such aid, advances, or appropriation, shall not exceed in the aggregate the sum of five hundred thousand dollars."

This exemption appears to have been added in recognition of the fact that the various railroads and canals which had been the beneficiaries of substantial state aid during the 1830's and 1840's were not of direct benefit to the named Southern Maryland counties whose citizens had, nonetheless, been forced to bear their share of the tax burden necessary to pay off the state debt incurred because of such state aid. The exemption permitted such assistance in those counties to the dollar amount mentioned.[177]

SUBSEQUENT AMENDMENTS

In 1924 the General Assembly passed and the voters ratified the Veterans Bonus Amendment.[178] This amendment was designed to remove the prohibition felt to exist against pledging the credit of the State to raise money for a veterans' bonus. It was provided, however, that any bonus bill passed by the General Assembly would be subject to referendum.

In 1960 an amendment[179] struck from the section the $50,000 limit on borrowing for temporary deficiencies and replaced it with the present language permitting tax anticipation borrowing and enabling the state treasurer to borrow to meet temporary emergencies.

JUDICIAL INTERPRETATION

Beginning almost immediately after the adoption of the Constitution of

[176] See I DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION 338-57, 369, 375-79, 395, 411, 414-49, (1851); II DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION 339-47 (1851).

[177] See PERLMAN, DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1867, 270, 279 (1923); PROCEEDINGS OF THE STATE CONVENTION OF MARYLAND TO FRAME A NEW CONSTITUTION 346 (1867).

[178] Acts of 1924, chapter 327, ratified Nov. 4, 1924.

[179] Acts of 1959, chapter 234, ratified Nov. 8, 1960.

1867, efforts were made to avoid what were regarded as the excessive limitations and restrictions of Article III, Section 34 and the companion provisions of Article III, Section 54 and Article XI, Section 7 of the Constitution. This resulted in litigation which was concerned principally with the meaning of three terms used in those constitutional provisions, namely, "debt," "credit," and "works of internal improvement." Space does not permit an exhaustive review of all the decisions of the Court of Appeals dealing with these three terms, but it is important here to deal briefly with the leading cases; not only to trace the growth and development of the case law dealing with these constitutional provisions, but to show the reasoning resorted to by the courts in an effort to avoid a literal interpretation of these provisions.

The leading case, and the one with which the inquiry must begin, is *Baltimore v. Gill*,[180] decided in 1869, in which the Court of Appeals was called upon to determine the meaning of "debt" in Article XI, Section 7, which in language closely paralleling that of Article III, Section 34, provided:

> "[N]o debt (except as hereinafter excepted), shall be created by the Mayor and City Council of Baltimore; nor shall the credit of the Mayor and City Council of Baltimore be given, or loaned to, or in aid of any individual, association, or corporation; nor shall the Mayor and City Council of Baltimore have the power to involve the City of Baltimore in the construction of works of internal improvement, nor in granting any aid thereto, which shall involve the faith and credit of the city, nor make any appropriation therefor, unless such debt or credit be authorized by [enumeration of requirements] . . . ."[181]

Baltimore City agreed to lend $1,000,000 to the Western Maryland Railway Company, believing that the City would thereby benefit. In order to avoid the constitutional restriction, an ordinance was passed authorizing the City to raise $1,000,000 by the pledge of capital stock of the Baltimore and Ohio Railroad which the City owned and to invest the money in mortgage bonds of the Western Maryland Railway Company. The ordinance further provided that the lender was to look exclusively to the pledge of Baltimore and Ohio Railroad stock and not to the general credit of the City for repayment of the loan.

This arrangement was attacked on the grounds that it constituted the creation of a "debt," the lending of the City's credit to a private corporation and involvement of the City "in the construction of works of internal improvement." In holding that the arrangement created a "debt" in the constitutional sense, notwithstanding the fact that the lender could look for repayment only to the Baltimore and Ohio Railroad stock and not to the City, the Court of Appeals held that the mere borrowing of the money by the City upon the pledge of a specific part of its property was sufficient to create a "debt" within the meaning of Article XI, Section 7. The Court said that the plain intent of Section 7 was "to restrain the municipal government of Baltimore from borrowing money, except for the purposes and in the manner prescribed, either upon the general credit of the City, or by a pledge of its revenues or assets; thereby creating a debt, and imposing additional

[180] 31 Md. 375 (1869).

[181] Baltimore v. Gill, 31 Md. 375. 386 (1869).

burdens upon the citizens, which may directly or indirectly involve increased taxation."[182]

When revenue bonds issued by states and municipalities to finance needed public improvements came into vogue in the early 1930's, it was thought that the decision in the *Gill* case might prevent the issuance of such revenue bonds in Maryland. Accordingly, the Maryland bridge program, involving the construction of the Susquehanna Bridge, the Potomac River Bridge and later the Chesapeake Bay Bridge, was delayed until a court suit could be instituted to determine whether revenue bonds could be issued without regard to Article III, Section 34. Such a test suit was instituted and the Court of Appeals held that no state "debt" in the constitutional sense was created by the issuance of such revenue bonds where both the authorizing statute and the bonds expressly provided that they would not constitute a "debt" or obligation of the State. The Court also held that the agreement by the State Roads Commission to maintain the bridges likewise did not create a "debt." The Court distinguished the *Gill* case by saying that in that case a "debt" existed because there was a pledge of existing property; whereas, in the bridge case there was no pledge of existing property, but a pledge of property that would come into existence only by virtue of the issuance of the revenue bonds.[183]

In the later case the Court upheld revenue bonds to provide financing for the reconstruction of Lexington Market in Baltimore City. Drawing an even finer distinction, the Court held that the Lexington Market revenue bonds were not to be secured by the market property, an existing property, but only by the revenues produced by the reconstructed market which had theretofore not been revenue producing because it had been operating at a loss.[184]

The term "credit" as used in these constitutional provisions has also required the drawing of fine distinctions by the courts. In an early case the Court of Appeals struck down an arrangement under which the County Commissioners of Anne Arundel County agreed to issue to a railroad negotiable county bonds in payment for a subscription to the stock of that railroad, and held that the arrangement was a loan of the county credit and that compliance with Article III, Section 54 of the Constitution was necessary.[185]

Sixty years later, sustaining the validity of a statute providing for the issuance of state bonds in the amount of $1,500,000, the net proceeds of which were to be given to the Johns Hopkins University for the construction of a new engineering building, the Court said:

> "Cash is not credit. Credit is sometimes a means of procuring cash, but the word is never used to describe a gift of cash. There is no prohibition in the Constitution against making appropriations to private institutions, provided the purpose is public, or semi-public, and thousands and thousand of dollars are appropriated out of the annual receipts every year. If the State should have a balance of a million and a half in its treasury from

[182] Baltimore v. Gill, 31 Md. 375, 390 (1869).

[183] Wyatt v. State Roads Commission, 175 Md. 258, 266 (1938).

[184] Castle Farms Dairy Stores v. Lexington Market Authority, 193 Md. 472, 483-84 (1949).

[185] Baltimore & Drum Point Railroad Company v. Pumphrey, 74 Md. 86 (1891).

annual receipts, there could be no constitutional objection to its giving this amount to the Johns Hopkins University for the purpose of constructing an engineering building. If the State does not have this amount available, but borrows it and then gives the cash to the University, which is what it is attempting to do, it is not giving or loaning its credit to, or in aid of, the University—it is using its credit with banking institutions to borrow the money, and it is giving the University its cash. What the Legislature of 1951 did by Chapter 414 was not to do by indirection what was forbidden to be done directly—it was to do something entirely different, something not prohibited, something not within the purpose of the constitutional prohibition, not within its wording, and not within its previous long-continued interpretation."[186]

The term "works of internal improvement" has also been the subject of much litigation. In an early case the Court of Appeals held that a state grant to counties for highway construction was not an involvement of the State "in the construction of works of internal improvement."[187] The Court in this case reviewed the historical background of these constitutional provisions at great length and concluded that railroads, canals and "possibly turnpikes," but not public roads, were the "works of internal improvement" which the constitutional provisions were intended to curb. The Court said that these works of internal improvement "were such as the State had been connected with or interested in as 'stockholder' or 'creditor'—such as had driven it to the very verge of bankruptcy and repudiation—and not such as every State government must have, either in its own name or in the names of its 'political agencies, created for the better government of the affairs of the State. . . .' "[188]

Other facilities which have been held by the Court of Appeals not to be "works of internal improvement" within the meaning of the constitutional prohibition are drainage and sewerage systems,[189] a public bridge,[190] a public market,[191] an educational institution,[192] a general hospital[193] and an international trade center.[194] In the last-mentioned case, in addition to a pledge of revenues to be derived from the project constructed with the bond proceeds, the Port Authority agreed to deposit monies from the general funds of a proposed trade center to assist in the construction of the center, and further agreed that the center itself was to be conveyed to a trustee as security for the payment of the principal and interest of the bonds.

In one of the latest cases, the Court approved the issuance of revenue bonds to finance construction of new state col-

[186] Johns Hopkins University v. Williams, 199 Md. 382, 401 (1952). See also Melvin v. Anne Arundel County, 199 Md. 402 (1952) in which the court upheld the issuance of Anne Arundel County bonds, the proceeds of which were to be given to a nonstock, nonprofit general hospital.

[187] Bonsal v. Yellott, 100 Md. 481 (1905).

[188] Bonsal v. Yellott, 100 Md. 481, 505 (1905).

[189] Welch v. Coglan, 126 Md. 1 (1915).

[190] Wyatt v. State Roads Commission, 175 Md. 258 (1938).

[191] Castle Farms Dairy Stores v. Lexington Market Authority, 193 Md. 472 (1949).

[192] Johns Hopkins University v. Williams, 199 Md. 382 (1952).

[193] Melvin v. Anne Arundel County, 199 Md. 402 (1952).

[194] Lerch v. Maryland Port Authority, 240 Md. 438 (1965).

lege dormitories when the bonds were secured in part by pledge of increased fees from existing college buildings.[195]

In 1965 an act of the General Assembly created the Maryland Industrial Development Financing Authority (MIDFA) and authorized it to insure mortgage loans secured by industrial projects.[196] The declared purpose of the act was to promote new and expanded industrial enterprises to provide greater opportunities for the gainful employment of people in Maryland. In a suit brought by a protesting taxpayer, the Court of Appeals held that a section of the Act purporting to pledge the full faith and credit of the State in support of the mortgage insurance was misleading because it was contrary to other provisions which limited the State's obligations as an insurer of the mortgages. The Court held that the statute must be construed so as not to pledge the full faith and credit of the State.[197] However, at its last session the General Assembly enacted supplemental legislation which clearly pledges the full faith and credit of the State in support of the MIDFA program. Md. Acts 1967 Chapter 642.

In view of the fact that the purported pledge of the full faith and credit of the State was thought to be absolutely essential by the proponents of the statute, its effectiveness has been severely limited by the Court's construction. Because of this construction of the statute, the Court had no occasion to decide the important constitutional questions involved in the case. Its opinion, however, does make clear its awareness of the necessity of some restrictions on the extension of state credit if the State's bonds are to retain the "AAA" rating which they have had for many years.[198]

CONCLUSIONS

The Commission believes that Article III, Section 34 of the present Constitution should be entirely rewritten. The heart of this section, the provisions requiring each incurred debt to be accompanied by a specific tax exclusively devoted to debt service, limiting maturity to fifteen years and prohibiting extension of the State's credit to "any individual, association or corporation," was a response to a specific evil, the reckless commitment of the State's credit to the railroad and canal companies over one hundred years ago. The sweeping language of these prohibitions, read literally, would appear to preclude the State from engaging in such commonplace and essential forms of financing as long-term revenue bond financing, in which only funds derived from the financed project are pledged to service the "debt," or borrowing for the purpose of making grants to private educational institutions or hospitals. To be sure, as the analysis of the court cases indicates, these prohibitions have been construed by the courts against the background of their adoption and the judicial interpretation has generally permitted modern financing techniques—but not without a price. Frequent litigation has been essential and the words "debt," "credit," and "works of internal improvement," as used in this part of the Constitution, have taken on highly specialized meanings, understood only by the initiated.

[195] Lacher v. Board of Trustees of the State Colleges, 243 Md. 500 (1966). See also Waring v. Board of Trustees of St. Mary's College of Maryland, 243 Md. 513 (1966).

[196] ANNOTATED CODE OF MARYLAND article 41, sections 266J-266CC (1965 Replacement Volume).

[197] Maryland Industrial Development Financing Authority v. Meadow-Croft, 243 Md. 515 (1966).

[198] Maryland Industrial Development Financing Authority v. Meadow-Croft, 243 Md. 515 (1966).

The words of the present Constitution, in short, do not mean what they appear to say.

The Commission has been extremely sensitive to the fact that the State today enjoys a "AAA" credit rating, the highest accorded to the bonds of any state or municipality. The Commission met with representatives of the leading banking and investment houses in Maryland and with a representative of Moody's Investors Service, Inc., the agency primarily responsible for rating the state bonds, in an effort to learn what effect, if any, changes in the Constitution would have on the State's credit rating. This basic inquiry was not directed to determining the soundness or unsoundness of particular uses of the State's credit, but was an effort to learn what effect, if any, changes in the State's organic law would have on its credit rating.

Although the views of the banking and investment witnesses were not always unanimous, there was general consensus on the following important points:

1. The State's credit rating will not suffer if the requirement that each loan be supported by a specific tax is abolished, so long as the full faith and credit of the State and the State's unlimited taxing power are permitted to stand behind its general obligation bonds.

2. Some constitutional limitation on the maturities of bond issues is essential in order to maintain the State's credit rating at present levels, but the constitutional limit on maturities can be extended from fifteen to twenty-five years without danger to the State's credit rating.

3. Revenue bond financing is necessary and desirable, and it should be made clear in the constitution that revenue bond financing is permissible.

4. Although constitutional provisions are relevant to a State's credit rating, the soundness of a State's management of its fiscal affairs in practice is of far greater importance.

RECOMMENDATIONS

The Commission believes that, so long as the full taxing power of the State stands behind its general obligation bonds, the elimination of the present requirement that each bond issue be accompanied by a specific tax for debt service will not affect the State's credit. Accordingly, the Commission recommends that this requirement be eliminated, and recommends that there be included, instead, a requirement that, when the General Assembly does not appropriate sufficient funds for the service of a particular debt, there shall be set apart from the first revenues thereafter received applicable to the general fund, a sum sufficient to service the debt. Such a provision has been recommended to the Commission by several of the banking and investment witnesses. It is similar to a provision which is in the present Constitution of New York.[199] The Commission believes that such a requirement will give the needed flexibility to the servicing of the state debt. In addition, an irrevocable pledge of the State's full faith and credit and unlimited taxing power will make clear the State's commitment to the payment and service of its debt.

The Commission further recommends that the provision be made that only general obligation bonds supported by a pledge of the State's full faith and credit and unlimited taxing power be considered a state indebtedness subject to constitutional restrictions.

The Commission also recommends that the maturity limit for general ob-

[199] NEW YORK CONSTITUTION article VII, section 16.

ligation bonds be established at twenty-five years. Most projects financed by bonds have useful lives of longer than fifteen years, and closer coordination between the useful life of the financed project and the life of the loan would promote greater and desirable flexibility in the establishment of the maturity schedules for the bonds in question. On the other hand, a maturity limitation in excess of twenty-five years might possibly adversely affect the State's credit rating and would be too great a shift to future generations of financial responsibility for the cost of today's progress.

The Commission further recommends that a "public purpose" test be the only constitutional limitation on the State's uses of its credit. Such a test rests on an accepted body of judicial opinion in Maryland, and the apparently inconsistent results of some of the court decisions can be explained by the fact that the courts have often applied a "public purpose" test to the financing arrangements being discussed.[200] This is not to say that every extension of credit heretofore undertaken with apparent legislative sanction would necessarily or automatically meet the "public purpose" test. The Commission seriously doubts, for instance, that every project which might be said to fall within the broad declared purposes of the MIDFA Act would, or should, be held to be a "public purpose."

The provisions of the present Constitution permitting limited appropriations for "works of internal improvement" in the three Southern Maryland counties no longer have relevance and should not be continued in a new constitution.

The Commission further recommends that a new constitution not contain any specific provisions relating to tax anticipation or bond anticipation borrowing, or provisions specifically permitting the contracting of debts for the defense of the State. If the "public purpose" test is adopted, the additional detailed provisions are unnecessary. The same may be said as to the specific authorization of a veterans' bonus.

Section 6.01. **State Indebtedness.**

The State shall have the power to incur indebtedness for any public purpose in the manner and upon the terms and conditions as the General Assembly may prescribe by law. All such indebtedness shall be secured by an irrevocable pledge of the full faith and credit and unlimited taxing power of the State. Unless the law authorizing the creation of an obligation includes such an irrevocable pledge, the obligation shall not be considered an indebtedness of the State. If at any time the General Assembly shall fail to appropriate sufficient funds to provide for the timely payment of the interest upon and installments of principal of all state indebtedness, there shall be set apart from the first revenues thereafter received applicable to the general funds of the State a sum sufficient to pay such interest and installments of principal. All state indebtedness shall mature within twenty-five years from the time when such indebtedness is incurred.

Comment:

This draft section embodies all of the Commission's recommendations with respect to state debt which are summarized at the end of the introductory comment to this draft article. It should be noted, however, that this draft section, unlike Article III, Section 34 of the

[200] Johns Hopkins University v. Williams, 199 Md. 382 (1952); Melvin v. Anne Arundel County, 199 Md. 402 (1952); Frostburg v. Jenkins, 215 Md. 9 (1957).

present Constitution, deals only with state indebtedness; it does not deal with a gift or loan of assets or credit of the State to a private person or corporation, which is dealt with in draft Section 6.02.

The first sentence of this draft section embodies the first principal recommendation of the Commission, namely, that the General Assembly shall have the power to authorize indebtedness on behalf of the State "for any public purpose." The Commission is fully mindful of the fact that "what is a public purpose for which public funds may be expended is not a matter of exact definition; it is almost entirely a matter of general acceptation."[201] It is true also that "the line of demarcation" between what is a private purpose and what is a public purpose "is not immutable or incapable of adjustment to changing social and economic conditions that are properly of public and governmental concern."[202]

This, however, is a desirable flexibility in the language of a constitution which ought to be able to meet the ever changing conditions of society. What, at any given point in time, would be generally accepted and understood as a "public purpose" should be deemed to be a "public purpose" within the meaning of this draft section. This is not to say that the General Assembly should be the sole or final arbiter as to what is or is not a "public purpose." In the final analysis, this decision is one for the courts; but it is not necessary or desirable that the term be rigidly defined to include only what may, under today's conditions and today's thinking, be regarded as a "public purpose."

[201] Finan v. Mayor and City Council of Cumberland, 154 Md. 563, 565 (1928).

[202] Frostburg v. Jenkins, 215 Md. 9, 16 (1957).

The second and third sentences of this draft section embody the next principal recommendation of the Commission that the constitutional concept of a state debt be stated clearly and precisely. This purpose is accomplished by the requirement that a state debt be secured by an irrevocable pledge of the full faith and credit and unlimited taxing power of the State and the stipulation that without such an irrevocable pledge an obligation is not a state debt.

This provision does not, in any way, prohibit the issuance by the State, or any state agency, of revenue bonds secured not by a pledge of the full faith and credit of the State, but by the revenues of the project for the financing of which the revenue bonds are issued. Such revenue bonds are not affected by this draft section. This draft section in no way applies to such revenue bonds and in no way places upon the General Assembly any restriction whatsoever with respect to their issuance. This draft section makes it abundantly clear that such revenue bonds would not be a state indebtedness. Accordingly, the issuance of revenue bonds in the ordinary form will not affect the credit of the State. The credit of the State is pledged only with respect to state debt and, as this draft section makes very clear, state debt means only general obligation bonds of the State.

It should be emphasized, therefore, that neither this draft section nor any other provision of the draft constitution in any way limits or restricts the General Assembly in the authorization of revenue bonds to finance self-liquidating projects. The purchasers of revenue bonds will look solely to the revenues from the projects financed by such bonds for the repayment of the principal and interest of the bonds, and not to the State of Maryland.

It should be noted also that there is no provision in this draft section or in draft Section 6.01 for the imposition of a special tax with which to fund a state debt. Here, again, a special tax would be unnecessary and, under the provisions of this draft section, would be improper since the full and unlimited taxing power of the State is pledged to repay every state indebtedness, and the repayment of a bond representing a state debt cannot be limited to funds derived from a special tax.

The fourth sentence of this draft section embodies the third principal recommendation of the Commission, and implements the requirements of the second and third sentences by providing a means by which any state indebtedness may be paid in the event the General Assembly should fail to appropriate sufficient funds to provide for the timely payment of interest and principal on state indebtedness when due. This sentence, in effect, makes the state debt a first charge upon the general funds of the State.

The fifth sentence of this draft section embodies the fourth principal recommendation of the Commission. It provides that no state indebtedness shall have a maturity longer than twenty-five years from the time such indebtedness is incurred.

The Commission believes that the requirements of this draft section will strengthen the credit standing of the State and will enable the State to maintain its present high rating. The simplicity and clarity of these provisions will also, it is hoped, bring to an end the almost continuous stream of litigation which has resulted from the elaborate provisions of the present Constitution in the one hundred years of their existence.

Section 6.02. **Gift or Loan of Assets or Credit.**

The assets or credit of the State shall not in any manner be given or loaned to any individual, association, or corporation unless a public purpose will be served thereby and unless authorized by an act of the General Assembly stating the public purpose and, in the case of a gift or loan of credit or a loan of assets, passed by the affirmative vote of three-fifths of all the members of each house.

Comment:

This draft section deals not with state indebtedness, but with a gift or loan of assets or credit of the State. It should be noted, however, that the first clause embodies the same "public purpose" concept of draft Section 6.01 dealing with state debt in that a gift or loan of assets or credit of the State to any private person is prohibited unless a public purpose will be served thereby.

This draft section differs significantly from the provisions of the present Constitution which flatly prohibit a gift or loan of the credit of the State to a private person. In this draft section a gift or loan of credit, or loan of assets, is not prohibited, but may be made only by a law enacted by the affirmative vote of three-fifths of all the members of each house of the General Assembly.

In addition, it will be noted that the statute must state the public purpose to be served by the gift or loan of assets or credit. The Commission believes this requirement to be a salutary provision. The General Assembly should be required to state clearly in the statute the public purpose which it believes will be served by the gift or loan of the assets or credit of the State.

Such a statement will serve several purposes. First, it will state the issue clearly for the members of the General Assembly so that in the consideration of the legislation there will be no uncertainty as to the real purpose of the statute. Second, it will inform the public of the public purpose intended to be served by the statute. Third, it will state for the consideration of the courts what the General Assembly believes to be the public purpose for which the legislation is designed since, as pointed out in the comment to draft Section 6.01, it will be the courts which, in the final analysis, will determine whether a "public purpose" is being served.

It should be noted that a gift of assets may be authorized by a statute which is not passed by the affirmative vote of three-fifths of all the members of each house. Gifts of assets for a public purpose, as for instance, gifts of cash to private educational institutions performing public functions, have been well recognized as entirely proper and, indeed, in many instances necessary.[203] The gift of assets for a public purpose is a practice long followed in this State, and there is no necessity to require that the authorizing statute be passed by a three-fifths vote. A gift or loan of credit or a loan of assets is, however, in a different category. It is unlike an immediate gift of assets in that it creates no present problem; it is something for the future and, hence, something that may never exist as a problem. It is, therefore, an action as to which there can be irresponsibility because of the ease with which one may be lulled into a sense of false security.

The Commission is fully mindful of the very strong arguments which can be made for a complete prohibition of a gift or loan of credit, or a loan of assets; but, as pointed out in the introductory comment, the reasons given for the inclusion of such a prohibition in the Constitution adopted more than one hundred years ago no longer exist. The Commission believes that the provision requiring the affirmative vote of three-fifths of all the members of each house to approve a gift or loan of credit, or a loan of assets, will afford sufficient protection against unwise or improvident action by the General Assembly.

BUDGET AND APPROPRIATIONS

Introductory Comment:

For more than fifty years the State of Maryland has operated under the executive budget system, the provisions of which are presently embodied in the fifteen subsections of Article III, Section 52 of the present Constitution. All provisions of the draft constitution dealing with budget and appropriations are contained in this draft article and embodied in draft Sections 6.03 to 6.10, inclusive. The Commission recommends that the executive budget system be retained in a new constitution, but it also recommends that the present very detailed provisions of Article III, Section 52 be completely rewritten so as not only to eliminate much of the detail which should not be in a constitution, but also to state the controlling principles more clearly and simply. Before the draft sections which are recommended to accomplish this purpose are discussed in detail, a brief historical review will be helpful.[204]

[203] Johns Hopkins University v. Williams, 199 Md. 382, 401 (1952).

[204] In its consideration of the budget provisions of the present Constitution, the Com-

HISTORICAL REVIEW

The State of Maryland adopted the executive budget system in 1916. It was the first state to do so.[205] Previously, in common with her sister states, Maryland had no orderly system of planned public expenditures. The practice prior to 1916 was for the governor, pursuant to the command of Article II, Section 19 of the present Constitution, to appear before a joint session of the two houses of the General Assembly and address them on the "conditions of the State," in the course of which address he directed attention to the State's needs, and recommended measures which, in his judgment, were required to meet them. The governor possessed the power under Article II, Section 17 to veto items in appropriation bills, but political realities dictated that he exercise this veto sparingly. Furthermore, vetoed items could be passed over the governor's veto.

In short, the General Assembly, under the practice existing prior to 1916, exercised the effective power to set the fiscal policies of the State. Under this system, "appropriations for various purposes were made piece-meal by the General Assembly, each project receiving independent consideration without relation to other claims upon the public purse."[206] Whatever may have been the practical possibilities, in an earlier day, for state legislators to have a total picture of the State's fiscal operations, by 1916 the growth of the state government had made it impossible. Consequently, expenditures were made in a haphazard fashion and "logrolling" for pet projects of various legislators was common, with the result that embarrassing deficits in the state treasury occurred. In 1915 alone, the treasury showed a deficit of $2,000,000. Furthermore, important state activities and needs were overlooked.[207]

The acute need for centralized budget administration became recognized. Shortly after his inauguration in 1916, Governor Emerson C. Harrington transmitted to the General Assembly a report on a budget system by the Commission on Economy and Efficiency, headed by Dr. Frank J. Goodnow, President of the Johns Hopkins University. This report contained a proposed constitutional amendment, the purposes of which were summarized in the report as follows:

> "1st. To impose upon the Governor the sole responsibility, within the limits of the Constitution and the provisions of existing law, of presc ting to the Legislature a complete and comprehensive statement of the needs and resources of the State, based upon:
>
> a. Estimates made by those applying for State moneys.

mission heard testimony from Messrs. James G. Rennie, then Director, and James P. Slicher, present Director of the Department of Budget and Procurement of the State of Maryland; Mr. Charles L. Benton, Director of Finance, Baltimore City; Mrs. Janet L. Hoffman, Fiscal Advisor to the City Council of Baltimore; Mr. John G. Lauber, then Director of Finance, Montgomery County, and now Administrative Assistant to the Governor for fiscal matters; Mr. John A. Donaho, President of John A. Donaho and Associates, Inc., consultants to governments; numerous representatives of the Maryland State Department of Education, including Dr. James A. Sensenbaugh, State Superintendent of Schools; and Mr. Milson C. Raver, Executive Secretary of the Maryland State Teachers Association.

[205] FIRST INTERIM REPORT OF THE [MARYLAND] COMMISSION ON ADMINISTRATIVE ORGANIZATION OF THE STATE, THE MARYLAND BUDGET SYSTEM (1951).

[206] McKeldin v. Steedman, 203 Md. 89, 96 (1953).

[207] See MILES, THE MARYLAND EXECUTIVE BUDGET SYSTEM 8-9 (1942).

b. Evidence brought out at public hearings on those estimates.

c. Administrative revision by the governor of all estimates, except those for the Legislature and the Judiciary, and for purposes for which provision has been made by the Constitution or existing law.

"2nd. To make it impossible for the Legislature so to change the plans proposed by the Governor as to produce a deficit.

"3rd. To permit the Legislature to make provision for any purpose not included in the Governor's plan, on the condition that it provide also for the revenue, which the accomplishment of its purpose necessitates."[208]

The proposed amendment was ratified by the people in 1916 and forms the heart of Article III, Section 52 of the present Constitution.[209] The central purpose of the "budget amendment" was to impose upon the governor the primary responsibility for controlling the fiscal policies and operations of the State and on the General Assembly the secondary task of reviewing the governor's proposals and eliminating unnecessary or excessive items. The General Assembly was allowed the initiative in passing supplemental appropriation bills only after the governor's budget had been acted upon and on condition that each supplemental appropriation bill be limited to a single purpose and impose a tax to produce revenue sufficient to pay the appropriation.

For the most part the executive budget system has served its major purpose, that of preventing deficits. It failed to do so only for a brief period during the Depression.[210] Nevertheless, the continued rapid growth in the State's activities prompted new criticism of the budget system. The First Interim Report in 1951 of the Commission on Administrative Organization of the State (the Sobeloff Commission) recommended numerous administrative changes and pointed to two major defects in the constitutional provisions.

That Commission found that the mass of itemized detail submitted to the General Assembly made it virtually impossible for conscientious legislators to grasp the significance of the expenditures they were called upon to analyze on short notice. Accordingly, that Commission recommended discontinuance of the "line item" budget and its replacement by a "program budget" in which expenditures are grouped by services to be performed so that legislators could more easily establish the relationship between a state service and its cost.[211]

That Commission also found that the power granted to the governor by Article III, Section 52(5) of the present Constitution to amend or supplement the budget prior to final passage "to correct an oversight, provide funds contingent on pending legislation or, in case of an emergency" had in practice been abused. Its report said:

"Knowing that frequently a Governor can be persuaded to include items in a supplemental budget which

[208] First Interim Report of the [Maryland] Commission on Administrative Organization of the State, The Maryland Budget System 3 (1951).

[209] Acts of 1916, chapter 159, ratified Nov. 7, 1916.

[210] See Miles, The Maryland Executive Budget System 8-9 (1942).

[211] First Interim Report of the [Maryland] Commission on Administrative Organization of the State, The Maryland Budget System 14-24 (1951).

have not been subjected to careful scrutiny by the Budget Director, petitioners for funds may deliberately neglect to make requests in time for inclusion in the initial budget. Furthermore, the Commission has been advised that the supplemental budget has become a bargaining device between the legislature and the executive. It is said that legislators will at times make approval of proposals sponsored by the Governor contingent on his inclusion of items sponsored by them in the supplemental budget. This means that financial and administrative problems get shunted into an area of political controversy for decision without regard to financial soundness. We are convinced that, with adequate advance notice, the Governor can enforce presentation of all budget requests in time for inclusion in his original budget. In the interest of sound budgeting, we urge that he do so. The power will remain, as now, to use the supplemental budget device to correct mechanical errors and to provide for expenditures required by legislation enacted at the current session prior to enactment of the budget."[212]

Response to the first of the proposals by the Commission on Administrative Organization of the State with respect to the constitutional provisions was swift. In 1952 the voters adopted amendments to subsections (4) and (5) of Article III, Section 52 of the present Constitution which eliminated the requirement that the budget contain an "itemized" estimate of appropriations, and instead required only that the estimate of all appropriations and the budget bill be "in such form and detail as the governor shall determine or as may be prescribed by law."[213] Since the adoption of these amendments, a budget by programs has been employed in Maryland.

No changes in the present Constitution have resulted from the second finding mentioned above of the Commission on Administrative Organization of the State, namely, the abuse of the governor's power to amend and supplement the budget. This Commission, however, in this draft article has attempted to provide a safeguard against this abuse.

JUDICIAL INTERPRETATION

In 1953 the General Assembly authorized a bond issue and provided for the levy of a special tax sufficient to discharge the interest on the bonds as it became payable and the principal of the bonds within fifteen years in accordance with the requirements of Article III, Section 34 of the present Constitution. Another section of the "bond act" provided that the governor should include in his annual budget an item for the payment of principal and interest due on the bonds in each respective year; and further provided that the special tax should not be levied unless the general funds appropriated in the annual budget bill were insufficient to discharge the obligations created by the "bond act." The Court of Appeals held that this arrangement was contrary to the purposes of Article III, Section 52 of the present Constitution and, hence, invalid. The Court declared that the purpose of Article III, Section 52 was not only to prevent the General Assembly from so changing the plans of the governor as to

[212] First Interim Report of the [Maryland] Commission on Administrative Organization of the State, The Maryland Budget System 24-25 (1951).

[213] Acts of 1952, chapter 20, ratified Nov. 4, 1952.

produce a deficit, but also to prevent the General Assembly from reaping the political benefit of authorizing expenditures while imposing upon the governor the distasteful burden of imposing the tax required to pay the cost.[214]

In 1939 the General Assembly created the Commission of Fisheries to be supported by certain designated revenues. An attempt was made to petition the law to referendum and this was resisted in the courts. The narrow question before the court was whether the act which established the Commission constituted a "law making an appropriation." If so, the law could not be submitted to referendum because laws making an appropriation for the maintenance of the government are not subject to referendum. The Court of Appeals held that the law did not make an appropriation merely because it required certain expenditures which, however, could be disbursed from the treasury only by an appropriation.[215]

There is some inconsistency between the principles enunciated in these two cases. In the one case the Court held that the budget amendment prevents the General Assembly from making an appropriation without shouldering the responsibility for imposing the tax necessary to pay it. In the other case, the Court held that the General Assembly may by general law provide that certain sums are to be expended for a particular purpose and thereby make it incumbent upon the governor to provide in his budget an appropriation to pay the cost.

In another case which should be noted, the Court of Appeals held that a supplementary appropriation bill may be "considered," but may not be put to a vote in either house of the General Assembly before final action is taken on the budget bill. The Court said that the purpose of Article III, Section 52(8) of the present Constitution was to prevent a vote on another appropriation bill before final action on the budget bill.[216]

RECOMMENDATIONS

The Commission firmly believes that provisions establishing the structure of the State's budget system should be continued in a new constitution. In large measure, the practical relationship between the executive and legislative branches of the state government is determined by the constitutional rights and duties of each branch with respect to the state budget. The Commission's inquiry into the concept and operation of the present executive budget system has convinced it that the system is fundamentally sound, both in theory and practice. The Commission's recommendations are designated primarily to improve the system's operation along lines already charted by the "Goodnow" and "Sobeloff" commissions, while removing unnecessary detail from the constitution.

Section 6.03. **Appropriations.**

The General Assembly may not appropriate any money out of the treasury except by a budget bill or a supplementary appropriation bill.

Comment:

The simple, yet emphatic sentence which constitutes this draft section is the keystone of the budget system. The General Assembly may by law set up programs, create agencies and authorize expenditures for their maintenance, but no money for such expenditures can

[214] McKeldin v. Steedman, 203 Md. 89 (1953).

[215] Dorsey v. Petrott, 178 Md. 230 (1940).

[216] Bickel v. Nice, 173 Md. 1 (1937).

be paid out of the state treasury unless, in addition to the law authorizing the expenditures, there is an appropriation either by budget bill or supplementary appropriation bill. Every appropriation of money out of the state treasury must, therefore, be made pursuant to the provisions of draft Sections 6.03 to 6.10, inclusive. There is no other authority anywhere in the draft constitution for the expenditure of public monies by the General Assembly or any other branch of the government.

This draft section is essentially the same in substance as Article III, Sections 52(1) and 52(2) of the present Constitution.

Section 6.04. **The Budget.**

On the third Wednesday in January in each year (except in the case of a newly elected governor, and then not later than twelve days after the convening of the General Assembly into regular session), unless such time be extended by the General Assembly, the governor shall submit to the General Assembly a budget for the ensuing fiscal year. The budget shall show the estimated surplus or deficit of revenues at the end of the preceding year and shall contain, for the fiscal year covered thereby, an estimate of revenues, a complete plan of proposed expenditures by program including all appropriations required by this Constitution or by law, and any additional information prescribed by law, all in such form and detail as the governor shall determine. The total of the proposed expenditures shall be limited to funds available therefor as shown in the budget.

Comment:

In broad outline and general concept this draft section is essentially the same as Article III, Section 52(3) of the present Constitution, but a number of important changes in detail have been made.

The present Constitution provides that on the third Wednesday in January of each year, except in the case of a newly elected governor and then not later than ten days after the convening of the General Assembly, the governor shall submit his budget. The third Wednesday in January is the date set for the convening of the General Assembly and, accordingly, the ten-day period applicable in the case of a newly elected governor expires on a Saturday. This draft section changes the ten-day period to a twelve-day period so that it will expire on a Monday instead of a Saturday, thus allowing the newly elected governor an extra weekend in which to put his budget message into final form.

The Constitutional Convention will undoubtedly consider recommendations for a different date for the convening of the General Assembly and a different date for the inauguration of a newly elected governor.[217] In the event the times for the convening of the General Assembly and for the inauguration of a newly elected governor are changed, the provisions of this draft section should be changed accordingly.

The second sentence of this draft section contains the basic requirements now included in Section 52(3), but the effort has been made to state these requirements more simply, directly and clearly. The words "by program" have been inserted after the words "a complete plan of proposed expenditures" in order to implement further the recommendation for a "program budget" contained in the Report of the Commission on

[217] See comment to draft Sections 3.12 and 4.05.

Administrative Organization of the State referred to in the introductory comment, and the 1952 amendments to Article III, Sections 52(4) and 52(5) which were enacted pursuant to the recommendation in that Report, and eliminated the line-item requirement which had theretofore existed. The recommendation embraced in this draft section carries this important concept one step further and makes it clear that the budget itself, as well as the budget bill, is to be constructed by "programs."

It should also be noted that although the governor, under the language of the second sentence of this draft section, has the primary duty to determine the form and detail of the budget, nevertheless, the General Assembly may by law require that specified information be included in the budget. This provision is essential to ensure the members of the General Assembly the power to require that they be fully informed concerning all matters contained in the budget or necessary to an understanding of the budget. The second sentence of this draft section, in addition, requires that the budget include all appropriations required by this constitution or by law. Further comment with respect to this requirement will be found in the comment to draft Section 6.05 which deals with mandatory appropriations.

The last sentence of this draft section is the imperative one which requires that the budget be "balanced." There is no explicit requirement to this effect in Article III, Section 52 of the present Constitution, although the provisions of that section might be read and have been interpreted to require the submission of a balanced budget. Inasmuch as the concept of a balanced budget lies at the very heart of the executive budget system, the Commission believes that it should be explicitly stated in the constitution. It was thought at first that the use of the word "balanced" alone might suffice for this purpose; but upon further consideration, the Commission believes that the simple, clear and explicit declaration of the last sentence of this draft section is the more desirable.

Section 6.05. **Mandatory Appropriations.**

The estimates of appropriations for the legislative branch, certified by the presiding officer of each house, and for the judicial branch, certified by the chief judge of the Superior Court, shall be transmitted to the governor, in such form and at such time as he shall direct. To the extent that appropriations for the legislative and judicial branches and for state support of public school systems are required by law, the estimates therefor shall be included in the budget without revision.

Comment:

This draft section is intended to continue the substance of the provisions of Article III, Section 52(4) of the present Constitution and a part of the provisions of Article III, Section 52(11), but the effort has been made to state the requirements as to mandatory appropriations in simpler and clearer language. This draft section enlarges the powers of the General Assembly in initiating items for the budget and, thereby, to some extent restricts the powers of the governor in the initiation and preparation of the budget.

The preparation of the budget is entirely in the hands of the governor except with respect to the appropriations for the legislative and judicial branches of the government. The budget for the legislative branch is prepared by the presiding officer of each house of the

General Assembly and is certified to the governor. There is no other explicit provision in the draft constitution for the preparation of the budget for the legislative branch and, hence, this will be done in such manner as is prescribed by law or by the rules of the two houses of the General Assembly.

The budget for the judicial branch is to be certified to the governor by the chief judge of the Superior Court, who, under draft Section 5.27, is the chief administrative judge of the judicial system. Here again, there is no other explicit provision elsewhere in the draft constitution as to the preparation of the budget of the judicial branch; so this will be done in such manner as may be prescribed by law or by rule of the Supreme Court.

The limited control of the General Assembly and the corresponding restriction on the power of the governor in the initiation of the budget are contained in the second sentence of this draft section. This provision requires the governor to include in the budget without revision the appropriations for the legislative and judicial branches and for state support of public school systems to the extent, but only to the extent, that the appropriations for the legislative and judicial branches and for state support of public school systems are required by law. This gives the General Assembly complete control over the budget of the legislative branch because it can by law provide what appropriations must be made.

Similarly, the General Assembly, except as limited by other constitutional provisions such as the prohibition against reduction in judges' salaries during their terms of office, has control, or at least theoretical control, over the budget of the judicial branch. In practice, however, this will be a control exercised jointly by the governor and the General Assembly, because the governor is required to include in the budget only those appropriations for the judicial branch which are required by law, and it is unlikely that the General Assembly will by law provide for all the expenditures included in the annual budget for the judicial branch. In any event, these two provisions preserve a measure of independence of the legislative and judicial branches from the executive branch. The "power of the purse" initially is largely vested in the governor but as to the legislative and judicial branches it is restricted.

The situation as to the public school system is somewhat different and because the Department of Education and the Maryland State Teachers' Association were very concerned about the provisions in the present Constitution with respect to the budget of the Department of Education, the Commission made a special study of the background and operation of the provisions of the present Constitution dealing with this matter.

It should be made clear at the outset that the protection accorded the "estimates for . . . the public schools as provided by law" under Article III, Section 52(11) of the present Constitution has never been construed to encompass the entire budget of the State Department of Education. To the contrary, the protection has been limited to "those estimates the amount of which is made mandatory by law"; that is, those estimates made pursuant to the laws of Maryland pertaining to education which require "fixed or mathematically calculable expenditures by the State for the public school system."[218] As the attorney general has pointed out:

[218] 36 Ops. Atty. Gen. 109, 110-11 (1951).

"To hold that the Department of Education has uncontrolled power over all appropriations for the public school system would give that Department indirect control over the entire State budget. Yet the Governor and the General Assembly are by Section 52 of Article III of the Constitution charged with responsibility for the over-all fiscal program of the State."[219]

In the view of the attorney general in 1951, budget estimates for the following items fell into the so-called "mandatory" category and could not be revised downward by the governor or by the General Assembly: Teachers' Retirement System, exclusive of the Administration Expense Fund; aid per classroom unit; basic aid per pupil; Equalization Fund; part payment of salaries of school officials; incentive fund for buildings; education of physically and mentally handicapped children; and state aid to public libraries.

The attorney general pointed out, however, that "the facts upon which the estimates are based must be correct, and we think the Department of Education ought to be compelled to show their accuracy."[220]

In 1964 the General Assembly made the first major revision in the basic state aid to education program since 1921,[221] significantly altering the statutory formula under which state aid to education is calculated. The basic purposes of the revision were to raise the level of the State's commitment to public education and to reduce disparities in the educational systems among the counties. The primary features of the revised formula are (1) the guarantee to every child in the State of an expenditure of $340 for current expense costs, (2) a required local share for each county and Baltimore City in an amount equal to 1.228 per cent of the sum of its "adjusted assessed valuation of real property" and its total "net taxable ordinary income," and (3) a guaranteed minimum state contribution for each pupil of $98.[222] The revision does not appear to have significantly affected the so-called "mandatory items" not subject to budget revision by the governor or the General Assembly. In testimony before the Commission the State Superintendent of Schools cited the following budget items as "mandated": state share of current expense; current expense incentive aid; pupil transportation; incentive fund for school construction; aid for handicapped children; junior colleges; public libraries; public library incentive aid; and Teachers' Retirement System. Although open to some differences in interpretation, these categories appear to reflect the attorney general's standard; that is, estimates for state aid which require fixed or mathematically calculable expenditures by the State for the public school system.

The "mandated items" for public schools fall into what may be termed, broadly speaking, expenditures for "operations"—expenses such as teachers' salaries, classroom construction, textbooks, heat and light for school buildings, and transportation—as opposed to expenditures for "administration." It has apparently never been suggested, for

[219] 36 Ops. Atty. Gen. 109, 111 (1951).

[220] 36 Ops. Atty. Gen. 109, 112 (1951).

[221] Acts of 1964, chapter 17.

[222] Other important details of the rather elaborate structure of the state aid formula are set out and explained in FINANCING EDUCATION FOR OUR TIMES IN MARYLAND, a pamphlet published by the Maryland State Department of Education in May, 1964.

example, that the salary of the state superintendent of schools or other items relating to the internal administration of the Department of Education are "mandated" items.

Under the attorney general's ruling cited above, the General Assembly effectively controls the practical meaning of the protections to the Department of Education budget presently afforded by subsections (11) and (12) of Article III, Section 52. The General Assembly not only determines the quantity of state aid, but, by controlling the question of whether to require state aid for given budgetary items by a "fixed or mathematically calculable expenditure," completely determines what shall or shall not be a "mandated" item. Thus even the protections presently afforded to mandated items by subsections (11) and (12) of Section 52 would appear to be sharply limited, in theory at least, by the will of the General Assembly.

Representatives of the State Department of Education and of the Maryland State Teachers' Association strongly urged retention of the existing provision as a guarantee against "political" interference with the school budget. The State Superintendent of Schools told the Commission that in other states, where revisions of the education budget are permitted, the education budget does become embroiled in "politics." The Executive Secretary of the Maryland State Teachers' Association said that the present provision is "the primary protection which keeps public schools out of politics" and is even more important than the protection against legislative revision which presently appears in Article III, Section 52(6) and which the Commission recommends be retained in draft Section 6.07.

Representatives of the Department of Budget and Procurement and some outside consultants suggested, with varying degrees of intensity, that the provision be eliminated because it undercuts the governor's control of his own budget and, thus, runs counter to the philosophy of the executive budget system. The present director of the Department of Budget and Procurement pointed out that, traditionally, the Department of Education was the largest "reverter"— *i.e.,* returned the largest percentage of unspent funds to the treasury—and suggested that this was due in large part to the inability of the budget department to revise education department estimates on the same basis as it revises the estimates of other state agencies.

Much testimony revolved around the extent to which the prohibition against a reduction by the governor of "mandated" items has practical meaning. Initially, there appeared to be significant conflict in the testimony on the question of whether the Department of Budget and Procurement did, in fact, revise some of the estimates, even as to "mandated" items, on which the education budget is based, particularly the estimate as to the anticipated number of pupils for the budgeted school year. The conflict has been seemingly reconciled, however. The true state of affairs would appear to be that the budget department does not hesitate to check those budget items which are based upon estimates by the Department of Education, and the Department of Education does not hesitate to correct erroneous estimates pointed out by the budget department analysts. In short, a cooperative atmosphere appears to prevail in which genuine give-and-take occurs. There has been no occasion brought to the atten-

tion of the Commission on which the Department of Education had to insist on the protections of subsections (11) and (12) of Section 52. Education officials testified, however, that the very presence of the protection was in part responsible for the atmosphere of give-and-take in discussions between the budget and education departments.

Conclusions

There was no clear evidence to indicate that the relative freedom of the Department of Education from "political" interference is due to the protections of subsections (11) and (12) of Section 52. A report cited to the Commission by the Executive Secretary of the Maryland State Teachers' Association[223] contains a strong indictment of political interference in the Maryland school system and recommendations for reform, many of which were incorporated into the extensive reforms of Maryland's system of education which were enacted by the General Assembly in 1916. The report does not, however, make reference to the provisions here in question. The Commission believes that the evil of "political" interference, from a budgetary standpoint, to which sound objection was made in the above-mentioned report, was that of "logrolling" for pet educational projects by the General Assembly.[224] It should be remembered that legislative "logrolling" on a more widespread scale was one of the factors which led to the adoption of the executive budget system in 1916.

In short, there does not appear to be evidence of "political" manipulation of the education budget by the governor. Prior to the 1916 budget amendment, Maryland had no executive budget system and the governor had no effective control of the budget and the protections of subsections (11) and (12) of Section 52 have been in effect since the adoption of the executive budget system. Accordingly, Maryland is without experience which would indicate whether the feared evils of "political" manipulation by the governor would or would not occur if these provisions were not retained.

Despite the absence of clear evidence that the provisions in question are responsible for the absence of "politics" in the public school system, the Commission recognizes that the protection to the education budget has become an important symbol of the freedom of the public schools from "politics." Since these provisions make only a limited inroad into the governor's control of his budget, the Commission believes that, on balance, the substance of the present protection ought to remain in a new constitution.

The Commission believes, however, that the language of the protection ought more nearly to conform to present practice and to reflect the fact that only items mandated by the General Assembly are protected. Thus, the Commission has substituted the words "as *required* by law" for the words "as *provided* by law" and has substituted the words "estimates . . . for state support to local school systems" for the words "estimates . . . for the public schools." The Commission believes that the proposed substitutions more clearly reflect the nature of those items which have traditionally been "mandated," yet the language is flexible enough to encompass periodic adjustments in the state aid formula by the General Assembly.

[223] Flexner & Bachman, Public Education in Maryland—A Report to the Maryland Educational Survey Commission (5th ed. 1921).

[224] See Flexner & Bachman, Public Education in Maryland—A Report to the Maryland Educational Survey Commission, chapters 9 and 12 (5th ed. 1921).

Section 6.06. **Presentation of Budget Bill.**

The governor shall deliver to the presiding officer of each house the budget and a bill for all the proposed appropriations of the budget, classified and in such form and detail as he shall determine or as may be prescribed by law. The presiding officer of each house shall promptly cause the bill, called the budget bill, to be introduced. The governor may, before final action thereon by the General Assembly, amend or supplement the budget bill to correct an oversight, to appropriate funds contingent on passage of pending legislation or to provide for an emergency. Such amendment or supplement shall be delivered to the presiding officers of both houses, and it shall thereafter become a part of the budget bill as an addition, substitute or modification thereof or any item thereof. Each amendment shall be accompanied by a statement by the governor explaining the reasons therefor.

Comment:

The first two sentences of this draft section are in substance the same as the provisions now incorporated in the first sentence of Article III, Section 52(5) of the present Constitution. The third sentence of this draft section is substantially the same as the first clause of the second sentence of the present Section 52(5), with the exception that this draft section elimates the requirement of Section 52(5) that the governor can amend or supplement the budget bill only "with the consent of the General Assembly." The Commission believes that such a consent requirement is inconsistent with the executive budget system in which Maryland has pioneered, and undercuts the governor's primary responsibility for the budget. This was also the view of the numerous governmental budget experts who testified before the Commission.

The fourth sentence of this draft section is substantially the same as the last clause of the second sentence of Article III, Section 52(5).

The fifth sentence of this draft section is an innovation and is recommended by the Commission as the safeguard against abuse of the governor's power to amend or supplement the budget. The Commission believes that if the governor is required to explain publicly each proposed budget bill amendment, the danger of his attempting to amend the budget in such a way as to bear no relation to the original document, or of his attempting to make substantive changes on the grounds of "oversight," will be substantially lessened. The Commission is informed that the present practice is for the governor to explain proposed budget bill amendments, but it believes that the recommended provision will ensure that the practice continues. The Commission further believes that this safeguard will meet one of the criticisms of the present system pointed out by the Commission on Administrative Organization of the State and discussed in the introductory comment.

Section 6.07. **Amendment of Budget Bill.**

The General Assembly may amend the budget bill by increasing any item relating to the legislative or judicial branches, or by reducing or striking out any item except the appropriation of sufficient funds to provide for the timely payment of the interest upon and installments of principal of all state indebtedness and the appropriations required by law for state support of public school systems; but it

may not otherwise amend the budget bill or change the estimate of revenues. The compensation of a public officer may not be decreased during his term of office.

Comment:

Article III, Section 52(6) of the present Constitution provides that the General Assembly shall not amend the budget bill in such a way as to affect the debt service obligations under Article III, Section 34 of the present Constitution, the provisions made by law for the establishment and maintenance of a system of public schools, or the payment of any salaries established by the Constitution. The first sentence of this draft section continues the prohibition against legislative amendment of the budget bill so as to affect debt service obligations, but does so in language consistent with draft Section 6.01.[225]

The first sentence of this draft section also continues the prohibition against legislative amendment so as to affect the provisions made by law for the establishment and maintenance of a system of public schools. This is a corollary of the complementary provision of draft Section 6.05, necessary to protect the public school system. This whole question is discussed at length in the comment to draft Section 6.05.

The first sentence of this draft section omits the prohibition in the present Constitution against legislative amendment of the budget bill so as to affect salaries required to be paid by the Constitution. The Commission recommends the omission of this provision on the assumption that the new constitution will not provide for specific salaries.

The first sentence of this draft section also includes a new prohibition against legislative amendment of the budget bill; namely, a prohibition against legislative amendment of the budget amendment so as to affect the estimate of revenues contained in the budget bill. Each of the experts who testified before the Commission emphasized the absolute necessity of preventing the General Assembly from tampering with the revenue estimates upon which the governor's budget is predicated. The Commission believes that such a prohibition is vital to the operation of an executive budget system. It has been informed by the state budget director that, in his long experience, the General Assembly has never amended the revenue estimates, although unsuccessful attempts to do so have occurred. The Commission, nevertheless, believes that the issue is so vital to the executive budget system that a specific prohibition ought to be included in the new constitution.

The first sentence of this draft section retains the substance of the provisions of Article III, Section 52(6) of the present Constitution which permit the General Assembly to amend the budget bill by increasing the items relating to the General Assembly and the items relating to the judiciary, and striking out or reducing any items. This preserves in the legislative branch some measure of control over the budget of the legislative and judicial branches.

The balance of this draft section incorporates the substance of the remainder of Section 52(6) with the exception of the provision relating to the inability of the governor to veto the budget bill which is provided in draft Section 6.08.

[225] See the comment to draft Section 6.01.

Section 6.08. **Enactment of Budget Bill.**

The budget bill shall become law when passed by both houses of the General Assembly and shall not be subject to veto by the governor. If the budget bill has not been enacted within fifty days after its introduction, it shall become law in the form in which it was introduced and any amendment or supplement thereto shall be treated as a supplementary appropriation bill.

Comment:

This draft section is new. A number of experts who testified before the Commission addressed themselves to the problem of legislative delay occasioned by the budget bill. The Commission concluded that legislative work on the budget bill could be completed sooner if the General Assembly did not engage in seemingly unnecessary detailed analysis and confined itself to the broader aspects of the budget bill. As pointed out above, it was for this very reason that the Commission on Administrative Organization of the State recommended substitution of the program type budget for the line-item budget.

The Commission feels that the imposition of a time limit upon legislative consideration of the budget bill would encourage a broader, program-by-program analysis by the General Assembly; allow more time for careful legislative consideration of supplemental appropriation bills; and reduce the pressure for a continuing legislative session by promoting the dispatch of legislative business more promptly. Accordingly, the Commission recommends that if the budget bill shall not have been finally acted upon by the General Assembly within fifty days after its introduction, it shall become law in the form and tenor of its original introduction. In the case of a newly elected governor, this time limit will expire eight days before the end of the regular session; and in other cases, twenty days before the end of the session.

To prevent abuse of the time-limit provision by the governor, who could, conceivably, amend his budget one day before it automatically became law and thus obtain provisions not even considered by the General Assembly, the Commission recommends the inclusion of the second clause of the second sentence. This clause provides, in substance, that any amendment or supplement made to the budget bill as originally introduced will not automatically become law if the time limit is reached, but will be governed by draft Section 6.10 relating to supplemental appropriation bills.

The first sentence of this draft section is recommended on the ground that the constitution should affirmatively state when, in the normal course of events, the budget bill becomes law and that the budget bill is not subject to the governor's veto. The substance of these provisions presently exists in the last clause of Article III, Section 52(6) of the present Constitution.

Section 6.09. **Testimony on Budget Bill.**

Either house of the General Assembly may require any person in any branch or agency of the state government, other than the governor, to appear and testify with respect to the budget bill or a supplementary appropriation bill. The governor or a person designated by him shall have the right to appear and testify with respect to the budget bill or a supplementary appropriation bill.

Comment:

This draft section treats in a simplified and unified manner the subject of the relative rights and duties of the governor and the General Assembly with respect to the preparation of and hearings on the budget bill. This subject matter is now covered in the first sentence of Article III, Section 52(11), in the first sentence of Section 52(12) and in Section 52(7) of the present Constitution.

The Commission believes that the power granted to and the duty imposed upon the governor in the first sentence of Section 52(11) and in the first sentence of Section 52(12) with respect to the gathering of information from state officials and the holding of public hearings on budget estimates are inherent in the powers and duties of his office and do not require specific statement in a new constitution.

The Commission believes, however, that the substance of Section 52(7), stating the rights and duties of the governor and the General Assembly with respect to the furnishing of explanations and information to the General Assembly, ought to be retained in order to insure that the General Assembly is adequately informed on all aspects of the budget bill. In addition, the governor or a person designated by him ought to have the right to appear and testify with respect to the budget bill, but the Commission believes it inappropriate to permit the General Assembly to require the governor to appear personally before it for this purpose.

Section 6.10. **Supplementary Appropriations.**

Any other appropriation shall be embodied in a separate bill, called a supplementary appropriation bill, which shall be limited to some single work, object or purpose clearly defined therein. A supplementary appropriation bill may not be considered by either house until the budget bill has become law, but may be considered and enacted thereafter in a regular session or at any time in a special session. A supplementary appropriation bill shall provide the revenue necessary to pay the appropriation by a tax, direct or indirect, to be levied and collected as prescribed therein, or in the case of a budget bill amendment or supplement which has not become law by funds available therefor in conformity with the estimate of revenues contained in the budget or any supplement thereto.

Comment:

This draft section continues, in substance, the provisions of Article III, Section 52(8) of the present Constitution dealing with supplementary appropriation bills as it existed before the amendment made by Chapter 416 of the Acts of 1966 ratified on November 8, 1966.

All the witnesses who appeared before the Commission were strongly of the opinion that there should be no relaxation of the rule prohibiting any money bill from moving through the General Assembly until after the budget bill has been enacted. The Commission, therefore, considered but rejected a suggestion that supplemental appropriation bills be permitted to pass one house prior to enactment of the budget bill.

This draft section also contains the following substantive provisions which are found in existing Section 52(8):

1. Neither house shall consider other appropriations until the budget has become law.

2. Such other appropriations shall be embodied in a separate bill limited to a single work, object or purpose.

3. Each supplementary appropriation bill shall provide the revenue necessary to pay the appropriation.

4. Every supplemental appropriation bill shall become law only upon receiving the favorable vote of a majority of all the members of each house.

5. The governor shall have the right to veto any supplementary appropriation bill.

This draft section, however, unlike the present Constitution, also provides that a supplementary appropriation bill may be funded by surplus, by changing the revenue estimates or by the governor's change of previously made revenue estimates. As a matter of fact, the present practice is for the governor to provide for the funding of a supplementary appropriation bill by this means. Accordingly, this change merely allows that which seemingly is not allowed at the present time, but which is done in fact, that is, to fund a supplementary appropriation bill through a change in the revenue estimates.

ARTICLE VII. LOCAL GOVERNMENT

Introductory Comment:

From the outset of its work the Commission recognized the need for extensive revision of those provisions in the present Constitution pertaining to all levels of local government, in order to achieve viable local government, unburdened by crippling restrictions emanating from state authority. The need for constitutional revision with respect to all provisions relating to local government is one of the most compelling reasons for the State's entire constitutional revision effort. The determination of what adjustments should be recommended and the drafting of model provisions regarding local government have commanded the Commission's very thoughtful and arduous attention.

The Commission's Committee on Political Subdivisions and Local Legislation began its deliberations on a semimonthly basis in September, 1965. In addition to its own very detailed study of the provisions of the present Constitution with respect to local government and also the relevant provisions of other state constitutions, the Committee met with numerous consultants. The Committee discovered early that its assignment was difficult because of the large variety of alternatives, and combinations of alternatives, available to it to be studied, digested, and evaluated.

In the course of the year during which the Committee was formulating its recommendations, it drafted numerous proposed articles on local government for its own consideration and for that of the Commission. The first of these drafts was a reorganization of provisions similar to those in Articles 11-A, 11B, 11C, 11-D, 11-E and 11-F of the present Constitution.

As additional drafts were prepared, there evolved a framework of relationships between the various categories of local government. From the discussions emerged a philosophy as to the relative strengths and abilities for expansion which should be imparted to the various categories of local government. The most basic principle determined and that which the Commission has adopted as the cornerstone of its recommended draft article on local government is that the county should be the primary unit of local government in Maryland.

As in other states, local government in Maryland is a creature of the State, established in an exercise of the State's sovereignty to perform specific functions within a defined geographical area. From the beginning, Maryland local government has centered around the creation and development of the county and the incorporated municipality. Each came into existence in Maryland more than two hundred fifty years ago; each began as an essentially separate and distinct legal entity, established in response to differing historical necessities and designed to perform basically different functions.

The county in Maryland originally served as little more than a broad geographic area within which certain governmental functions, particularly those relating to the judicial and record-keeping functions, could be locally administered.

St. Mary's County was the first county in Maryland, having been created in 1637 by an order of the governor. By 1776, eighteen counties, primarily in the area surrounding the Chesapeake Bay, had been established. Except for Gar-

rett County, which was created in 1872, and Wicomico, which was created by the Constitution of 1867, Maryland's other twenty-one counties, substantially as they exist today, had come into existence prior to 1867.[226]

During the colonial period, almost fifty years after the creation of the first county, the formal process of establishing municipal governments was initiated. The "Town Act," the first act which systematized the establishment of cities and towns in Maryland, was passed in 1683, authorizing the colony to select land sites, establish communities, and provide for their government.

In 1960, Maryland's incorporated municipalities numbered one hundred fifty-two.[227]

Unlike many other states, there are neither township governments nor independent school districts in Maryland. Moreover, of the State's twenty-three counties ten contain no more than four incorporated municipalities and two contain none.[228] This has resulted in a relatively low number of local governmental units. Indeed, one of the present strengths of local government in Maryland is the absence of a multiplicity of local governmental units with the consequent overlapping of functions. There is, however, considerable variation in the organization of the local governments and in the responsibilities borne by them.

Local-state relations in Maryland are characterized by extensive state administrative and legislative control. Administrative control may take a variety of forms, including gubernatorial appointment of certain local officials; state agency participation in the appointment or certification of special local officials and employees; supervision of local program formulation, administration, and records management; and state requirements of periodical financial and other reports. Although such controls directly affect local operations in standards and performance, of far more significance have been the nature and scope of legislative control. Within constitutional limits, the power and role of the General Assembly in the enactment of legislation for local government have particularly dominated local-state relations and have brought about a system of local-legislative relations uniquely characteristic of the Maryland governmental system.[229]

The provisions of the Maryland Constitution have effectively placed in the General Assembly fundamental and far-reaching control over local governments. Constitutional restraints or prohibitions on the passage of general legislation, applicable to all counties, are virtually nonexistent. In this respect, the Maryland Constitution varies from those of many other states which spell out in considerable detail sundry aspects of and requirements for local governments.

Further, those provisions which do relate specifically to local government, and

[226] For a discussion of the history, dates, and boundaries of Maryland counties, see MATTHEWS, THE COUNTIES OF MARYLAND, THEIR ORIGIN, BOUNDARIES, AND ELECTION DISTRICTS (Maryland Geological Survey Special Publication 1907).

[227] SPENCER, CONTEMPORARY LOCAL GOVERNMENT IN MARYLAND 10 (Univ. of Md. Bureau of Governmental Research 1965) (hereinafter cited as SPENCER, CONTEMPORARY LOCAL GOVERNMENT IN MARYLAND).

[228] Anne Arundel (two); Baltimore County (none); Calvert (three); Charles (two); Harford (three); Howard (none); St. Mary's (one); Somerset (two); Talbot (four); Worcester (four).

[229] SPENCER, CONTEMPORARY LOCAL GOVERNMENT IN MARYLAND 14, 15.

which would thereby limit or restrain action by the General Assembly in such areas, are relatively few and limited in scope. Some of those provisions as often affirm as limit action by the General Assembly. Article VII, Section 1 of the present Constitution, for example, sets forth the manner of the election of county commissioners, but further authorizes the General Assembly to prescribe the compensation, powers and duties of such officials.[230] Other provisions which relate directly to local government deal primarily with the manner in which certain other local offices shall be filled,[231] with certain limits on the powers of counties to contract debts,[232] and with the power of the General Assembly to create new counties.[233]

LOCAL LEGISLATION

The Maryland Constitution, also unlike that of many other states, does not substantially prohibit the General Assembly from enacting local legislation—that is, laws which are applicable only to the residents of either a single or a few political subdivisions. Moreover, the general public laws which are enacted by the General Assembly are often amended to exempt specific political subdivisions.

Maryland has gone further than most other states in empowering the General Assembly to enact local laws. As one observer expressed it in 1944: "The other states in the Union, probably without exception, impose greater restrictions upon the passage of local and special laws than does Maryland."[234]

The procedures of the General Assembly for considering local legislation have themselves prompted a unique development of the organization and procedures of the General Assembly. Local bills usually are introduced either by a delegate from the county concerned or by a senator from the district in which the county is located. Local bills are subsequently referred to select committees in each house for consideration. These committees are concerned only with local legislation.

In the Senate, a senator from the county concerned will sit on the select committees with two other senators, usually from neighboring counties. In the House of Delegates, a select committee is composed of the delegates from the county affected by the bill.

The General Assembly will ordinarily enact any local bill or accept any exemptory amendment recommended by one of its select committees as a matter of legislative courtesy, unless such action would seriously interrupt or conflict with a statewide program. Thus, the delegation to the General Assembly from each county and Baltimore City constitutes a "little legislature" and possesses enormous power with which to shape or influence the programs and operations of its county.

An exception to this procedure has resulted from two amendments to the present Constitution, Article XI-A and

[230] Those provisions governing the manner of election or apportionment of certain local officials include: Article IV for certain judicial offices and court officers; Article VII, county commissioners and surveyors; Article XI, the Mayor and City Council of Baltimore City; Article XVII, which requires four-year terms for all elected county officials.

[231] MARYLAND CONSTITUTION article V, section 7; article VII, sections 1 and 2; article XI, section 1.

[232] MARYLAND CONSTITUTION article III, section 54.

[233] MARYLAND CONSTITUTION article XIII, section 1.

[234] EVERSTINE, LOCAL GOVERNMENT: A COMPARATIVE STUDY 54 (Legislative Council of Md. Research Report No. 23, 1944).

Article XI-E. These amendments have contributed substantially to clarifying certain aspects of local responsibilities for local laws. The first of these, adopted in 1915, enables counties and Baltimore City to participate in and assume responsibility for the passage and effect of local legislation on specified subjects. Under this provision four counties and Baltimore City have adopted charters and have thus acquired some degree of "home rule" power.[235]

The second amendment, adopted in 1954, grants to all municipalities certain "home rule" powers and has substantially clarified the relationship between municipalities and the General Assembly since its adoption in 1954. In addition, Article XI-F, ratified in 1966, establishes "code home rule" as a second form of county "home rule," which is in many ways similar to municipal "home rule" in Maryland.[236]

It is significant that in 1944 the Legislative Council reported that from sixty per cent to sixty-five per cent of the bills introduced and passed during a regular session of the Maryland General Assembly were local, concerning only individual counties. In that same year, it was observed:

> "The consideration of local legislation requires a substantial share of the time and energies of members of the General Assembly. In this respect Maryland occupies almost a unique position among the states, for its legislature gives perhaps more attention to the details of local government than does the legislature of any other state in the Union."[237]

A detailed study of the 1965 session of the General Assembly indicated that of the 1,212 bills introduced in the House of Delegates, 483, or forty per cent, were local bills. Of the 678 bills introduced in the Senate, 314, or forty-six per cent, were local bills.[238] This would indicate that although some counties and Baltimore City have acquired "home rule" powers, the problem which remains with respect to the other counties in Maryland continues to be significant.

The practice of the General Assembly of acting upon large quantities of local legislation has been subject to much criticism. It has been urged that the role of the General Assembly in enacting local legislation blurs public understanding of the relationship between local programs and the State, and makes it extremely difficult for the public to place responsibilities for the passage of local laws or for inaction with respect to critical local problems. Although a delegation to the General Assembly ordinarily will work closely with local elected officials, differences between the two can result in the passage of local legislation which is objectionable to local officials

[235] Four counties (Montgomery in 1948, Baltimore in 1956, and Anne Arundel and Wicomico in 1964) have adopted charter governments with special departments and officers which perform functions formerly exercised by the Board of County Commissioners.

[236] For the meaning of "charters" for counties and Baltimore City, see SPENCER, CONTEMPORARY LOCAL GOVERNMENT IN MARYLAND 19-26. For the meaning of "Code Home Rule" for counties, see SPENCER, CONTEMPORARY LOCAL GOVERNMENT IN MARYLAND 26-32.

[237] EVERSTINE, LOCAL GOVERNMENT: A COMPARATIVE STUDY 1 (Legislative Council of Md. Research Report No. 23, 1944).

[238] Slomoff, "Second Review of Legislation," 1967 (Monograph among unpublished papers of Maryland Constitutional Convention Commission in ENOCH PRATT LIBRARY, UNIVERSITY OF MARYLAND LIBRARY, MARYLAND STATE LIBRARY, JOHNS HOPKINS UNIVERSITY LIBRARY).

or it can result in the failure of the General Assembly to enact needed legislation specifically requested by them. This situation tends to discourage local participation in the legislative process by which local laws are enacted.

BROAD GRANT OF POWER

If the answer to the question of where the power to enact local legislation should reside is the county, an additional and equally perplexing problem arises as to what the nature of the grant of power to the county should be. Should the grant of power be in the form of specific delegations of power to enact legislation on certain subjects, or should the grant be a broad general grant which is limited only by specific acts of legislation by the General Assembly.

The experience of the past has been that most grants of power by the State to local governments have been specific delegations of power. Rules of construction judicially applied to grants of local government power developed slowly. Any vestige of the counties having any inherent powers or of their receiving the benefit of liberality in the construction of delegated powers[239] was swept away by the Dillon Rule, which was enunciated in 1872 and which was the composite of several independent concepts of diverse origin. The Rule stated:

> "It is a general and undisputed proposition of law that a municipal corporation possesses, and can exercise, the following powers, and no others: First, those granted in *express words;* second, those *necessarily or fairly implied* in, or *incident* to, the powers expressly granted; third, those *essential* to the declared objects and purposes of the corporation—not simply convenient, but indispensable."[240]

This rule was formulated in an era when rural-dominated legislatures were jealous of their power and when city scandals were notorious. It has been the authority, without critical analysis of it, for literally thousands of subsequent cases. It is fair to conclude from the footnotes of Dillon's first edition that he was reinforced in his statement of the rule by the anti-city feeling of the time.

Since in almost all states the Dillon Rule governs—*i.e.,* no local powers exists unless it is expressly delegated or clearly implied—express statutory denials of local authority are less important generally, except for tax rate and debt limitation, than denials by omission.

RECOMMENDATIONS

It is against this background that the Commission's recommendations with respect to the county level of local government must be viewed. The Commission believes that county government must be strengthened as the basic unit of local government in the State. To this end, it recommends that "home rule" be required for every existing county whether or not it has formerly adopted a charter. The Commission further recommends that the State through the constitution give to the counties a broad grant of power which, in effect, would give them all residual powers, all those powers which are neither specifically withheld nor subsequently withdrawn by the Gen-

[239] Willard v. Newburyport, 12 Pick. 227, 229-32 (Mass. 1831); Smith v. Newbern, 70 N. C. 14, 19 (1874).

[240] DILLON, MUNICIPAL CORPORATIONS 173 (2d ed. 1873).

eral Assembly. This recommendation would also relieve the General Assembly from the time-consuming exercise of considering matters which are purely of local import when it should be concerned with statewide problems.

The Commission believes that a democratic and responsive government can best be obtained if local governments, elected by the people, are free to solve local problems without first securing the prior approval of the General Assembly. In addition, the citizenry will be able to follow clearly the course of proposed local legislation, and the local elected officials will not be able to evade responsibility for the enactment or rejection of local legislation.

MULTI-COUNTY GOVERNMENTAL UNITS

In our present society it is increasingly difficult for small units of government to perform the technical and complex functions needed and demanded by the people. Units of local government overlap unnecessarily and, except for the continued absence of school districts, the number of special units of local government continues to increase rapidly. Nearly everywhere there are too many independent and semi-independent special agencies of local government being established.

The means by which area-wide governments have been provided to solve the problems arising from the growth of densely populated urban or metropolitan areas have varied widely. They have included growth and consolidation by annexation, consolidation by merger, federation, the urban county plan and others. Space does not permit a detailed consideration of these various methods. They will be discussed more fully in a research monograph which the Commission is causing to be prepared and which will be available to the delegates to the Constitutional Convention.[241]

These problems were also discussed at the Conference on Metropolitan Problems which was held at Goucher College on December 9 and 10, 1966. The conference was convened and sponsored by Goucher College, The Johns Hopkins University, Morgan State College and the University of Maryland at the request of the Commission and discussed ways in which the present Constitution of Maryland could be revised to empower local units of government to respond more readily to current demands for expanded services and facilities. Some eighty-five leaders of local government in Maryland and other Marylanders with practical experience in local government were invited. Also in attendance was a panel of out-of-state experts.[242] The transcript of the conference proceedings

[241] "Methods of Providing for Local Government of Metropolitan Areas," 1967 (Monograph among unpublished papers of Maryland Constitutional Convention Commission in ENOCH PRATT LIBRARY, UNIVERSITY OF MARYLAND LIBRARY, MARYLAND STATE LIBRARY, JOHNS HOPKINS UNIVERSITY LIBRARY).

[242] Dr. John Bebout, Director, Institute of Urban Affairs, Rutgers University; The Honorable Beverly Briley, Mayor of Nashville-Davidson County, Nashville, Tennessee; Dr. Carlton Chute, Department of Public Administration, New York University; Mr. William Colman, Director, Advisory Commission on Intergovernmental Relations; Dr. Lorene R. Cumming, Ontario Department of Municipal Affairs; Dr. Luther Gulick, Institute of Public Administration; Dr. Victor Jones, University of California, Berkeley, California; Mr. John Keith, Executive Vice-President, Regional Planning Association of New York (City); and Mr. James A. Norton, Director, Greater Cleveland Association.

will be available to the delegates of the Constitutional Convention.[243].

One criticism of the present Constitution is that it prevents or makes extremely difficult a decrease in the number and increase in the size of local units of government by: (a) freezing the existence of units smaller than counties, (b) establishing specific counties, (c) regulating change of county boundaries, and (d) requiring specific majorities of the electorate in consolidation and mergers.

Accordingly, the Commission believes that the authority by which local governments divide and incorporate, and by which independent *ad hoc* agencies are created, should be made more restrictive. Conversely, the authority by which local governments disestablish, consolidate or merge should be made less restrictive, and the authority of *ad hoc* agencies should be subject to the authority of general local government. These recommendations are strongly supported by the Advisory Commission on Intergovernmental Relations.[244]

The Commission believes that the draft provisions which it recommends with respect to the counties, municipal corporations, and multi-county governmental units will implement these policies to the extent to which it is desirable for them to be implemented in the constitution. While the Commission has placed primary emphasis upon strengthening county governments as the basic unit of local government, this draft article permits the General Assembly to establish different forms of local government, other than municipal corporations, when and if the need arises. In accordance with the Commission's belief that the constitution should be adaptable to the changing conditions of the future, this draft article provides for a maximum amount of flexibility in the organization and powers of local units of government.

Although subscribing firmly to the principle of prescribing maximum flexibility and freedom of action for local units of government in meeting the needs of their citizens, the Commission, nevertheless, also believes it desirable that certain limitations on the exercise of "home rule" by political subdivisions be written into the constitution. The Commission recommends that the State reserve sufficient authority in the General Assembly to enable it to act where necessary to modify the responsibilities of and the relationships among local units of government located within a region where such action would be in the best interest of the people of the region as a whole.

The Commission thus proposes that the State adopt a modification of the "home rule" concept, to wit: county home rule for strictly local problems; regional government for area-wide problems, but with the State free to legislate and otherwise act with respect to the problems which transcend the county boundaries. The Commission believes that the State is well advised not to lose the opportunity in the normal process of constitutional change to make sure that constitutional "home rule" provisions are so modified as to ensure that the authority of the State with respect to its

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[243] This transcript has not yet been published, but it is anticipated that it will be published prior to September 1, 1967.

[244] [U. S.] ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS UPON THE STRUCTURAL, FUNCTIONAL AND PERSONNEL POWERS OF LOCAL GOVERNMENT 64 (Oct. 1962).

densely populated urban areas is not unduly restricted.

Because of the rapid changes taking place in large metropolitan areas with respect to the methods by which particular governmental services are provided, it is necessary that the State be in a position to afford leadership, stimulation, and, where necessary, supervision with respect to metropolitan area problems. This is especially the case where the metropolitan areas extend into more than one county, because in such a situation, there is no authority short of that of the State which can be brought to bear upon the area involved.

In densely populated urban areas, governments with area-wide powers may be needed to make effective decisions about the areas' transportation network, its broad pattern of land use, the contamination of air and streams, and its common recreational and open-space needs. Failure to establish such governments with wide powers when needed may very well lead to a greater loss of self-determination in local affairs through the continuous transfer of responsibility to the state and federal governments.

Some such unit of government may become necessary to serve area-wide needs, determine priorities for the use of public funds, and develop integrated funds for transportation, land use, water supply, control of pollution, and other functions. Such governmental units should have the breadth to see a problem as a whole; a mechanism for formulating policy issues for voters; the ability to arrive at real decisions; the power to act through administration, regulation, and taxation; and a procedure by which they can be held responsible by the voters.

In July, 1966, the Research and Policy Committee of the Committee for Economic Development issued a report in which it stated:

> "It is time for the citizens of the 50 states to take stock of their systems of local government in relation to urgent present and prospective needs. This involves more than an assessment of current performance. It also demands a judgment of future capabilities in planning and executing activities essential to healthy community development. As we approach the twenty-first century, weaknesses in eighteenth and nineteenth century forms must be corrected—or new systems created—if local government is to survive as a vital force."[245]

RECOMMENDATIONS

After much deliberation, the Commission recommends that alternative mechanisms for establishing multi-county governmental units be prescribed in the constitution. The Commission does not recommend that any such units of government, either active or dormant, be created by a new consitution itself; however, it does strongly recommend that specific provisions for the method of creating such units in the future be included in a new constitution. In draft Section 7.03 the Commission proposes numerous alternative methods for the establishment of multi-county governmental units. Although it believes such units, when and if created, should be popularly elected representative governments, it also provides for the creation of intergovernmental authorities in draft

[245] RESEARCH AND POLICY COMMITTEE OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT, MODERNIZING LOCAL GOVERNMENT TO SECURE A BALANCED FEDERALISM 11 (July 1966).

Section 7.06, in keeping with its additional belief that maximum flexibility should be permitted local governments in solving their problems.

Section 7.01. **Units of Local Government.**

For the purposes of this Constitution, Baltimore City shall be considered a county; "municipal corporation" shall mean an incorporated city, town or village, but shall not include Baltimore City or any county; "region" shall mean an area comprising all or parts of two or more counties.

Comment:

This draft section defines the terms used throughout this draft article. This draft section categorizes Baltimore City as a "county" unit of local government for all purposes of the draft constitution. This is in keeping with Baltimore City's present characterization. The City became a governmental unit distinct from Baltimore County in 1851. Like the counties, it has its own delegation in the General Assembly, and constitutes a separate judicial circuit of the State. Moreover, the City alone composes the Sixth Appellate Circuit from which two of the seven judges on the Court of Appeals are selected.

In addition, Article I, Section 14 of the Annotated Code of Maryland (1957) states that as a rule of interpretation of the Code, Baltimore City shall be considered as a county, unless such construction would be unreasonable. Indeed, the constitutional and statutory status of Baltimore City is more akin to that of a county than to other municipalities of the State. The Commission believes that by defining Baltimore City as a "county" in a new constitution, its status as a unit of government is made clear.

In defining "municipal corporation" the Commission believes it desirable to state that such units of local government do not include any county or Baltimore City. This definition restricts the historical definition of "municipal" and defines it in terms of an incorporated unit of government within a county. The assignment of the term "municipal corporation" to a particular level of government should facilitate clarity when speaking of the relationships between various units of local government.

The term "region" is defined as a civil division which extends across county lines. Such a "region" may comprise all or parts of two or more counties, but not parts of adjoining states. The term "region," unlike the terms "municipal corporation" and "county," does not necessarily apply to an area over which there is a government whose jurisdiction coincides with the boundaries of the "region." The term "region" is also not synonymous with the term "metropolitan" in that "region" may be applied to a sparsely populated area which crosses county lines as well as to such areas with a high population density. The term "metropolitan" is applied to areas with a high population density, whether totally within or partially without a county, and whether or not coincidental with the boundaries of an incorporated municipality.

Section 7.02. **Establishment of Counties and Multi-County Governmental Units.**

The General Assembly may provide by law for the establishment, incorporation, change, merger, dissolution and alteration of boundaries of counties and multi-county governmental units, including intergovernmental authorities and popularly elected regional representative governments, but excluding municipal corporations. A law altering the boundaries of a county shall be enacted only by the affirmative vote of at least three-fifths of all the members of each house.

Comment:

This draft section allocates to the General Assembly the State's inherent power to determine the overall structure of local government in the State. Although the Commission recommends that the counties continue to be the basic units of local government, it recognizes that future population growth patterns may require the establishment of either revised or new units of local government.

This draft section provides that either the General Assembly may directly provide by law the needed adjustments in the structure of local government in the future, or it may provide by law for the means by which such adjustments may be made by either the existing units of local government or by those citizens who wish to band together in bringing about the desired adjustments. Where the General Assembly provides by law for local initiative and action, the General Assembly can also establish restrictions against the abuse of whatever power is granted.

In its deliberations the Commission concluded that in order to maintain a viable system of local government, the General Assembly must have the recognized power to alter the boundaries of local units of government. It also concluded that the General Assembly must have the power to create units of government between the state and county levels. Because the Commission believes that there should not be a proliferation of intergovernmental authorities, it debated at length whether, allowing for the future creation of regional governments, the constitution should contain an absolute prohibition against the creation of other intergovernmental public corporations, commissions, authorities, boards or special districts possessing the power to contract indebtedness, to collect taxes, or to collect revenues over an area smaller than the entire state.

The Commission concluded that in all probability different forms of regional governments and authorities would be required in different areas of the State in the future, and that the precise form that such governments or authorities should take could not be determined at the present time. Therefore, the Commission recommends that the General Assembly be empowered to establish, incorporate, change, merge, dissolve and alter the boundaries of multi-county governmental units, including either intergovernmental authorities or popularly elected regional representative governments.

Under the draft constitution the power to establish, incorporate, change, merge and dissolve municipal corporations, as well as the power to alter their boundaries, is delegated to the counties, thus removing it from the purview of the General Assembly. This specific recommendation is further discussed in the commentary to draft Section 7.14.

This draft section prescribes that the General Assembly may provide by law

for the alteration of the boundaries of counties. As has been previously stated, the General Assembly may exercise this power by providing a procedure for the counties themselves to alter their boundaries or it may enact a law which directly alters the boundaries of a county. The Commission considered numerous suggestions of provisions which should be applicable if the General Assembly were directly to alter the boundaries of a county. These suggestions were primarily premised upon there being a referendum of one or another group of the citizenry who would be affected by a proposed boundary alteration.

One suggestion was that the alteration of a county boundary should require a majority vote in a mandatory referendum of those voters in the area acquiring new territory. A second suggestion was that the alteration of a county boundary should require a majority vote in a mandatory referendum of those voters in the area which is to be acquired as a result of the boundary alteration. A third suggestion was that there be a separate mandatory referendum in each of the previously mentioned areas and that a boundary alteration require a favorable vote of the majority of the voters in each. A fourth suggestion was that there be a separate mandatory referendum in the area from which territory would be taken.

All of these suggestions were rejected by the Commission by votes of better than two to one because the Commission believes that any of the proposed requirements would have the undesirable effect of precluding any change whatsoever and, for all practical purposes, would restrict the State in any efforts to resolve the pressing problems arising from urbanization. Another suggestion was made that where the boundaries of three or more counties would be altered by the same proposal, then a referendum, if mandatory, should be statewide rather than of the voters living in any particular area. Although this approach appealed to a majority of the members of the Commission, it was considered as the second choice of the various alternative approaches available.

As a compromise, and as a restraint upon the General Assembly against improvident action, the Commission recommends that in those cases where the General Assembly directly alters the boundaries of a county, such change be enacted only upon the approval of at least three-fifths of all the members of each house of the General Assembly. Under this approach no referendum would be mandatory; although, the General Assembly could prescribe referendum procedures under its general authority.

REGIONAL GOVERNMENTS AND INTERGOVERNMENTAL AUTHORITIES

Section 7.03. **Establishment of Regional Governments.**

Upon the establishment by the General Assembly by law of the boundaries of a region, a popularly elected representative government for the region, and the instrument of government therefor, may be created by the General Assembly by law, or by the counties within or partly within the region acting concurrently by law, or by affirmative action of a majority of the registered voters of the region voting upon a plan proposed by a petition signed by a number of registered voters of the region equal to at least five per cent of the vote cast in the region for governor in the most recent gubernatorial election.

Comment:

This draft section is the first of four which prescribe the procedures for and the restrictions upon the creation of units of local government at the multi-county level, be they popularly elected regional representative governments or intergovernmental authorities. The Commission recommends that provisions for the creation of multi-county regions and regional representative governments, as well as for the creation of intergovernmental authorities, be included in a new state constitution because it believes that there is a need for modernizing governmental structures in multi-county and metropolitan areas to enable them to carry out more efficiently and effectively those public responsibilities which are clearly area-wide in scope. It also believes that the trend toward the adoption of area-wide governments and authorities to cope with the problems arising from metropolitan growth suggests that it would be improvident for a new constitution to ignore either the situations where they can be used or restrictions upon them.

The need for changing the geographical jurisdictions and powers of local government in many of our metropolitan areas arises because of the growing maladjustment between what these governments are called upon to do and their ability to perform. More specifically, the present powers, jurisdictions and structures of local governments, and the status of intergovernmental relations in the metropolitan areas, make it increasingly difficult for the local government to perform independently many functions which are inevitably area-wide in nature.

In a paper, *The Metropolitan Problem,* which was published in June of 1960, the Greater Baltimore Committee, Incorporated, stated:

> "The metropolitan problem has become more acute in a setting of continuing growth in metropolitan areas in number, population, territorial size and governmental capacity. The basis of the problem is the absence of general local governmental organizations broad enough to cope with metropolitan needs. There is a lack of area-wide governmental jurisdiction that can effectively provide and finance services, that can plan and regulate and that is constructed to facilitate adequate accountability to the metropolitan public for their actions."[246]

A recent editorial in the *Baltimore Magazine* stated:

> "When the idea of metropolitan cooperation is advanced as the answer to meeting problems common to Baltimore's metropolitan area, the objection most frequently raised centers around the reluctance of local governments to surrender any of their autonomy. This is an important factor, to be sure, and should not be dismissed lightly."

The editorial continues:

> "Indeed, we have already taken a few preliminary steps along the road to metropolitan cooperation. The establishment of the Metropolitan Transit Authority was the first such step, followed by the Regional Planning Council. Both agencies have been organized to deal with metropolitan problems that cut across invisible political boundaries.

[246] A copy may be found in the MARYLAND STATE LIBRARY.

"Early this year (1966), the heads of government in Baltimore City and two adjacent counties set up an informal Metropolitan Council, the purpose of which was to make possible municipal cooperation in such areas as teacher recruitment and the purchase of supplies and equipment.

"To be sure these are but a beginning—yet they are steps in the right direction."[247]

It is not a question, therefore, whether local governments in multi-county, urban areas should be reorganized to participate in federal-state-local programs. Basic structural changes in local government, with political changes flowing therefrom, are inevitable and are, in fact, already underway. The question is whether the elements of a multiple-purpose general government are to be the model for the formal institutions of regional government or whether local government is to deteriorate into a collection of special functional governments.

Local officials often mistakenly view a general regional or multi-county government, even though its functions be limited to those that are considered to be area-wide in scope, as the principal threat to local autonomy. This kind of multi-county or regional government can be organized and controlled by the officials of the municipalities and counties comprising the metropolis. The danger lies in the step-by-step but cumulative removal of activity after activity out of reach of the periodic determination by the community of how its limited resources will be allocated through the grant of fiscal, administrative, and political autonomy to special interests organized as special districts or authorities.

Failure to establish multi-county or regional governments with wide powers may lead to a greater loss of self-determination in local affairs through the continuous transfer of responsibilities to the state and federal governments. The Commission believes that governmental policies should be developed and carried out at the level of government closest to home; however, matters such as transportation, air pollution, and the like cannot be tackled by small local jurisdictions. A multi-county or regional level of government could cope with these problems without sacrificing local controls.

In addition, there are reasons to believe that an integrated approach to an area-wide problem such as transportation is, over the long run, more efficient and economical per unit of service provided. Because the Commission believes that there are a number of problems, such as the absence of a public policy with regard to the provisions of open space for future development and recreational needs, which are not being met adequately or at all for lack of an area-wide approach, and because these problems are of such mounting importance that sooner or later they will compel governmental action, the Commission recommends that there be specific provisions in a new state constitution to guide the formation of multi-county regional governments.

The Commission recommends that before any regional government may be created, the General Assembly must establish by law the boundaries of the regions for which the government will be created. This, in a sense, gives to the General Assembly a veto power over the

[247] Dec. 1966, p. 80. In the same issue also see "Where Metro Government Works," pp. 17-19.

creation of a regional government; but, more importantly, it assigns to the General Assembly the responsibility for mapping out a master plan of regions. This will assure that regions will neither overlap nor be formulated in such a way as to leave a small area isolated outside the structure of regional governments.

Draft Section 7.03 leaves to the General Assembly the determination of when to delineate one or all of the State's regions; although it may well be that the General Assembly will want to study and legislate a system of regions at its first session following the ratification of a new constitution. Feeling that the need already exists for some regions, the Commission debated at great length the degree to which regions should actually be established by the constitution.

One proposal was that the State should be divided by law into not more than five departments, each of which should consist of a contiguous geographic area comprising one or more, or parts of one or more, counties; and that in the event that a law dividing the State into departments was not to become effective on or before June 1, 1970, the State should thereupon be divided into the five departments specifically set forth in the constitution, but subject to boundary alteration by law at any time.[248]

Another proposal was that the constitution should provide that the State must be divided by law into five or fewer regions for which regional representative governments could be established whenever the General Assembly, the county legislative bodies within a region, or the majority of the registered voters voting upon a petition submitted by the residents of a region determined it appropriate to initiate such a government. This approach would have the General Assembly create dormant regions at its first session following the ratification of a new constitution, which could then be activated upon the initiative of any one of three specified agencies or groups whenever it is determined appropriate to act.

After much deliberation, the Commission concluded that it should recommend that the General Assembly be empowered to determine the delineation of the regions whenever it thinks such action appropriate. Under this recommendation, there is neither a limit on the number of regions which the General Assembly might create nor is it necessary that all the regions be circumscribed simultaneously. The effect of this would be that the General Assembly could, for example, establish as a region the area of Maryland adjacent to Washington, D. C., in 1970 and could wait until 1980 to create as a region the area comprising metropolitan Baltimore, or vice versa.

This draft section also prescribes that once the boundaries of a region have been established by the General Assembly, three alternative methods are available for the creation of a representative government for the region: by action of the General Assembly by law; by the concurrent action by law of all the counties within or partly within the region; or by the affirmative action of

[248] These five proposed departments were: the Western department comprising Allegany, Garrett and Washington counties; the Southern department comprising Calvert, Charles and St. Mary's counties; the Eastern department comprising Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico and Worcester counties; the Baltimore department comprising Baltimore City and Anne Arundel, Baltimore, Carroll, Harford and Howard counties; and the Washington department comprising Frederick, Montgomery and Prince George's counties.

a majority of the voters of the region who are registered and voting upon a plan proposed by a petition signed by a number of registered voters of the region equal to at least five percent of the vote cast in the region for governor in the most recent gubernatorial election. Three alternatives are made available in the belief that maximum flexibility is desirable, and that action should be feasible upon the initiative of any of the three groups of persons and without the approval of or without being subject to the veto of any one of the other two.

The Commission strongly believes that a multi-county or regional government should be constituted by representatives who are directly elected by the people who live in the region. The term "popularly elected regional representative governments" was chosen with care by the Commission to reflect the view that every regional government which is created should be composed of representatives who are elected directly by the people residing in the region rather than of persons appointed or elected by the governing boards of smaller units of local government. When a popularly elected representative body determines overall policy, it is likely to be more responsive to its electorate in making decisions.

Although the provisions of draft Section 7.03 for the establishment of regional governments are not the exclusive means by which multi-county governmental units may be created, they do prescribe a specific method for inaugurating the preferable form of area-wide government, a popularly elected representative government. To this extent, the Commission believes that the inclusion of draft Sections 7.03, 7.04 and 7.05 in a new constitution is most desirable for guiding the development of government in Maryland beyond the present.

Section 7.04. **Change of Structure of Regional Government.**

The instrument of government for a region shall provide for amendment of the instrument by the affirmative vote of a majority of the voters of the region voting on an amendment submitted by the governing body or by petition of the voters in accordance with the provisions of the instrument.

Comment:

This draft section requires that any instrument of government for a region, such as a charter, include a provision for its amendment by the favorable vote of a majority of the voters of the region voting on an amendment submitted either by the region's governing body or upon the petition of voters themselves. The Commission recommends this provision to ensure that when a regional government is established by the General Assembly, rather than either by the concurrent action of the counties which form the region or by the voters who reside in the region, both the resident voters and the regional government will have an opportunity to initiate changes in the structure of the government.

Section 7.05. **Powers of Regional Governments.**

Powers may be vested in a regional government either by all counties within or partly within a region relinquishing powers to the regional government by law, by the General Assembly by law withdrawing specified powers from all counties within or partly within a region and conferring the powers upon the regional government, or by the General Assembly by law delegating powers of the State to the regional government. A power conferred upon a regional government may

thereafter by law be relinquished by the regional government or be withdrawn by the General Assembly. In either event the power relinquished by or withdrawn from the regional government shall revert only to the respective counties or to the State, from which it originated.

Comment:

This draft section provides that such powers as may be exercised by a regional government will be those which are specifically delegated to it. The Commission recommends that there be alternative methods prescribed in a new constitution for the granting of powers to a regional government. Specifically, the Commission recommends that a regional government be able to acquire powers from the counties within or partly within the region by all of such counties relinquishing specified powers to the regional government by law. The Commission also recommends that the General Assembly be empowered to withdraw specified powers from the counties within or partly within a region and vest them in the regional government, and that the General Assembly be authorized to delegate powers of the State to a regional government.

Regardless of the means by which a regional government has acquired a particular power, the Commission recommends that the General Assembly have the specific authority to withdraw that power and that the regional government have the authority to relinquish the power. The Commission also recommends that whenever a power is withdrawn from or voluntarily relinquished by a regional government, the power lost by the regional government should revert only to the State or to the counties from which it originated. The Commission believes that this last recommendation is essential if the provisions recommended in this draft section are not to have the effect of undermining the powers of the "home rule" counties.

Section 7.06. **Powers of Intergovernmental Authorities.**

The General Assembly or a popularly elected representative local government may by law grant to intergovernmental authorities the power to impose and collect service charges, to borrow money and to collect taxes imposed by the General Assembly or by the popularly elected representative local government, but may not grant the power to impose taxes.

Comment:

This draft section is proposed as a limitation upon the amount of authority which can be granted or delegated to an intergovernmental authority. Specifically, it permits such authorities to be given the power to impose and collect service charges, to borrow money and to collect taxes imposed by the General Assembly or by a popularly elected representative local government. It prohibits the grant to such authorities of any power to impose taxes.

A limited-purpose multi-county authority is an independent governmental unit organized to perform one or more urban functions throughout part or all of a metropolitan area, including the central city.[249] Although a multi-purpose

[249] For a discussion of the use of metropolitan special districts and authorities, see [U. S.] ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, ALTERNATIVE APPROACHES TO GOVERNMENTAL REORGANIZATION IN METROPOLITAN AREAS 49 (June 1962).

Also see [U. S.] ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, THE PROBLEM OF SPECIAL DISTRICTS IN AMERICAN GOVERNMENT (May 1964).

authority has advantages over a single-purpose authority, it nevertheless often lacks the ability to coordinate the interrelated functions performed by the smaller units of local government which have overlapping jurisdictions.

When conventional special districts, agencies or authorities are created to deal with the expanding problems of metropolitan populations, the question arises as to how the governing board members should be selected and held responsible. Should they be appointed by the governor of the State, or by some local official, or should they be local officials already elected, or appointed, to some other governmental post?

Authorities are often composed of persons appointed by the governing bodies of the smaller units of local government which the authorities are organized to serve. Historically, such authorities have proven to be almost totally isolated from the electorate of the area in which they serve with the consequence that they are often not responsive to the wishes of that electorate. In many cases the governmental service requirements of the residents either are not met in the metropolitan aspects or are supplied by authorities which may be autonomous or remote from coordinated control.

Single and multi-purpose authorities have, however, been the most frequent means of coping with metropolitan needs or interests. Their boards show a diversity of representative bases. A minority of them are elected or made up of representatives of the constitutent units. State appointment or combined state and local appointment has been far more prevalent. The more general the unit of government, the greater is the need for local political representation.[250]

The constitutent unit system of representation assures the local governments of the means of control. Although the constituent-unit principle represents a more logical system of selecting district governing boards than do other methods of appointment, it is doubtful that it affords sufficient accountability to the electorate of the area served. Moreover, when local officials constitute such boards, the process of public control can be strange indeed. These members ran successfully for city or county offices in campaigns that rarely, if ever, were concerned with the affairs of the district. Nevertheless, if the voters become dissatisfied with the performance of the officials as district board members, they can recall them from the city or county office.

The Commission believes that in addition to the frequent remoteness from public control of the governing boards of authorities and special districts, such authorities and special districts are undesirable because of their generally restricted functional nature. A limited-purpose approach results in a fragmentary and usually uncoordinated attack on area-wide problems. Because of this belief, the Commission seriously considered recommending that a new constitution prohibit the use of such authorities altogether. However, the Commission concluded that maximum flexibility should be permitted local units of government in resolving their problems and that there might be instances where the best politically feasible solution

[250] For a general discussion, see BROMAGE, POLITICAL REPRESENTATION IN METROPOLITAN AGENCIES (Univ. of Mich. Institute of Public Administration 1962).

might be the establishment of an intergovernmental authority or special district.

The Commission thus recommends that a new constitution authorize local units of government to establish regional service corporations or authorities for the performance of governmental services necessitating area-wide handling, and that such authorities be permitted to have appropriate power to impose and collect service charges and to borrow money. Nevertheless, the Commission strongly recommends that such authorities be restricted from imposing taxes because of the belief of the Commission that the power to tax should be reserved to elected representative governments.[251]

COUNTIES

Section 7.07. **Powers of Counties.**

A county may exercise any power, other than judicial power, or perform any function which is not denied to it by this Constitution, by its charter or by a public general law which in its terms and in its effects is applicable to all counties or to all counties of the county's class, and which has not been transferred exclusively to another governmental unit.

Comment:

A number of the Commission's recommendations have related to various methods of ensuring that local governments have the powers they need to carry out their governmental responsibilities. Perhaps the most basic and far-reaching recommendation of the Commission to accomplish this purpose is one designed to overcome the effect of judicial decisions interpreting the powers of local government restrictively.

The Commission recommends in this draft section that the counties be given a broad grant of power in the form of "home rule." Such a grant would give to each county all functional powers not expressly reserved, pre-empted, or restricted by the county's charter, the state constitution, or public general law which in its terms and in its effects is applicable to all counties or to all counties of the county's class, or which have not been transferred exclusively to another governmental unit.

This draft section would itself restrict counties from exercising any judicial power. The Commission believes that this absolute prohibition is desirable as a complementary provision to its recommendations that the judicial system be operated entirely by the State.

The broad grant of power to the counties constitutes a somewhat new approach towards delineating the legal relationship between the State and local governments. This approach is one which has been highly recommended for delineating the legal relationship between municipal corporations and state governments in those states where the municipal corporation is the principal unit of local government.[252] This approach has also been generally recommended for "select units of local government" by the

[251] See comment to draft Section 8.01.

[252] For a review of "home rule" as recommended for municipal corporations, see Fordham & Asher, "Home Rule Powers in Theory and Practice," 48 OHIO STATE LAW JOURNAL (1948). Also see NATIONAL MUNICIPAL REVIEW 132-44 (1955).

Advisory Commission on Intergovernmental Relations.[253]

This approach is a sharp departure from Maryland practice under Articles XI and XI-A of the present Constitution which restrict counties to the exercise of only those powers specifically granted to them by the Constitution or by public general law. Nevertheless, the Commission anticipates that the broad grant of power to county governments will both revitalize them and stimulate their initiative as a result of unshackling them from the present severe restrictions upon their power. In addition, the Commission believes that the interests and sovereignty of the State are well protected by the provision that the General Assembly may deny prescribed powers to the counties generally, or to counties of a class, by public general law. Thus, for instance, taxing powers of a specified character could be denied to all counties by the General Assembly.

The most pronounced growth in county governments in Maryland has been the large-scale expansion of their functions, particularly those normally associated with municipal governments. This enlargement has involved both the performance of some functions at more intensified levels and the assumption of new activities. Numerous counties in urban areas, for example, have greatly broadened their public health services to combat communicable diseases, epidemics and unsanitary practices, and their social welfare programs to provide greater assistance to dependent children, the needy, the aged, and the blind. They have also launched into such new activities as developing and maintaining airports, building and operating public hospitals, installing sewers and operating sewage disposal facilities, and establishing and staffing large parks and recreational areas. A number of counties have also grown functionally by making contractual agreements with municipalities to perform certain services for them, such as tax assessment or collection.

The largest proportions of county money are spent on education, roads and streets, social welfare programs, and hospitals and public health.

Section 7.08. **Classification of Counties.**

Classes of counties, based upon population as determined by the most recent United States Census or upon other criteria, may be prescribed by law with not more than five classes and not less than three counties in any one class. No more than one classification shall be in effect at any one time but the classification may be changed at any time.

Comment:

This draft section permits the General Assembly to classify counties into reasonable groups for purposes of legislating public general laws which are applicable to all counties within one or another classification. This recognizes the possible need for the General Assembly to resolve problems which are unique to certain counties with common characteristics such as high population density, heavy air traffic, or intense economic activity. This approach would also permit classification on a regional basis should there be a desire for such classification.

[253] [U. S.] ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS UPON THE STRUCTURAL, FUNCTIONAL AND PERSONNEL POWERS OF LOCAL GOVERNMENT 72 (Oct. 1962).

If classification of counties is to be permitted, the Commission recommends that the counties be grouped into not more than five classes and that there be a prohibition against having fewer than three counties in any single class. In addition, the Commission recommends that a new constitution permit only one classification system to be in effect at any one time. Under this proposal, whenever the classification system is changed, all laws previously enacted with particular reference to one or another classification of counties would be automatically repealed by any alteration of the classification system. The Commission believes that the provisions of this draft section are essential to protect the integrity of the prohibition against the General Assembly enacting local legislation.

The Commission debated at length the question of whether classification should be permitted on a basis other than population. It concluded that although population was by far the most rational basis, in its judgment, for determining classes of counties; nevertheless, the need to achieve flexibility suggests that the constitution not restrict classification to a single criterion.

Section 7.09. **General Application of Laws.**

Except as otherwise specifically provided in this Constitution, the General Assembly may not enact any public local laws and, except with respect to appropriations, may enact only public general laws which in their terms and in their effects apply without exception to all counties or to all counties in a class. No county shall be exempt from any public general law applicable to counties in its class.

Comment:

This draft section prohibits the General Assembly from enacting public local laws. This would effect a significant change in the present practice of the General Assembly under which, as previously noted, forty to sixty per cent of all legislation considered may be classified as local legislation. The recommendation that the practice of the General Assembly of considering local legislation be discontinued with the adoption of a new constitution is complementary to the Commission's recommendation that the counties be established as the principal units of local government and that they be granted "home rule" powers.

Although the 1864 Constitution of Maryland prohibited the passing of local or special laws on at least eleven distinct subjects, the present Constitution contains no such restriction. The prohibition against consideration of local legislation by the General Assembly should result in the General Assembly's giving more considered attention to the appropriate subjects of statewide concern for which there should be general legislation.

This draft section protects counties from undue interference by the General Assembly by requiring that any withdrawal of powers from the counties be by general legislation which is applicable either to all counties, or to all counties in the same class. The General Assembly is restricted by this provision from eroding the powers of any one particular county.

The Commission believes that the present practice whereby a county exempts itself from a public general law has blurred the distinction between local and general legislation with the result that there is much confusion with regard to the applicability of many public general

laws. Since there is a degree of ineffectiveness of the State's legislative power in this procedure, the Commission recommends that the practice of a county exempting itself from the applicability of a public general law be prohibited.

Section 7.10. **Structure of County Governments.**

Within one year following adoption of this Constitution, the General Assembly shall provide by law alternative procedures by which an instrument of government of a county may be proposed: by enactment of the local governing body, by petition of ten per cent of the qualified voters of the county, by board created by enactment of the local governing body or created by the voters of the county approving a voters' petition for such a board, or by such other methods as may be prescribed. An instrument of government shall be submitted for adoption by the affirmative vote of a majority of the voters of the county voting thereon. The General Assembly shall provide by law an instrument of government which shall become effective on the first day of January of the fourth year following the effective date of this Constitution for those counties which have not previously adopted an instrument of government as provided in this section.

Comment:

Articles XI-A and XI-F of the present Constitution contain elaborate provisions for the formation of "home rule" and "code home rule" governments for counties. The Commission believes that such detailed and rigid provisions are inappropriate for inclusion in a new constitution and are properly a subject for public general laws. The Commission therefore recommends that the more general language of draft Section 7.10 be adopted to require the General Assembly to enact a law within one year following the adoption of a new constitution setting forth the procedure by which counties may enact an instrument of government. The law enacted must permit the proposal of a structure of county government either by the county governing body enacting a public local law, by petition of the voters of a county, or by a board specifically created either by the existing county governing body or by the voters. In any case, the proposed structure of government must be submitted to the voters for their ratification.

This draft section gives those counties which have not already adopted an instrument of government until the first of January of the fourth year following the effective date of a new constitution to adopt an instrument of government. Failing to act within the prescribed time, a county must accept without ratification the instrument of government which is provided by the General Assembly by public general law, but may at any time thereafter adopt its own instrument of government in the manner prescribed by this draft section. The Commission anticipates that this provision will encourage local initiative by the existing county governing bodies and the voters within each county.

This draft section does not require a county to change its present form of government. On the contrary, a county may elect to continue its present form of government by adopting an instrument of government which does so. All that is required is affirmative action; inaction will put into effect, until changed by the county, the model instrument of government prescribed by the General Assembly.

The draft section leaves to the General Assembly the determination of the procedures for such matters as the election of charter commissions, the publication and ratification of any proposed instrument of government, and the financing of the cost.

Section 7.11. **Continuance of Existing County Governments.**

County governments existing at the effective date of this Constitution shall continue unless changed pursuant to this Constitution.

Comment:

This draft section clarifies the status of those county governments which exist at the time of the adoption of a new state constitution. It provides that existing county governments will continue unchanged until such time as they are changed pursuant to the provisions of the new constitution. The Commission believes that this draft section is desirable to eliminate any uncertainty as to the status of existing county governments in the interim period.

Section 7.12. **Change of Structure of County Government.**

An instrument of government of a county may be amended by the affirmative vote of a majority of the voters of the county voting on an amendment submitted by the governing body or submitted upon petition of voters in accordance with the provisions of the instrument of government.

Comment:

This draft section assures both the governing body and the electorate of a county continued opportunity to initiate changes in the structure of their county government. The Commission recommends that this guarantee be included in a new constitution because it believes that every county instrument of government should be subject to change by the electorate. In addition, in the case where an instrument of government drafted by the General Assembly becomes effective under draft Section 7.10 for a county which has not adopted its own instrument of government by the first day of January of the fourth year following the effective date of a new constitution, the electorate of the county should have an opportunity to alter the structure of government set forth in such instrument of government to their own satisfaction.

CREDIT LIMITATIONS

Section 7.13. **Gift or Loan of Assets or Credit of Local Governments.**

The assets or credit of a county, representative regional government, or intergovernmental authority shall not in any manner be given or loaned to any individual, association, or corporation unless a public purpose will be served thereby and unless authorized by its governing or authorizing body by act stating the public purpose, and in the case of a gift or loan of credit or a loan of assets, passed by the affirmative vote of three-fifths of all its members.

Comment:

Under Article XI, Section 7 of the present Constitution, Baltimore City may not incur any indebtedness without the express consent of the General Assembly. Non-charter counties are similarly restricted by Article III, Section 54. Moreover, although pursuant to Article XIA—the "home rule" amendment to the present Constitution—charter counties

may be authorized to incur indebtedness without the express consent of the General Assembly, limits have been set on the exercise of that power by statute. (Article 25A, Section 5(P), of the Annotated Code of Maryland.) The draft constitution does not contain a requirement that the General Assembly consent to any indebtedness to be incurred by a county. However, the Commission does recommend that credit restrictions identical to those imposed upon the State by draft Section 6.02 be prescribed for counties, representative regional governments, and intergovernmental authorities. Accordingly, this draft section prohibits the assets or credit of a designated local government from being given or loaned to any individual, association, or corporation unless a public purpose is served thereby and unless authorized by the governing or authorizing body of the local government by an act stating the public purpose served by the gift or loan.

This draft section also provides that in the case of either a gift or loan of credit, or a loan of assets, the act authorizing the gift or loan must be passed by the affirmative vote of three-fifths of all of the authorizing body's membership. The Commission believes that the requirement of such a vote is desirable in order to insure against the improvident action of an authorizing body which might underestimate the risk involved in either pledging a government's credit or lending its assets.

The Commission is persuaded of the wisdom of including such a limitation in a new constitution since public funds are appropriately spent only for public purposes, and only pursuant to the official act of a representative body. This restriction is also thought to enhance the credit standing of local governments.[254]

MUNICIPALITIES

Section 7.14. **Municipal Corporations.**

A county may provide by law for the incorporation, change, merger, dissolution and alteration of boundaries of municipal corporations located in the county, and may delegate powers of the county to any municipal corporation. No existing municipal corporation may be dissolved or have withdrawn any existing powers set forth in its charter without either the consent of its governing body or the consent of the General Assembly by law.

Comment:

This draft section complements those on counties by providing that municipal corporations shall continue to be governments of limited jurisdiction within the counties. In order to avoid irresoluble conflicts between the "home rule" counties, with their broad grants of power, and municipal corporations, the Commission believes that counties should be given the power to provide by public local law for the creation, incorporation, and dissolution of any new municipal corporations within their boundaries and for the methods and procedures of changing and merging municipalities and altering their boundaries.

Until 1953, the incorporation of a municipality was an exercise of the State's authority and discretion. Prior to the enactment of Article 23A of the Annotated Code of Maryland, new municipal corporations were created by acts of the General Assembly passed in response to local petition or request. Article 23A removed the process of incorporation to the local level of govern-

[254] See comment to draft Section 6.02.

ment, and incorporation now requires local initiative and petition, and the approval of the relevant county governing body before it can become effective. In this way, that portion of the incorporation process which formerly rested with the General Assembly has already been transferred by the provisions of Article 23A to the governing bodies of the several counties. The effect of draft Section 7.14, then, is not so much to change the present procedure as it is to shift from statutory provision to constitutional provision the ultimate responsibility for establishing municipal corporations.

Under the procedure prescribed by the General Assembly for municipal incorporation today, any group of persons may petition for the incorporation of an area if there are at least 300 persons who maintain bona fide residence within the proposed municipal area. The petition must be initiated by at least twenty per cent of those persons who live in the proposed area, and who are registered to vote in county elections, together with the realty owners of at least twenty-five per cent of the total assessed evaluation of the real property in that area. In time, the petition must be presented to the relevant county governing body, which may by resolution provide for a public referendum on the question.[255]

The role of the county in the process of incorporating municipalities is already very significant. Full and final authority has been granted to the county in matters of incorporation in the following terms of the statute:

> "No municipal corporation shall be created under the provisions of this subtitle without the specific approval of the board of county commissioners or of the county council of the county in which the proposed municipal corporation is located."[256]

This provision recognizes the county's contemporary and vital interest in the physical and governmental development of the areas within its boundaries.

The Commission recognizes that certain existing municipal corporations are presently the dominant forces of local government in their respective areas of the State. The Commission, therefore, recommends the inclusion in a new constitution of a grandfather clause to protect the continued existence of those municipal corporations which exist at the time that a new state constitution becomes effective. Such a grandfather clause should be qualified to the extent that with the approval of the municipality's governing body or with the consent of the General Assembly, such existing municipal corporations could be either dissolved or have withdrawn certain of their existing charter powers. This qualification would return to the General Assembly the power of arbiter over conflicts which might arise between a county and an existing municipal corporation and which, because of the county's and the municipal corporation's concurrent power, might otherwise be impossible to resolve.

It should be noted that the existence and status of municipal corporations will not be changed by this draft section except that it will be the county rather than the General Assembly which will incorporate municipalities or provide the laws by which municipalities will be incorporated; and it will be the county rather than the General Assembly which will be the source of the powers of municipalities.

[255] ANNOTATED CODE OF MARYLAND article 23A, sections 20-30 (1957).

[256] ANNOTATED CODE OF MARYLAND article 23A, section 21 (1966 Replacement Volume).

COOPERATIVE AGREEMENTS

Section 7.15. **Intrastate Intergovernmental Agreements.**

A county, municipal corporation or other governmental unit may, except to the extent prohibited by law, agree with the State or with any other county, municipal corporation or governmental unit for the joint administration of any functions and powers and the sharing of the costs thereof.

Comment:

This draft section ensures that there are no obstacles arising from the constitution to cooperation between the State and its civil divisions, or between the civil divisions themselves in the performance of joint functions. The Commission believes that the adoption of this draft section will encourage intrastate cooperation. With the continued growth of inter-community needs and problems in the metropolitan age, cooperation among local governments has greatly increased in efforts to meet the challenges of adequate services and facilities.

Intergovernmental agreements are agreements under which a governmental unit conducts an activity jointly or cooperatively with one or more other governmental units, or contracts for its performance by another governmental unit. The agreement may be permanent or temporary; pursuant to special acts or general law; effective with or without voter approval; and may be formal or informal in character. Intergovernmental agreements may be for the provision of direct services to citizens of two or more jurisdictions, such as water supply or police protection; or they may be for governmental housekeeping activities, such as joint purchasing or personnel administration activities.

Adherents of intergovernmental agreements are primarily attracted to this cooperative device because it provides a process for dealing with needs and problems on a voluntary basis and affords a means of retaining local determination and control. The most vigorous opponents of this cooperative device consider it to be a weak palliative that is incapable of handling the total major area-wide difficulties of the metropolis.

In general, cooperative agreements are negotiated by administrators of the respective local governments and can go into effect after their governing bodies pass the necessary ordinances and resolutions. In contrast, alternative approaches generally become operative only after they have surmounted the often difficult hurdles of obtaining the sanction of the local voters. Unquestionably, cooperative agreements, often accomplished without public awareness that they exist, are subject to a much easier adoption procedure.

In terms of its local use in metropolitan areas, the cooperative method embraces an exceedingly broad sweep of local services and facilities and involves every level of local government. Some of the important functions include airports, building inspection, civil defense, construction and operation of public buildings (including not only the headquarters of governments, but also auditoriums, hospitals, libraries, memorials, and stadiums), correctional and detention facilities, election services, fire protection, flood control, public health activities, and hospital services. Others include law enforcement, library services, parks and recreation, personal services, planning, purchasing, refuse disposal, road construction and maintenance, sewage disposal and treatment,

tax assessment and collection, public welfare activities, and water supply.

Most cooperative agreements are between two governments and concern a single activity, and they usually pertain to services rather than facilities. Such agreements are not necessarily permanent. The Philadelphia, Cleveland, St. Louis and Los Angeles areas and the State of California provide good illustrations of the use of intergovernmental agreements.[257]

[257] BOLLENS & SCHMANDT, THE METROPOLIS: ITS PEOPLE, POLITICS AND ECONOMIC LIFE 379 (1965).

ARTICLE VIII. GENERAL PROVISIONS

Introductory Comment:

This draft article contains eight sections dealing with five diverse and unrelated subjects. It is believed that this arrangement is preferable to the inclusion in the constitution of a number of separate articles consisting of only one or two relatively short sections.

The subjects dealt with in this draft article are taxation, education, the militia, interstate intergovernmental cooperation and public officers. The Commission's recommendations with respect to each of these matters is set forth in the eight draft sections of this article and the commentary with respect to each of them, and it will not be necessary to summarize those recommendations here. However, there are some general provisions included in the present Constitution which the Commission recommends be omitted from a new constitution; and the Commission's recommendations with respect to these provisions are set forth here.

TAXATION

Article 15 of the present Declaration of Rights provides in part as follows: "That the levying of taxes by the poll is grievous and oppressive, and ought to be prohibited; that paupers ought not to be assessed for the support of the government; . . ." These two clauses date back to the Constitution of 1776, but the first clause was amended in 1864 when the word "prohibited" was substituted for the word "abolished."[258]

The tax by the "poll," or head, was at one time the only direct tax in Maryland. In a slave-holding era such taxes probably bore some rough relation to ability to pay, inasmuch as slaves were taxed by the head and their owner required to pay the tax. The historical opposition to the poll tax apparently stems from its imposition on Maryland dissenters for the support of the Church of England. It is noteworthy that no prohibition against the poll tax appeared in the constitutions adopted in the neighboring states of Delaware, Pennsylvania and Virginia, where the poll tax was not used for the support of the church. Efforts to repeal the prohibition in the constitutional conventions of 1850, 1864 and 1867 failed, probably because of the association of the poll tax with the right to vote. A proposed amendment to Article 15, which included repeal of the poll tax provision, was submitted to the people at a referendum in 1890, but was defeated.

The Commission does not think it necessary to continue in a new constitution a prohibition of the poll tax. In holding payment of poll taxes as a voting requirement unconstitutional, the United States Supreme Court said nothing to impair the legality of the poll tax as such "so long as it is not made a condition to the exercise of the franchise.[259] Stripped of its applicability to voting

[258] Much of the historical analysis of the provisions of the present Declaration of Rights and Constitution dealing with taxes contained in the commentary to Article VIII of the draft constitution is drawn from the excellent work of H. H. Walker Lewis, "The Tax Articles of the Maryland Declaration of Rights," 13 MD. L. REV. 83 (1953), and from a memorandum prepared at the request of the Commission by Mr. Lewis which brings his article to date and which will be published in a subsequent issue of the Maryland Law Review.

[259] Harper v. Virginia Board of Elections, 383 U. S. 663, 669 (1966).

rights, the Commission sees no objection to such a capitation tax if it meets the test of uniformity required by draft Section 8.02, and the "due process of law" and "equal protection of the laws" requirements of draft Section 1.04.

In colonial Maryland all persons who received public alms were considered paupers and exempted from taxation. An act of the General Assembly in 1781 exempted from all taxation persons "whose property shall not be valued above 10 pounds current money." Pauperism is no longer defined by the General Assembly; it is arguable, however, that the general exemptions from taxation of small holdings which do currently appear in the taxing statutes are an outgrowth of the pauper exemption. Whether or not such exemptions are required by the second clause of Article 15 of the present Declaration of Rights is open to question. In any event, this clause has significance for historical reasons only and it has no modern meaning or effect. The Commission, therefore, recommends that it be omitted from a new constitution.

The concluding clause of Article 15 of the present Declaration of Rights provides that, "fines, duties or taxes may properly and justly be imposed or levied with a political view for the good government and benefit of the community."

The "political view" clause has been in every Maryland constitution in substantially the same form. To the extent that it authorizes the levying of taxes, it is redundant since the General Assembly has plenary legislative power; and no specific authorization of the taxing power is necessary in a state constitution. Notwithstanding this fact, some cases have referred to the clause (mistakenly, it is submitted) as the constitutional basis of indirect, non-property taxes, such as license taxes, inheritance taxes and income taxes.[260] It has also been suggested that such indirect taxes as are "authorized" by the "political view" clause are not subject to the uniformity and equality principle inherent in the preceding clauses of Article 15 of the present Declaration.[261] Another rather antiquarian reading of the "political view" clause is that it may justify the exaction of taxes not strictly speaking for the support of the government, but nevertheless for the good of the community.[262]

The Commission believes that the essential meaning of the "political view" clause has been given expression in the first clause of draft Section 8.01. The Commission, therefore, recommends that the "political view" clause of the present Constitution be omitted from the new constitution.

THE LOTTERY

Article III, Section 36 of the present Constitution reads as follows:

> "No Lottery grant shall ever hereafter be authorized by the General Assembly."

This prohibition first appeared in the Constitution of 1851. It will be noted that it prohibits *future* lottery grants. It was not until 1860 that the General Assembly finally abolished all lotteries then existing within the State. Prior to that time various forms of lottery were used to a very substantial extent to help fi-

[260] See, *e.g.*, Oursler v. Tawes, 178, Md. 471, 485-86 (1940).

[261] NILES, MARYLAND CONSTITUTIONAL LAW 32-33 (1915).

[262] See, *e.g.*, Waters v. State, 1 Gill 302 (1843), upholding on this theory a tax for the financing of the colonization of free Negroes in Africa.

nance some of the more venerable of the Maryland institutions.

A Board of Lottery Commissioners was established in 1818 to supervise and tax all lottery grants in the State. According to a list published by the Commissioners of Lotteries in 1818, lottery schemes had helped raise funds for the construction of the churches and cathedrals of a number of different faiths, as well as for hospitals, monuments, roads, libraries and schools. It has been estimated that from 1791 to 1800 approximately 180 lottery grants and their extensions produced some 3,200 lotteries in Baltimore City alone, attracting $180,000,000, of which $120,000,000 was returned as prize money and $60,000,000 was divided among the promoters, the State and the intended specific beneficiaries of the lottery schemes.

In practice, the schemes did not raise funds either quickly or easily for the intended projects. In order that the Maryland lotteries be competitive with lotteries in other states, it was often necessary to return in prize money most of the money collected, with only a small percentage being retained for the construction project to be assisted. Thus, many extensions of lottery authorizations were essential before the intended projects were completed. By the 1830's substantial sentiment existed for the curbing, and eventual abolition, of the lottery grants on the grounds that they were a slow and uneconomical system for the raising of funds for public and quasi-public projects, that they created pauperism, and that they were marked by mismanagement and even corruption on the part of the commissioners.[263]

[263] BALTIMORE CRIMINAL JUSTICE COMMISSION, REPORT ON LEGALIZED GAMBLING 3-7, 23-25 (1964).

It was suggested to the Commission by proponents of lotteries that the constitutional prohibition against "lottery grants" might be construed to bar only grants by the General Assembly of authority to private corporations or individuals to operate a lottery, but not to prevent the institution of a state-operated lottery. However, Attorney General Herbert R. O'Conor in 1935, in an official opinion,[264] expressed the contrary opinion and ruled unconstitutional a bill which would have authorized the operation by the State of a sweepstakes on horse racing in Maryland.

The Commission invited testimony and statements from all persons interested in expressing their views as to whether a lottery should be prohibited by a new constitution. The Comptroller of the City of Baltimore, the principal advocate in Maryland of a state-operated lottery, urged abolition of the existing constitutional prohibition of lotteries on the grounds that it is inconsistent to bar lotteries but not parimutuel betting at race tracks; that a state-operated lottery would take from organized crime a major source of revenue, namely the numbers racket; that a state-operated lottery would raise money for sound public purposes; and that most citizens favor a state-operated lottery and their will should not be thwarted.

Statements presented on behalf of the Episcopal Diocese of Maryland and the Baptist Convention of Maryland favored retention in the constitution of the present prohibition of lotteries on the grounds that a lottery is immoral, corrupts the young by its sanction of "easy money," would be an admission that our taxpayers would not support their government, and would "open the flood

[264] 20 Ops. Md. Atty. Gen. 266 (1935).

gates of crime." These opponents of a lottery also contended that gambling is a destructive, parasitic force in society and said that the lottery would bring in its wake crime and poverty. The statement presented on behalf of the Roman Catholic Archdiocese of Maryland and concurred in by Cardinal Shehan expressed no opinion on the merits of a state-operated lottery, but suggested that the question was properly one for legislative determination, and "not the type of subject matter which should be included in a state constitution."

The Commission recommends that the new constitution not contain any prohibition of a lottery.

In making this recommendation the Commission in no way wants to be understood as favoring the adoption of a state-operated lottery or any other form of gambling device for the alleged purpose of raising revenue for the State. Instead, the Commission's recommendation is based on its conviction that the issue is not one of such dimension as should be treated in the State's organic law. Although impressed with the persuasive arguments against the wisdom of a state-operated lottery, the Commission feels that these arguments should be addressed to the elected legislative representatives of the people. The Commission is aware of the fact that the constitutions of at least thirty-five other states either bar or sharply restrict lottery operations.[265] Nevertheless, the Commission believes that as important and far reaching as the lottery question may be, it is not of that fundamental character which justifies its inclusion in a state constitution.

Section 8.01. **Taxes.**

No tax shall be imposed except for a public purpose and except by the elected representatives of the people exercising legislative powers.

Comment:

This draft section incorporates the principle of "no taxation without representation" which had been expressed, for Englishmen, in the British Bill of Rights of 1689 and, for American colonists, in the Declaration of the Stamp Act Congress of 1765. The principle is stated in Article 14 of the present Declaration of Rights as follows:

> "That no aid, charge, tax, burthen or fees ought to be rated or levied, under any pretence, without the consent of the Legislature."

This provision appeared in identical language in the Declarations of Rights of 1851 and of 1864, and in substantially the same language in the Declaration of Rights of 1776.[266]

The purpose of this draft section is to prevent the imposition of taxes without the consent of the elected representatives of the people. Delegations of the taxing authority to local subdivisions have been held proper,[267] but in some instances the principle appears to have been eroded through the delegation by the General Assembly of taxing authority to nonelected administrative boards.

[265] INDEX DIGEST 487.

[266] MARYLAND CONSTITUTION article XII (1776); MARYLAND CONSTITUTION article 12 (1851); MARYLAND CONSTITUTION article 14 (1864).

[267] Alexander v. Mayor and City Council of Baltimore, 5 Gill 383 (1847); Burgess v. Pue, 2 Gill 11 (1844).

Such a delegation, in unusual circumstances, has been upheld.[268]

The Commission believes that the historic principle of "no taxation without representation" has important modern significance in requiring that the consent of the elected representatives of the people be required before taxes of any kind can be imposed.

The Commission also recommends inclusion in this draft section of a public purpose limitation on the imposition of all taxes. The Commission believes that the public purpose test distills and gives effect to the meaning of the "political view" clause of Article 15 of the present Declaration of Rights.

Section 8.02. **Assessments.**

No assessment nor any exemption therefrom with respect to any tax imposed by the State or any governmental unit thereof shall be made except pursuant to uniform rules within classes or subclasses of taxpayers, property or events as may be provided by law and such classes or subclasses may include property devoted to agricultural or open-space uses.

Comment:

The Commission believes that no constitutional mandate is or ought to be necessary in order to confer on a legislative body the power to tax, to assess property, to make reasonable exemptions from taxation or to make reasonable classifications of property necessary to a proper exercise of the taxing power. The Commission believes, however, that it is a proper function of the constitution to place such restrictions on the exercise of the taxing power as are necessary to safeguard the rights of all Maryland citizens. With respect to taxation, it is the right of the citizen to be treated uniformly with other citizens similarly situated. Indeed, it might be postulated that this is a natural right which must be protected in all events from governmental encroachment.

It is for this reason that protection from discriminatory tax practices found its way into the Declaration of Rights. In Article 13 of the 1776 Declaration of Rights the clause immediately following the pauper exemption provided that:

> "[E]very other person in the State ought to contribute his proportion of public taxes, for the support of government, according to his actual worth, in real or personal property, within the State; . . . ."

This provision strongly reflected the principle of "contribution according to worth" enunciated in the same year by Adam Smith in his "Inquiry Into the Nature and Causes of the Wealth of Nations."

This clause has been amended three times. It was changed slightly in the 1851 Declaration of Rights to make it clear that nonresidents owning property in this State could be required to contribute to the support of the government and that the measure of worth was not restricted to property within the borders of the State. As thus amended, the clause was continued in the Declaration of Rights of 1864 and of 1867, but was amended in 1915 to strike out the requirement for the apportionment of

[268] Baltimore v. State, 15 Md. 376 (1860), where the Court upheld a legislative grant of authority to a state board of police commissioners, appointed to bring to a halt widespread lawlessness and corruption in Baltimore City, to determine its own expenditures and to require the City to pay them.

taxes according to actual worth and to substitute the requirement for uniformity in assessment and taxation of land within the taxing district, of improvements on land and of personal property within the classification.[269] Another amendment adopted in 1960 brought the clause to its present form in Article 15 of the Declaration of Rights by permitting the classification of land for tax purposes.[270] As part of this amendment, Article 43 of the present Declaration of Rights was also amended; both amendments were intrinsically bound up with the farmland assessment question.

Of these three amendments to Article 15, by far the most significant was the classification and uniformity amendment of 1915.[271]

Article 15 of the present Declaration of Rights has been interpreted by the courts to guarantee to the citizens equal and even-handed treatment in matters of property taxation.[272] This concept should be strengthened and broadened into other fields of taxation, particularly in view of the fact that in a modern society it is the excise tax, and not the property tax, which produces the greatest revenue.

Uniformity in taxation does not imply universality. The solution of the problem lies in proper classification. So long as proper classes are maintained, the test of uniformity will be met if all members of the class are treated alike. For these reasons, this draft section requires that classifications be established by law before a tax may be imposed. Since taxation depends upon the trilogy of the taxpayer, the taxpayer's property and the relationship of the taxpayer to the property—an "event"—this draft section recommends that the taxation process be accomplished within these concepts.

It should be emphasized that the concept of proper classification should not be restricted solely to the property tax, although Article 15 of the present Declaration points in this direction. For example, it has been suggested that indirect taxes are not within the purview of direct taxation.[273] This decision has caused a belief by some commentators that the income tax is not subject to Article 15 of the present Declaration and that the uniformity and equality provisions of Article 15 are therefore inapplicable to the income tax.[274]

In common parlance, the word "assessment" as applied to taxation is used almost entirely to mean official valuation for purposes of determining the amount of an *ad valorem* tax. It should be noted, however, that in this draft section the word "assessment" is used in its broader sense and therefore includes not only valuation of property for *ad valorem* tax purposes, but the imposition or levy of a tax, or the determination of the rate or amount of a tax. The requirements of this draft section are, therefore, clearly applicable not only to

[269] Acts of 1914, chapter 390, ratified Nov. 2, 1915.

[270] Acts of 1960, chapter 64, ratified Nov. 8, 1960.

[271] See Lewis, "The Tax Articles of the Maryland Declaration of Rights," 13 MD. L. REV. 83 (1953), for a very interesting and informative discussion of the causes and effects of the 1915 amendment.

[272] National Can Corp. v. State Tax Comm'n, 220 Md. 418 (1959); State Tax Comm'n v. Gales, 222 Md. 543 (1960).

[273] State v. P., W. & B. R.R., 45 Md. 361, 378 (1876).

[274] Cairns, "History and Constitutionality of the Maryland Income Tax Law," 2 MD. L. REV. 1 (1937).

property taxes, but to indirect and excise taxes of every kind.

Uniform treatment in matters of taxation does not, however, depend solely on proper classification. Classification properly made is but the first step. The necessary corollary is that each class or subclass which defines the incidents of taxation must be treated by uniform rules. Thus, the objective standards that fix the tax burden must be equally applied to each incident of a similar nature. This draft section recognizes this necessity by requiring that all assessments and exemptions within a recognized class shall be made "pursuant to uniform rules."

The direct burden of any tax is imposed through the process of assessment, whether the tax be direct or indirect. The hidden burden of taxation, however, is derived not from what the individual taxpayer must pay by reason of his assessment but, rather, by what his neighbor does not pay because of his underassessment. The concept is, in the last analysis, one of distribution. If the common government requires a certain sum to operate, the entire citizenry must pay the bill. An underassessment requires a shifting of the burden which may or may not be fair, depending upon the method by which the burden is distributed.

The most common cause of underassessment in the broad, generic sense is the exemption from taxation. Exemptions are of many kinds and are the product of many motives—social, economic, political. Exemptions from tax may, therefore, be justified on sound grounds; they may also be subject to strong criticism. The Commission believes that all exemptions, like all assessments, should be made uniformly throughout the State. To this end, the Commission recommends and this draft section requires that exemption from tax shall also be made pursuant to "uniform rules." There is no comparable provision in the present Constitution, but this recommendation has found favor with all state tax administrators with whom the Commission consulted.

This draft section is intended to place the concepts of uniform and fair tax practice in the constitution in a broad and meaningful manner. It will apply to all taxes and to all exemptions from taxes. In addition, it should be noted that this draft section applies to every legislative body in Maryland that imposes a tax.

This draft section specifically permits the separate classification of "property devoted to agricultural or open-space uses." It is recognized that specific reference to this special form of classification is not essential to confer upon the General Assembly the power so to classify. The Commission believes, however, that in view of the very recent adoption[275] by an overwhelming vote of the amendments to Articles 15 and 43 of the present Declaration of Rights to provide for a special method of assessing land devoted to farm or agricultural uses, an explicit sanction of a classification of property devoted to agricultural use would be an appropriate expression of the public policy of the State.

It should be noted, however, that the language of this draft section, "property devoted to agricultural or open-space uses," is broader than the language of Article 43 of the present Declaration of Rights, "land actively devoted to farm or agricultural use." The Commission

[275] Acts of 1960, chapters 64 and 65, ratified Nov. 8, 1960.

believes that this draft section will give the General Assembly greater latitude in dealing with the problem of assessing fairly and equitably for tax purposes land which is and should be retained as essentially rural or open-space land, although located in close proximity to land in highly developed suburban or urbanized areas. This also gives the General Assembly the power to take appropriate steps to encourage "open-space" uses of land where this is desirable.

Section 8.03. **Public Education.**

The State shall provide by law for a statewide system of free public schools sufficient for the education of, and open to, all children of school age, and shall also provide for such other public educational institutions as may be desirable for the intellectual, cultural and occupational development of the people of this State.

Comment:

The provisions with respect to education in the present Constitution are those contained in the three sections of Article VIII of the Constitution and in the first portion of Article 43 of the Declaration of Rights. Their predecessors were the six sections of Article VIII which first appeared in the Constitution of 1864. Article VIII, Section 2 of the present Constitution, which deals with the system of public schools as constituted at the time the Constitution of 1867 became effective, is no longer operative, but the remaining two sections of Article VIII of the present Constitution and the portion of Article 43 of the Declaration of Rights dealing with education, are still in effect and have never been amended.

Article VIII, Section 1 of the present Constitution requires the General Assembly to "establish throughout the State a thorough and efficient System of Free Public Schools" and provide for their maintenance by taxes or otherwise; Section 3 provides that "the School Fund of the State shall be kept inviolate, and appropriated only to the purposes of Education." In relevant part, Article 43 of the Declaration of Rights declares that the legislature "ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general melioration of the condition of the People."

Unlike the Constitution of 1864, the present Constitution does not provide for boards of education, superintendents of schools or any of the other matters necessary for the administration of a school system. These details are all left for the determination of the General Assembly with the result that the entire public school system in Maryland is today dependent upon statutory authority for its creation, existence, maintenance and financial support. The only other provisions of the present Constitution dealing with education are those contained in the budgetary provisions of Article III, Section 52.[276]

In this draft section, the Commission recommends retaining the essential parts of Article VIII, Section 1 of the present Constitution and the relevant part of Article 43 of the Declaration of Rights, but believes that this draft section has

[276] These essential budgetary provisions are continued in draft Sections 6.05 and 6.07. See the commentary to those draft sections.

stated these concepts and requirements in clearer, simpler and yet more explicit and meaningful language. The mandate of this draft section is also broader in scope in that it requires the General Assembly not merely to establish a system of public schools, but to establish "a statewide system of free public schools sufficient for the education of, and open to, all children of school age. . . ." This leaves for the determination of the General Assembly the precise limits of "school age"; and clearly authorizes, but does not require, the General Assembly to provide for kindergarten and nursery schools. At the same time, the last clause of this draft section authorizes, but does not require, the General Assembly to provide for post-secondary school education and adult, vocational and other special forms of education as may be desirable.

Some persons appearing before the Commission advocated constitutional definition of "free public schools" as including colleges. The Commission believes, however, that the extent to which college and post-graduate education shall be encouraged or subsidized, or provided entirely at the expense of the State, is a matter which should be left to the determination of the General Assembly.

The Commission believes that this draft section emphasizes the necessity for an adequate statewide system of free public schools and the overall importance of public education at every level.

The Commission does not believe that any good purpose would be served by the retention of a provision that the "School Fund" of the State shall be kept inviolate. As used originally in the Constitution of 1864, the "free public-school fund" was a fund of $6,000,000 derived initially from property taxes. The principal of the fund thereby created was declared to be inviolate; and the interest on the fund was to be used for education purposes only. There is no such separate "School Fund" today and this term in Article VIII, Section 3 of the present Constitution means any monies received by the local school authorities from the local subdivisions. These funds can only be used for purposes of education and any expenditure by a local school board may be challenged as not being for an educational purpose. Only to this extent does Article VIII, Section 3 of the present Constitution have any application today.[277]

School funds as they exist today are essentially local funds, rather than state funds and no separate or identifiable "School Fund" now exists. In addition, the Commission believes that the existing provision does not actually give any real protection to the integrity of the monies appropriated for public school purposes. At the state level, all such appropriations are included in the budget. To a large extent, they are based upon the requirements of a statute and the estimates of public school officials as to the amount of money needed to meet these requirements. More often than not, the requirements are over-estimated with the result that at the end of each fiscal year there remains an unexpended balance of the appropriation in the budget for public schools. This balance does not continue in existence as a school fund of any kind, but instead, under the budgetary provisions of Article III, Section 52 of the present Constitution, it reverts to the state treasury as a general surplus, which may be utilized in a supplemental

[277] Board of Education v. Wheat, 174 Md. 314 (1938).

budget, or in the budget for the next fiscal year, for any purpose. It is not in any way limited to use for school purposes. The Commission believes that full and adequate protection of the school fund is provided by draft Sections 6.05 and 6.07.[278]

Some persons testifying before the Commission urged that a state board of education and a state superintendent of schools be given constitutional recognition, as was done in the Constitution of 1864 and is done in some other states.[279]

As noted above, a state board of education and a state superintendent of schools are now provided for by statute, and the Commission is reluctant to recommend a change in the status of what appears to be an extremely well-run organization, free from political influence. Proponents of constitutional recognition of a state board of education and a state superintendent of schools argue that such recognition would ensure against future political domination of the school system, but the Commission believes that constitutional sanction does not necessarily give greater protection against political interference. For instance, the Constitution of Hawaii originally provided for a state superintendent of schools, but by constitutional amendment the state superintendent of schools in Hawaii is now elected, a result which the Commission believes would be most unfortunate in Maryland.

It will be noted that the draft section does not include any language which would either prohibit or require public aid to private educational institutions. The Commission believes that this is a matter to be decided by the General Assembly, as it sees fit within the constitutionally prescribed limits.

It has been the long established practice of the General Assembly, beginning as early as 1784, to give aid to private institutions of all kinds which are performing the same services as public institutions, such as colleges, hospitals and welfare institutions. The Commission does not think that this is an improper use of public funds which should be restricted or prohibited, except to the extent that other constitutional requirements restrict or inhibit such use.[280] On the other hand, there has been no explicit constitutional sanction for the practice of granting state aid to private institutions during a period of nearly two hundred years, and the Commission does not believe that any explicit constitutional sanction is needed now.

Some members of the Commission, however, expressed the fear that because this draft section refers only to public education, it may be implied that state aid to private education is forbidden. They suggested that this draft section be amended so that the clause requiring the General Assembly to provide for such other public educational institutions as may be desirable be changed to require the General Assembly to "provide for or aid such other educational institutions as may be desirable." Most of the members of the Commission believed that this change was unnecessary

[278] See the commentary to those draft sections.

[279] Phay, "The Board of Trustees of the University of North Carolina: A Comparison with Other Governing Boards," 9-16 *Popular Government* (May 1966).

[280] As for example, draft Section 1.03 and the "establishment of religion" clause of the First Amendment to the United States Constitution as made applicable to the states by the Fourteenth Amendment. See Horace Mann v. Board of Public Works, 242 Md. 645, *cert. denied,* 385 U. S. 97 (1966).

and they pointed to the fact that without any express sanction in the present Constitution, state aid to private nonsectarian educational institutions had been held valid and constitutional.[281]

The Commission, however, desires to make it abundantly clear that nothing contained in or omitted from the language of this draft section is intended to prohibit, restrict or limit the use of public monies to aid private educational facilities. This draft section is intended to deal only with public education. The General Assembly has plenary legislative power under draft Section 3.01 and any limitation on its authority to appropriate public monies for the aid of private education would flow from other constitutional restrictions and not from this draft section.

Section 8.04. **Higher Education.**

The University of Maryland shall be managed by the regents of the University of Maryland in accordance with law, and the regents shall have exclusive general supervision of the institution and the control and direction of all expenditures from the institution's funds. The governing boards of the state colleges and other state institutions of higher education shall formulate policies for their respective institutions and shall by law be granted such additional powers of supervision, direction and control of their respective institutions and institutional funds as may be feasible and consistent with their status as public agencies.

Comment:

The first sentence of this draft section grants what has been termed "constitutional autonomy" to the University of Maryland. This matter was the subject of extensive hearings by the Commission's Committee on Miscellaneous Provisions, which also had extensive correspondence and both formal and informal discussions of the subject with leading educators in the State. The question was also the subject of prolonged discussion and debate in the formal sessions of the Commission.

The discussion of "constitutional autonomy" for the University of Maryland was initiated by a letter to the Committee on Miscellaneous Provisions from Dr. Wilson H. Elkins, President of the University. This was followed by extensive correspondence between Dr. Elkins and the Committee and other members of the Commission, and by a personal appearance of Dr. Elkins before the Committee. In addition, the Committee solicited and received the views and statements of position of other educators, and in particular those of the Advisory Council on Higher Education and the Board of Trustees of State Colleges.[282]

In its initial report to the Commission dealing with this subject matter, the Committee on Miscellaneous Provisions proposed for inclusion in a new constitution a section designating the University of Maryland as the state university, granting autonomy to its Board of Regents and providing for a Board of Regents to be appointed by the governor. The proposed section was discussed by

[281] See Johns Hopkins University v. Williams, 199 Md. 382 (1952).

[282] This correspondence and testimony, and these statements of position, will be included in Volumes II and IV of the papers of the Maryland Constitutional Convention Commission (in ENOCH PRATT LIBRARY, UNIVERSITY OF MARYLAND LIBRARY, MARYLAND STATE LIBRARY, JOHNS HOPKINS UNIVERSITY LIBRARY).

the Commission, but referred back to the Committee for further consideration. In its subsequent report to the Commission, the Committee on Miscellaneous Provisions proposed for inclusion in a new constitution a section consisting of the first sentence of this draft section.

After very extensive debate, the Commission rejected the proposal of the Committee on Miscellaneous Provisions by a vote of 11 to 10 and then referred the matter back to the Committee to draft for further consideration of the Commission a provision granting to the University of Maryland something less than the complete autonomy previously recommended by the Committee and rejected by the Commission.

Pursuant to this direction, the Committee on Miscellaneous Provisions presented to the Commission at its next meeting, held some ten days later, three alternate provisions which the Committee believed would provide something less than complete autonomy to the University of Maryland. The Committee, however, recommended none of these provisions and, instead, again recommended to the full Commission that it adopt the provision granting complete autonomy to the University of Maryland theretofore recommended by the Committee.

On reconsideration, the Commission, by a vote of 13 to 11, reversed its previous action rejecting the proposal of the Committee. Then, by a vote of 20 to 4, the Committee's proposal was amended to read as set forth in this draft section. After further discussion, the following substitute was proposed and, by a vote of 11 to 10, was rejected:

> "The governing boards provided by law for the University of Maryland and for state institutions of higher learning shall formulate policies for their respective institutions and shall have general supervision thereof in all academic matters. They shall by law be granted such additional powers of supervision, direction and control of their respective institutions and the expenditure of the funds thereof as may be feasible and consistent with their status as public agencies."

Throughout the debate and discussion of this matter, the members of the Commission were generally agreed that the University of Maryland, the state colleges and other public institutions of higher education should have autonomy in all academic matters, and were also generally agreed that the state colleges under the Board of State Colleges and the community colleges under the Board of Education should not be granted so-called "constitutional autonomy." Finally, the members of the Commission were also in general agreement that the Regents of the University of Maryland should not only have full control of the institution in all academic matters, but that they should also have control over the general supervision of the institution and control over the expenditure of its funds. In other words, the members of the Commission were generally in agreement on the proposition that the University of Maryland ought to have "autonomy" not only in academic matters, but in fiscal matters. The divergency of opinion among the members of the Commission was over the question of whether this "autonomy" should be granted by statute and, therefore, be subject to change by the General Assembly; or should be granted by the Constitution and, therefore, not be subject to change by the General Assembly.

The University of Maryland has been in existence in some form since 1807, and since 1812 its governing authority has been the Board of Regents.[283] It is a land-grant institution, and is the State's only public university and is one of the ten largest universities in the nation. The University has had a degree of statutory autonomy since the passage of the so-called "Autonomy Act"[284] in 1952 which conferred on the Board of Regents the power to manage the affairs of the University with certain exceptions. In 1964 the Autonomy Act was amended to require that in branch facilities of the University, nonacademic personnel be under the rules and regulations of the state personnel department and purchases made by such branch facilities be "subject to the authority of the Central Purchasing Bureau."[285] This provision has now apparently been superseded by a statute enacted in 1967, restoring to the Board of Regents full autonomy as to the Baltimore County branch.[286]

All of the nation's leading public universities do not enjoy constitutional autonomy, but the University of California, the University of Michigan and the University of Minnesota do.[287] Approximately half of the states recognize the state university in their constitutions[288] and in some new or recently revised constitutions, constitutional autonomy for state universities has been granted or expanded.[289] Many state universities enjoy varying degrees of autonomy granted by statute, which is, therefore, subject to the control of the legislature.[290]

Those favoring "constitutional autonomy" for the University of Maryland suggest that the starting point for any great state university is autonomy of management consistent with, and properly balanced against, the need for supervision by public authorities. These proponents emphasize that even under "constitutional autonomy" the General Assembly will have the final authority to determine how much will be appropriated each year for the University. They contend that while the necessary autonomy can be provided by statute, it can also be eroded by subsequent legislation. This has happened in Maryland and in other states. The proponents of "constitutional autonomy" further point out that the early land-grant colleges, of which the University of Maryland is one, have been traditionally autonomous; and that "the complex bureaucratic organization resulting from the vast expansion of state government has become a discordant intrusion upon the desired and established independence of these educational institutions."

[283] Acts of 1812, chapter 159; see also Acts of 1920, chapter 480.

[284] Now codified as ANNOTATED CODE OF MARYLAND article 77, section 249(e) (1965 Replacement Volume).

[285] ANNOTATED CODE OF MARYLAND article 77, section 251A (1965 Replacement Volume).

[286] Acts of 1967, chapter 674.

[287] INDEX DIGEST 406; MINNESOTA CONSTITUTION article VIII, section 4.

[288] INDEX DIGEST 405-08.

[289] ALASKA CONSTITUTION article VII, sections 2, 3; GEORGIA CONSTITUTION article VIII, section 4; HAWAII CONSTITUTION article IX, sections 4, 5; MICHIGAN CONSTITUTION article VIII, sections 4, 5; MISSOURI CONSTITUTION article IX, section 9. See also: Phay, "The Board of Trustees of the University of North Carolina: A Comparison with Other Governing Boards," *Popular Government* (May 1966).

[290] See MOOS & ROURKE, THE CAMPUS AND THE STATE (1959); THE REPORT OF THE COMMISSION FOR THE EXPANSION OF PUBLIC HIGHER EDUCATION IN MARYLAND 45 (June 1962).

The proponents of "constitutional autonomy" say that under "statutory autonomy" the University of Maryland has grown in size until it is one of the ten largest universities in the United States, that it has become fully accredited by its regional accrediting association and numerous professional associations, that it has been invited to establish a chapter of Phi Beta Kappa, that the faculty has attained distinction in many fields as a result of which the University has become engaged in very substantial research programs sponsored principally by the federal government, and that, in addition, the University is the principal research agency of the State. This research activity, which is an integral part of the graduate program of the University, is growing rapidly.

The position of the University in requesting "constitutional autonomy" is summarized in the following excerpt from a letter from Dr. Elkins to the Commission:

> "Constitutional recognition will further enhance the reputation of the University and provide security for the future. In asking for this, the University does not seek independence from the legislature or the executive branch of the government, but it does plead for the power of internal management. It does not seek to be independent of the Budget Bureau of the State in justifying funds from the State, but it should be independent of the Budget Bureau in the management of those funds. If the University did not have the power to purchase equipment and employ personnel without going through other agencies, it would not be in a position to carry on its vast and highly specialized research and service activities.
>
> "In summary, the University of Maryland presents a special case for constitutional recognition. Its comprehensive nature, complexity, size, unique function, and its experience with statutory autonomy places it in a position which is strikingly different from all other institutions in the State. Statutory autonomy can be eroded and has been in the past. In many and often devious ways, it is under attack continually. A simple provision in the constitution, giving power of management to the Board of Regents, will substantially strengthen the University of Maryland in the decisive years ahead."

Those not favoring "constitutional autonomy" for the University of Maryland point out that the University of Maryland is not an agency of government which should be provided for in the constitution, that no other agency of the State has autonomy under the constitution, that the entire system of public education is a creature of statute and the State Board of Education which administers it at the state level does not have constitutional status, that the University is a public institution supported by taxation and should be subject to the final authority of the General Assembly, and that the General Assembly and not the University should have the ultimate authority in prescribing the tuition and other fees payable by students at the University. It is further suggested that although the General Assembly would, under this draft section, have control over the total amount of public money appropriated to the University, it would have no control whatsoever over the uses of such monies as might be appropriated to the University.

The Board of Trustees of State Colleges very strongly urged the Commis-

sion to recommend also that the new constitution establish autonomy for the governing boards of all institutions of higher education, including the Board of Trustees of State Colleges.

The Commission is impressed by the rapid development in quality and quantity of the State's other higher educational facilities, including the five state colleges presently under the supervision of the Board of Trustees of State Colleges, Morgan State College which is now independent but contemplated for inclusion under the supervision of the Board of State Colleges,[291] and the community colleges which are now under the supervision of the Board of Education. The Commission is also concerned that all of these institutions of higher education be given maximum opportunity for unfettered development. However, the present system of state colleges and community colleges is relatively new and the Commission thinks that it would be unwise to establish permanently in the constitution a system of government for these colleges which is still in a state of development.

For these reasons, the Commission recommends that the constitution grant autonomy in academic matters to the governing boards of other public institutions of higher education and recognize the need of such governing boards for a large measure of statutory autonomy in the supervision, direction and control of their respective institutions and institutional funds. These concepts are expressed in the second sentence of this draft section.

Section 8.05. **Militia.**

The General Assembly may provide by law for a militia. The governor shall be its commander-in-chief and shall appoint its officers. The governor may call out the militia to repel invasions, suppress insurrections, and enforce the execution of the laws. The military power of the State shall be and remain subject to civil control at all times, and only members of the militia when in actual service may be subject to trial by a military court of this State.

Comment:

The provisions of the present Declaration of Rights and Constitution with respect to the military forces of the State, or militia, are found in Articles 28, 29, 30, 31 and 32 of the Declaration of Rights, Article II, Sections 8, 10 and 15 of the Constitution and Article IX of the Constitution, which now consists of two sections.

The five articles of the present Declaration of Rights are the familiar ones declaring that a well regulated militia is the natural defense of a free government, that standing armies are dangerous to liberty and ought not to be maintained without the consent of the General Assembly, that the military ought to be at all times under the control of the civil power, that no soldier should in time of peace be quartered in any house without the consent of the owner nor in time of war except in the manner prescribed by law, and that no person except regular soldiers, marines and mariners in actual service ought to be subject to or punishable by martial law.

Article II, Section 8 of the present Constitution designates the governor as commander-in-chief of the "land and

[291] Under House Bill 551, 1967 session of the General Assembly, Morgan State College would have remained independent. The bill was not passed but was referred to the Legislative Council.

naval forces of the State" and authorizes him to call out the militia to enforce the execution of the laws, but further provides that he shall not take command in person without the consent of the General Assembly. Section 10 provides that the governor shall nominate and, with the consent of the Senate, appoint all military officers whose selection is not otherwise provided for. Section 15 authorizes the governor to suspend or arrest any military officer of the State for disobedience of orders or other military offense and to remove such military officer pursuant to the sentence of a court-martial.

Article IX, Section 1 of the present Constitution directs the General Assembly to make provisions for organizing a militia and to pass laws to promote volunteer militia organizations. Section 2 of this Article provides for an adjutant general to be appointed by the governor and makes certain other provisions with respect to the duties of the adjutant general, the compensation of the adjutant general, and other officers of the general staff of the militia.

The Commission recommends this single draft section to replace and supersede the five articles of the present Declaration of Rights and the five sections of the present Constitution.

The Commission asked General George Gelston, Adjutant General, General Milton A. Reckord, former Adjutant General, and General William U. Ogletree, Assistant Adjutant General of the Maryland National Guard, for an expression of their views on the proposed militia provision. General Reckord, speaking for all three officers, stated that they were satisfied with the provisions of the present Constitution except for the last clause of Article IX, Section 2 limiting payments to officers of the staff. He also indicated, however, that there would be no problems under this draft section with respect to the militia's everyday operations which are presently governed by Article 65 of the Maryland Code.

Almost all state constitutions provide that the military shall be subservient to civil power; and all provide that the governor shall be the commander-in-chief and that the General Assembly shall provide for the organization and maintenance of the militia.[292] These three elements, plus the explicit power given to the governor to call out the militia and appoint its officers, are the substance of this draft section.

The Commission reviewed the historical background of Article 32 of the present Declaration of Rights to ascertain whether the term "martial law" as used therein was intended to prohibit the trial of civilians by military courts, or to prohibit the imposition of military rule on the civilian populace. The investigation showed that the original purpose of Article 32, the provisions of which have not been altered since the Constitution of 1776, was to assure that a civilian would be tried only in a civil court and not in a military court, and that military rule over a civilian community in time of domestic disorder (popularly termed "martial law") was not intended to be proscribed.

The Commission is of the opinion that the prohibition against the trial of civilians in military courts ought to be retained and that there should be included in a new constitution the substance of the provisions now contained in Article II, Section 8 stating the

[292] INDEX DIGEST 691, 701, 706.

purposes for which the governor may call out the militia.

This draft section confers on the governor broad powers to call out the militia, but any abuse of the power to invoke military rule may be resisted in the courts as a deprivation of due process of law under draft Section 1.04 and under the Fourteenth Amendment to the United States Constitution.

Section 8.06. **Interstate Intergovernmental Cooperation.**

This Constitution shall be construed to permit, except to the extent prohibited by law, the cooperation of the government of this State with any other government and the cooperation of the government of any county or other governmental unit with one or more other governments outside the boundaries of the State in the administration of their functions and powers.

Comment:

The Commission recommends the inclusion of this draft section in a new constitution to make it clear that there are no state constitutional obstacles to cooperation between the State or its local subdivisions, and the national government or other state or local governments, to the extent authorized by the General Assembly.

Although it does not appear that any other provision of the draft constitution would prohibit such intergovernmental cooperation, the Commission thinks it desirable to use this means to emphasize the need for an intergovernmental approach to many of the problems now faced by the people of the State. The specific mention of intergovernmental action in the new constitution should make both the electorate and public officials aware of the availability of such an approach.

Section 8.07. **Oath of Office.**

Every person elected or appointed to any office of profit or trust under the Constitution or laws of this State shall, before he enters upon the duties of such office, take and subscribe the following oath or affirmation: "I, ..., do swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of Maryland and support the Constitution and laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of ....., according to the Constitution and laws of this State." No other oath or political test shall be required.

Comment:

This draft section is essentially the same as Article I, Section 6 of the present Constitution with one deletion and one addition.

Article I, Section 6 of the present Constitution requires that before taking office a governor, senator, member of the House of Delegates or judge shall take an oath that he will not directly or indirectly receive the profits or any part of the profits of any other office during his term. This part of the oath has been omitted from this draft section for two reasons.

First, the Commission believes that the provision is wholly inappropriate for an oath of office. If there is to be a prohibition against holding more than one office, it should be stated affirmatively elsewhere in the Constitution.

Second, the Commission recommends the omission from a new constitution of such an affirmative prohibition except with respect to members of the General Assembly under certain circumstances. This prohibition as to members of the General Assembly is included in draft Section 3.09. The Commission has not recommended including anywhere in the draft constitution a provision similar to that contained in Article 35 of the present Declaration of Rights to the effect that no person shall hold at the same time more than one office of profit created by the Constitution or laws of the State. The Commission believes that this subject matter should be left to the General Assembly to be dealt with in the whole setting of conflict of interests, prescribed qualifications for offices, and so forth.

Every state constitution requires an oath of office of its appointed or elected officials and most of the prescribed oaths are in substantially the form of this draft section.[293] Article II, Section 1 of the United States Constitution prescribes the oath of office for the President of the United States and Article VI of the Constitution of the United States provides that "the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; . . . ."

The Commission recommends that the oath prescribed by this draft section be the only one required of any elected or appointed officer of the state. For this reason the Commission has recommended for inclusion in this draft section the last sentence providing that no other oath or political test shall be required. This does not represent a substantive change inasmuch as the concluding clause of Article 37 of the present Declaration of Rights prohibits any oath of office other than the one prescribed by Article I, Section 6.

Section 8.08. **Impeachment.**

The House of Delegates shall have the sole power of impeachment of elected officials, judges and any other state officers who may be designated by law, in cases of serious crimes or serious misconduct in office. The affirmative vote of three-fifths of all the members of the House of Delegates shall be required to impeach. Impeachments shall be tried by a special tribunal of ten judges appointed by the Supreme Court from among the judges of the State. The concurrence of three-fifths of the judges of the special tribunal shall be required to convict. Judgment upon conviction shall be removal from office and may include disqualification from holding any office of public trust, as well as deprivation of pension rights and other privileges of office. A person tried upon impeachment, whether or not convicted, shall be liable to criminal prosecution and punishment according to law.

Comment:

This draft section makes substantial changes in the provisions of Article III, Section 26 of the present Constitution dealing with impeachment. In this draft section the power of impeachment is retained in the House of Delegates, but the trial of an impeachment is by a special tribunal of ten judges appointed by the Supreme Court of the State from among the judges of the State. In Article III, Section 26 of the present Constitution, trial of an impeachment is by the Senate.

[293] INDEX DIGEST 827.

In the present Constitution the affirmative vote of a majority of all members of the House of Delegates is required for impeachment; in this draft section the affirmative vote of three-fifths of all the members of the House of Delegates is required for impeachment.

In the present Constitution the concurrence of two-thirds of all the senators is required for conviction; in this draft section the concurrence of three-fifths of the judges of the special tribunal is required for conviction. The Commission is aware of the fact that in this particular situation the concurrence of three-fifths of the judges is the same as the concurrence of a majority, namely, six judges. It, nevertheless, believes that it is desirable to include this requirement to indicate that six judges are more than a simple majority.

The next to the last sentence of this draft section has been added to make it abundantly clear that upon conviction after impeachment, the penalty in every case shall be removal from office, but may also include disqualification from holding any office of public trust as well as deprivation of pension rights and other privileges of the office. These latter penalties are not mandatory, but may be imposed in the discretion of the special tribunal of judges. The last sentence, in addition, makes it clear that impeachment, whether or not followed by conviction, does not relieve the impeached person of responsibility under the criminal laws.

Impeachment has not been resorted to in Maryland for more than one hundred years. Nonetheless, the Commission believes that the existence of such an extraordinary removal procedure is desirable. It is included in the constitutions of practically every state.[294] It is also provided for in Article I, Sections 2 and 3 and Article II, Section 4 of the United States Constitution.

The Commission debated at some length the question of whether the trial of an impeachment should be before the Senate as is provided in the present Constitution and in the United States Constitution, or before some other tribunal. It will be remembered that in the federal Constitutional Convention of 1787 there was considerable debate as to whether impeachments should be tried by the Senate or by the Supreme Court of the United States, and approval of the provision for trial of impeachment cases by the Senate was by a relatively narrow margin.

The Commission believes that the trial of an impeachment, as the trial of any other case, is essentially a judicial proceeding for which a branch of the legislature is ill-suited. The Commission further believes that every precaution should be taken to insure that trial of an impeachment will be free of any partisan character and will be conducted by experienced triers of fact and of law. It is for these reasons that the Commission has recommended that this draft section provide for trial of impeachment cases by a special tribunal of ten judges. Wide latitude is given to the Supreme Court in determining the composition of the special tribunal in order that an impartial panel of judges may be obtained regardless of the identity of the officer impeached.

The Commission believes that this draft section represents a substantial improvement upon the provisions of the present Constitution with respect to impeachment.

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[294] INDEX DIGEST 534-35.

ARTICLE IX. AMENDMENT OF THE CONSTITUTION

Introductory Comment:

This draft article sets forth the procedure by which the constitution may be revised. The Commission recommends that the people of Maryland adopt a new constitution which is both a brief and a general document with the limitations on governmental power expressed in general terms, and which leaves to the future discretion of the General Assembly the details of governmental organization, administration and authority. Although the Commission believes that such a basic document will be flexible enough so that without change in the basic language it can be interpreted to meet the demands of a rapidly expanding and changing society, the Commission is, nevertheless, aware that the social, economic, technological and political forces which interact to shape society may change, with a resulting need for growth or change in the state constitution. Since good government must be responsive to changes in society and since it is not possible to foresee all the problems with which society may be faced in the future, there must be provision in a new constitution for the constitution's alteration.

Alteration of a state constitution may take various forms: change by interpretation, change by amendment, and change by major revision. Change by interpretation occurs by the action of governors, legislatures, courts and the people; although the detailed language of the present Constitution leaves less room for change and growth by interpretation than is the case with the constitution of the federal government. A striking example of change by interpretation is the approval of "revenue bonds" issued by the State or its agencies, notwithstanding the prohibitions and restrictions of Article III, Section 34 of the present Constitution with respect to state indebtedness.

Change by amendment is the method most frequently used in Maryland for altering the State's basic document. Since the ratification of the present Constitution in 1867, there have been 145 specific amendment questions submitted to the voters of Maryland. Of these, 124 have been adopted, with the effect that whatever were the original benefits of brevity and generality of the 1867 Constitution, they have been lost. Some fourteen other states have amended their constitutions over seventy times each. In some states, the amending process is resorted to infrequently, and in others very often. Tennessee was unable to amend its 1870 Constitution until 1953; whereas, the California Constitution of 1879 has been amended over 370 times.

Amendments to state constitutions are generally initiated by three methods: (1) Through legislative action, (2) through state convention, and (3) through formal initiative petitions. Whereas most states allow the use of either of the first two methods, only thirteen states permit amendments to be initiated directly by the people through the use of the initiative petition, requiring a specified number of signatures on the petition.[295]

[295] For a discussion of the process of initiating amendments to constitutions by initiative petition and for an enumeration of those states which permit this method of constitutional change, see GRAVES, MAJOR PROBLEMS IN STATE CONSTITUTIONAL REVISION 25-27 (1960).

Except New Hampshire, all states provide at least technically for some method of legislative initiation. While sixteen states allow a majority of the members elected to initiate an amendment, most states require an extraordinary vote of the members elected to each house. About a dozen states require that an amendment, to be initiated, must be passed by extraordinary vote at two successive legislative sessions. The Maryland Constitution of 1776 had such a provision.

A constitutional convention, although primarily an instrument for drafting an entirely new constitution, is also used for the purpose of initiating amendments to an existing document. In New Hampshire, as was the case in Maryland's 1851 Constitution, this is the only method set forth for initiating amendments. In those states where the constitution makes no provision for the calling of a constitutional convention, constitutional lawyers have contended that conventions can always be called as an inherent right of the people acting through their elected representatives. Where conventions have been held in such states, the courts have found the procedure valid.[296] Eleven states provide that the question of calling a convention must be submitted to the electorate at stated intervals regardless of the attitude of the legislature on the matter.

Except in Delaware, where the legislature can amend the constitution by its own action, ratification of amendments by the people is required regardless of the method used for initiating the amendment.

Change by revision, although occasionally initiated directly by a state legislature, is more frequently initiated by a constitutional revision commission which is the creature of the legislature and which, after preparing its recommendations, submits its proposals to the legislature for approval before such recommendations are submitted to the voters. Another method of change by revision and the only one common to all of the fifty states is the constitutional convention. The constitutional convention is the first and basic legislative body in the sense that it establishes a framework for the determination of public policy. The nation has seen well over two hundred state constitutional conventions.

Maryland has had four constitutional conventions, those of 1776, 1850, 1864 and 1867. This method of constitutional change, based upon the people's election of delegates for the specific purpose of constitutional revision, carries with it a sanction and a prestige not found in other methods. Historically and legally, the convention is the direct "voice of the people" in matters affecting general constitutional change.[297]

The instrument of government prepared by a constitutional convention or by a legislature is normally submitted to the voters for their approval or rejection, since the right of the people to have a voice in the formulation of their basic law would appear to be so fundamental as to be beyond argument. In 1874 Chief Justice Agnew of the Supreme Court of Pennsylvania stated that court's opinion that "nothing in the nature of delegated power . . . can take from the people their sovereign right to ratify or reject a constitution or ordinance framed by it, or can infuse present life and vigor

[296] Wells v. Bain, 75 Pa. 39 (1873).

[297] JAMESON, THE CONSTITUTIONAL CONVENTION (1867).

into its work before its adoption by the people."[298]

In Maryland, the Constitution of 1776 was adopted without the ratification of the electorate. However, the Constitutions of 1851, 1864 and 1867 were each ratified by the electorate in a referendum. Almost without exception, the state constitutions of the twentieth century have been submitted to the people for their ratification.

The Commission believes that this draft article will permit constitutional amendment and revision whenever there is popular demand for change. On the other hand, the Commission also believes that the amendatory power should not be used merely to accomplish temporary purposes. The Commission is of the opinion that the provisions of this draft article strike the right balance between encouraging constitutional stability and guaranteeing the electorate's ultimate control over its basic instrument of government.

Section 9.01. **Amendments.**

An amendment to this Constitution may be proposed either by the affirmative vote of three-fifths of all the members of each house of the General Assembly or by the vote of a majority of all the members of a constitutional convention called by the General Assembly. In either case, the proposed amendment shall be submitted to the voters of the State at a special or general election as determined by the General Assembly or the Convention, whichever proposes the amendment. Notice of the election shall be given as prescribed by law. Unless otherwise provided, the amendment shall become effective thirty days after approval by the vote of a majority of those voting thereon.

Comment:

This draft section permits either the General Assembly or a constitutional convention to initiate constitutional amendments. In this regard, the draft section is similar to Article XII of the Model State Constitution. However, unlike the Model, this draft section does not provide for the proposal of constitutional amendments directly by the people through the use of the initiative petition. The initiative petition procedure has been promoted as a desirable tool for overcoming the inaction of recalcitrant mal-apportioned legislatures. However, with the breaking of the log-jam on reapportionment by the decision of the United States Supreme Court in *Baker v. Carr*,[299] the Commission believes that there no longer exists any reason for providing an alternative to the General Assembly and constitutional conventions for initiating amendments to the constitution.

While the Commission does not believe it desirable for an amendment provision to require the General Assembly to pass a proposed amendment at two successive sessions of the legislature before it can be submitted to the electorate for its ratification, the Commission does believe that the affirmative vote of three-fifths of all the members of each house of the General Assembly should be required before a constitutional amendment can be initiated by the legislature. Hopefully, such a restriction would discourage improvident legislative action. As previously noted, most state constitutions do require more than a simple majority vote in one or both houses.

[298] Wood's Appeal, 75 Pa. 59 (1874).

[299] Baker v. Carr, 369 U. S. 186 (1962).

This draft section requires that all amendments to the constitution be ratified by the electorate. The Commission believes that a popular referendum is the proper method for ratifying any proposed constitutional change, and that it is the only appropriate method where the constitution itself has been ratified by the electorate. The Commission recommends that ratification of proposed constitutional amendments be by a majority of those voters who vote on the question.

Although the amendment provisions of some state constitutions require that ratification of proposed amendments be by a majority of those voters who vote in the election, the Commission strongly suggests that such a limitation should not be imposed upon the power of the electorate. It has been repeatedly demonstrated that voter interest is far greater in electoral contests than in questions on constitutional amendments. The median vote, both for and against, on the sixteen proposed constitutional amendments which were on the ballot in the 1966 general election in Maryland was only thirty per cent of the total vote cast for governor. Therefore, were constitutional amendments permitted only in those cases where they received approval by a majority vote of all those voters who vote in the election, rather than a majority vote of all those voters who vote on the particular question, amendment of the constitution would become almost an impossibility.

The Commission does not believe it necessary for a constitutional provision to prescribe a minimum time which must elapse between the time when an amendment is proposed and the time when it is submitted to the electorate for ratification. This draft section only prescribes that a ratification election must be preceded by "due notice" as prescribed by the General Assembly. It is to be hoped that the minimum time lapse will be great enough to afford the electorate an opportunity for discussion of the merits of any proposed amendment.

Section 9.02. **Constitutional Convention.**

The General Assembly may by law call a constitutional convention at any time or may at any time submit to the voters of the State the question of calling a constitutional convention. If the question of calling a convention shall not have been submitted to the voters of the State for a period of twenty years, then it shall be submitted at the next general election. A convention shall be held within one year after a majority of those voting on the question approve the calling of a convention. Within sixty days after such approval, the governor shall appoint a commission to prepare for the convention. At its next regular session following such approval, the General Assembly shall provide by law for the assembling of the convention, the election of delegates, the filling of vacancies in the position of delegate, and the appropriation of sufficient funds for the work of the convention. The convention shall adopt its own rules of procedure. Any proposal recommended by the convention for changing the constitution shall be submitted to the voters of the State for adoption, and shall be effective only if approved by the affirmative vote of a majority of those voting thereon.

Comment:

The constitutional convention has been the historical method in Maryland for revising the state constitution. Although the General Assembly, un-

doubtedly, has the inherent power to convene a constitutional convention at any time, the Commission recommends that a new constitution give specific recognition to the valuable prerogative of the people to call a constitutional convention, by including a provision affirming the right of the General Assembly to call a convention and one prescribing that the question of calling a convention must be periodically placed before the people.

Unlike the provision of Article XIV, Section 2 of the present Constitution which requires that the General Assembly provide by law for taking "the sense of the People" in 1970 and every twenty years thereafter in regard to calling a convention for altering the Constitution, this draft section provides that if the question of calling a convention has not been considered by the voters of the State for a period of twenty years, then it shall be submitted at the next general election. In this way the Commission believes it has ensured that the opportunity of the electorate to express its will on the calling of a convention will not be defeated by legislative inaction.

Noting the failure of the General Assembly to provide for a constitutional convention following the favorable votes of the State's electorate in 1930 and 1950, the Commission recommends that there be a requirement that a convention be held within one year after the electorate approves the calling of a convention to ensure that a convention will be held within a reasonable time after its approval. This draft section would further require the appointment by the governor of a commission to prepare for any convention which is called, within sixty days of the convention's approval, and would require the General Assembly to enact an enabling act for the convention at its next regular session. The Commission believes that pre-convention preparation is indispensable to successful constitutional revision.

Since a constitution provides the framework for the government of the people, the Commission recommends that any change in the basic document, either by alteration or revision, be required to be ratified by a majority of those voters voting on the question before it can become effective.

V

Comparison of Present Constitution and Draft Constitution

PREFATORY STATEMENT

This chapter presents a comparison of the present Constitution of the State of Maryland and the draft constitution recommended by the Commission. The entire present Constitution is set forth in the left-hand column of the following pages. In the right-hand column of the following pages, directly beside those provisions of the present Constitution with which they correspond, are set forth those provisions of the draft constitution which cover the same subject matter.

Since the draft constitution is arranged differently from the present Constitution, the draft constitution does not appear with its sections in numerical order. To facilitate the reader's awareness of the new arrangement, the word "Section" appears written out rather than abbreviated beside the number of a section which is not contained in the same chapter of the draft constitution as the immediately preceding section in the right-hand column.

Moreover, on occasion the new organization of material in the draft constitution prohibits an accurate section-by-section comparison. In these cases, the group of sections in the draft constitution which correspond to a group of sections in the present Constitution is set forth consecutively beside the first and subsequent sections of the relevant group in the present Constitution. Wherever confusion would result without it, a double line divides these group comparisons.

Rather than repeat sections of the draft constitution which may have consolidated provisions found in several sections of the present Constitution, subsequent references to a section of the draft constitution are made by a notation to see the particular section where first printed. Blank space in the right-hand column reflects the omission from the draft constitution of provisions found in the present Constitution. Blank space in the left-hand column generally reflects the addition to the draft constitution of provisions which are not found in the present Constitution.

Notwithstanding the difficulty of comparing two documents as dissimilar in many respects as the present Constitution and the draft constitution, an attempt has nevertheless been made to compare provisions of these two documents to the extent possible.

PRESENT CONSTITUTION	DRAFT CONSTITUTION
DECLARATION OF RIGHTS.	***ARTICLE I. DECLARATION OF RIGHTS***
We, the People of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution of this State for the sure foundation and more permanent security thereof, declare:	
Article 1. That all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their Form of Government, in such manner as they may deem expedient.	**Section 1.01. Purpose of Government.** All political power originates in the people and all government is instituted for their liberty, security, benefit and protection.
Art. 2. The Constitution of the United States, and the Laws made, or which shall be made, in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are, and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution or Law of this State to the contrary nothwithstanding.	
Art. 3. The powers not delegated to the United States by the Constitution thereof, nor prohibited by it to the States, are reserved to the States respectively, or to the people thereof.	
Art. 4. That the People of this State have the sole and exclusive right of regulating the internal government and police thereof, as a free, sovereign and independent State.	
Art. 5. That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to the benefit of such of the English Statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject,	**Sec. 1.06. Jury Trial in Civil Cases.** Every person shall have the right of trial by jury of issues of fact in civil proceedings at law in the courts of this State in which the amount or value in controversy exceeds such minimum as may be fixed by law.

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nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from, or under the Charter granted by His Majesty Charles the First to Caecilius Calvert, Baron of Baltimore.	
Art. 6. That all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct: Wherefore, whenever the ends of Government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought, to reform the old, or establish a new Government; the doctrine of non-resistence against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.	
Art. 7. That the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every white male[1] citizen, having the qualifications prescribed by the Constitution, ought to have the right of suffrage.	
Art. 8. That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.	
Art. 9. That no power of suspending Laws or the execution of Laws, unless by, or derived from the Legislature, ought to be exercised, or allowed.	
Art. 10. That freedom of speech and debate, or proceedings in the Legislature, ought not to be impeached in any Court of Judicature.	**Sec. 1.02. Freedom of Expression.** (Second Sentence) Freedom of the press and freedom of speech shall not be abridged, each person remaining responsible for abuse of those rights. **Section 3.10. Immunity of Legislators.** A member of the General Assembly shall not be liable in any civil action or criminal prosecution for any words used in any proceedings of the General Assembly.
Art. 11. That Annapolis be the place of meeting of the Legislature; and the Legislature ought not to be convened, or	

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held at any other place but from evident necessity.	
Art. 12. That for redress of grievances, and for amending, strengthening and preserving the Laws, the Legislature ought to be frequently convened.	
Art. 13. That every man hath a right to petition the Legislature for the redress of grievances in a peaceable and orderly manner.	**Section 1.02. Freedom of Expression.** (First Sentence) The people shall have the right peaceably to assemble and to petition the government for the redress of grievances.
Art. 14. That no aid, charge, tax, burthen or fees ought to be rated or levied, under any pretence, without the consent of the Legislature.	**Section 8.01. Taxes.** No tax shall be imposed except for a public purpose and except by the elected representatives of the people exercising legislative powers.
Art. 15. That the levying of taxes by the poll is grievous and oppressive, and ought to be prohibited; that paupers ought not to be assessed for the support of the Government; that the General Assembly shall, by uniform rules, provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the Counties and by the City of Baltimore for their respective purposes, shall be uniform within each class or sub-class of land, improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy; yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community.	**Sec. 8.02. Assessments.** No assessment nor any exemption therefrom with respect to any tax imposed by the State or any governmental unit thereof shall be made except pursuant to uniform rules within classes or subclasses of taxpayers, property or events as may be provided by law and such classes or subclasses may include property devoted to agricultural or open-space uses.
Art. 16. That sanguinary Laws ought to be avoided as far as it is consistent with the safety of the State; and no Law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time, hereafter.	**Section 1.11. Unusual Punishment.** Excessive bail shall not be required. Neither excessive fines nor cruel and unusual punishment shall be provided by law or be imposed by the courts.
Art. 17. That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty: wherefore, no *ex post facto* Law ought to be made; nor any retrospective oath or restriction be imposed, or required.	**Sec. 1.07. Legal Limitations.** No bill of attainder, or *ex post facto* law, or law impairing the obligation of contracts shall be enacted, nor shall any conviction of crime work corruption of blood or forfeiture of estate.

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Art. 18. That no Law to attaint particular persons of treason or felony, ought to be made in any case, or at any time, hereafter.	
Art. 19. That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.	**Sec. 1.04. Due Process.** No person shall be deprived of life, liberty or property without due process of law, or be denied the equal protection of the laws, or be subject to discrimination by law or other governmental action because of religion, race, color or national origin.
Art. 20. That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties and estate of the People.	**Sec. 1.09. Rights of Accused.** A person accused of crime shall have the right to be informed of the charge against him in time to prepare his defense, to have the assistance of counsel in his defense, to be confronted with and to examine under oath or affirmation the witnesses against him, to have compulsory process for obtaining witnesses and to have a speedy and public trial in the jurisdiction where the crime is alleged to have been committed and before an impartial jury, without whose unanimous consent he shall not be adjudged guilty.
Art. 21. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.	
Art. 22. That no man ought to be compelled to give evidence against himself in a criminal case.	**Sec. 1.10. Double Jeopardy; Self-Incrimination.** No person shall be twice put in jeopardy of criminal punishment for the same offense or be compelled in any criminal case to be a witness against himself.
Art. 23. That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the Land.	See Section 1.04, p. 297.
Art. 24. That Slavery shall not be re-established in this State; but having been abolished under the policy and authority of the United States, compensation, in consideration thereof, is due from the United States.	
Art. 25. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted, by the Courts of Law.	See Section 1.11, p. 296.
Art. 26. That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general	**Sec. 1.08. Search and Seizure.** The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures

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warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.	and in their oral or other communications against unreasonable interceptions shall not be violated. No search warrant shall be issued except upon probable cause supported by oath or affirmation, and the place to be searched, the persons or things to be seized, or the communications sought to be intercepted shall be particularly described in the warrant.
Art. 27. That no conviction shall work corruption of blood or forfeiture of estate.	See Section 1.07, p. 296.
Art. 28. That a well regulated Militia is the proper and natural defence of a free Government.	**Section 8.05. Militia.** The General Assembly may provide by law for a militia. The governor shall be its commander-in-chief and shall appoint its officers. The governor may call out the militia to repel invasions, suppress insurrections, and enforce the execution of the laws. The military power of the State shall be and remain subject to civil control at all times, and only members of the militia when in actual service may be subject to trial by a military court of this State.
Art. 29. That standing Armies are dangerous to liberty, and ought not to be raised, or kept up, without the consent of the Legislature.	
Art. 30. That in all cases, and at all times, the military ought to be under strict subordination to, and control of, the civil power.	
Art. 31. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, except in the manner prescribed by Law.	
Art. 32. That no person except regular soldiers, marines, and mariners in the service of this State, or militia, when in actual service, ought, in any case, to be subject to, or punishable by Martial Law.	
Art. 33. That the independency and uprightness of Judges are essential to the impartial administration of Justice, and a great security to the rights and liberties of the People: Wherefore, the Judges shall not be removed, except in the manner, and for the causes provided in this Constitution. No Judge shall hold any other office, civil or military, or political trust, or employment of any kind, whatsoever, under the Constitution or Laws of this State, or of the United States, or any of them; or receive fees, or perquisites of any kind, for the discharge of his official duties.	**Section 5.24. Restriction of Non-Judicial Activities.** No judge shall engage in the practice of law, or run for elective office other than the judicial office he then holds, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive any remuneration for his judicial service except as provided herein. No retired judge while engaging in such activities shall be paid any pension for his judicial service.
Art. 34. That a long continuance in the Executive Departments of power or trust is dangerous to liberty; a rotation therefore, in those Departments is one of the best securities of permanent freedom.	

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Art. 35. That no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State; nor shall any person in public trust receive any present from any foreign Prince or State, or from the United States, or any of them, without the approbation of this State. The position of Notary Public shall not be considered an office of profit within the meaning of this Article.	
Art. 36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought by any Law to be molested in his person or estate, on account of his religious persuasion, or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain, any place of worship, or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief; provided, he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or in the world to come.	**Section 1.03. Freedom of Religion.** No law shall be enacted respecting an establishment of religion. Every person shall have the right to worship or not to worship as he thinks most acceptable, and no person shall be disqualified from holding public office or be rendered incompetent as a witness or juror because of his opinion on matters of religious belief.
Art. 37. That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution.	See Section 1.03, p. 299.
Art. 38. That every gift, sale or devise of land to any Minister, Public Teacher or Preacher of the Gospel, as such, or to any Religious Sect, Order or Denomination, or to, or for the support, use or benefit of, or in trust for, any Minister, Public Teacher or Preacher of the Gospel, as such, or any Religious Sect, Order or Denomination; and every gift or sale of goods, or chattels, to go in succession, or to take place after the death of the Seller or Donor, to or for such support, use or benefit; and also every devise of goods or chattels to or for the	

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support, use or benefit of any Minister, Public Teacher or Preacher of the Gospel, as such, or any Religious Sect, Order or Denomination, without the prior or subsequent sanction of the Legislature, shall be void; except always, any sale, gift, lease or devise of any quantity of land, not exceeding five acres, for a church, meeting-house, or other house of worship, or parsonage, or for a burying ground, which shall be improved, enjoyed, or used only for such purpose; or such sale, gift, lease, or devise shall be void. Provided, however, that except in so far as the General Assembly shall hereafter by law otherwise enact, the consent of the Legislature shall not be required to any gift, grant, deed, or conveyance executed after the 2nd day of November, 1948, or to any devise or bequest contained in the will of any person dying after said 2nd day of November, 1948 for any of the purposes hereinabove in this Article mentioned.	
Art. 39. That the manner of administering an oath or affirmation to any person, ought to be such as those of the religious persuasion, profession, or denomination, of which he is a member, generally esteem the most effectual confirmation by the attestation of the Divine Being.	
Art. 40. That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege.	See Section 1.02, Second Sentence, p. 295.
Art. 41. That monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered.	
Art. 42. That no title of nobility or hereditary honors ought to be granted in this State.	
Art. 43. That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general melioration of the condition of the People. The Legislature may provide that land actively devoted to farm or agricultural use shall be assessed on the basis of such use and shall not be assessed as if subdivided.	**Section 8.03. Public Education.** The State shall provide by law for a statewide system of free public schools sufficient for the education of, and open to, all children of school age, and shall also provide for such other public educational institutions as may be desirable for the intellectual, cultural and occupational development of the people of this State. For assessment of land devoted to farm or agricultural use, see Section 8.02, p. 296.

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Art. 44. That the provisions of the Constitution of the United States, and of this State, apply, as well in time of war, as in time of peace; and any departure therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good Government, and tends to anarchy and despotism.	**Section 1.12. Habeas Corpus.** The privilege of the writ of habeas corpus shall not be suspended and the provisions of this Constitution shall apply both in time of war and in time of peace.
Art. 45. This enumeration of Rights shall not be construed to impair or deny others retained by the People.	**Sec. 1.13. Reserved Rights.** This enumeration of rights shall not be construed to impair or deny others retained by the people.
ARTICLE I. ELECTIVE FRANCHISE.	***ARTICLE II. SUFFRAGE AND ELECTIONS***
Section 1. All elections shall be by ballot; and every citizen of the United States, of the age of twenty-one years, or upwards, who has been a resident of the State for one year, and of the Legislative District of Baltimore City, or of the county, in which he may offer to vote, for six months next preceding the election, shall be entitled to vote, in the ward or election district, in which he resides, at all elections hereafter to be held in this State; and in case any county, or city, shall be so divided as to form portions of different electoral districts, for the election of Representatives in Congress, Senators, Delegates, or other Officers, then, to entitle a person to vote for such officer, he must have been a resident of that part of the county, or city, which shall form a part of the electoral district, in which he offers to vote, for six months next preceding the election; but a person, who shall have acquired a residence in such county, or city, entitling him to vote at any such election, shall be entitled to vote in the election district from which he removed, until he shall have acquired a residence in the part of the county, or city, to which he has removed.	**Section 2.01. Eligible Voters.** Every citizen of the United States who has attained the age of twenty-one years, who has been a resident of this State for six months and of the House of Delegates district in which he offers to vote for three months next preceding an election, and who is registered to vote, shall be qualified to vote at such election for all officers to be elected by the people and upon all questions submitted to a vote of the people. Removal from one house district to another in this State shall not deprive a person of his qualification to vote in the house district from which he has removed until three months after his removal.
Sec. 1A. The General Assembly of Maryland shall have power to provide by suitable enactment for voting by qualified voters of the State of Maryland who are absent at the time of any election from the ward or election district in which they are entitled to vote and for voting by other qualified voters who are unable to vote personally by reason of physical disability which shall confine said voters to a hospital or cause them to be confined to bed, and for the manner in which and the	**Sec. 2.02. Eligible Voters in Presidential Elections.** A person who has been a resident of this State less than six months next preceding an election, but who is otherwise eligible to vote under this Article, may vote for President and Vice President of the United States or presidential electors in that election. **Sec. 2.03. Voters in United States Enclaves.** A person shall not be deemed ineligible to vote in national or state elections solely by reason of the fact that he resides on land over which the United States exercises exclusive jurisdiction. **Sec. 2.04. Disqualification.** The General Assembly shall by law establish disqualifications for voting by reason of mental incompetence or conviction of serious crime, and may provide for the removal of such disqualifications.

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time and place at which such absent voters may vote, and for the canvass and return of their votes.

Sec. 2. No person above the age of twenty-one years, convicted of larceny, or other infamous crime, unless pardoned by the Governor, shall ever thereafter be entitled to vote at any election in this State; and no person under guardianship, as a lunatic, or, as a person *non compos mentis,* shall be entitled to vote.

Sec. 3. If any person shall give, or offer to give, directly or indirectly, any bribe, present, or reward, or any promise, or any security, for the payment, or the delivery of money, or any other thing, to induce any voter to refrain from casting his vote, or to prevent him in any way from voting, or to procure a vote for any candidate, or person proposed, or voted for, as the Elector of President and Vice-President of the United States, or Representative in Congress, or for any office of profit or trust, created by the Constitution or Laws of this State, or by the Ordinances, or Authority of the Mayor and City Council of Baltimore, the person giving, or offering to give, and the person receiving the same, and any person who gives or causes to be given, an illegal vote, knowing it to be such, at any election to be hereafter held in this State, shall, on conviction in a Court of Law, in addition to the penalties now or hereafter to be imposed by law, be forever disqualified to hold any office of profit or trust, or to vote at any election thereafter. But the General Assembly may in its discretion remove the above penalty and all other penalties upon the vote seller so as to place the penalties for the purchase of votes on the vote buyer alone.

Sec. 4. It shall be the duty of the General Assembly to pass Laws to punish, with fine and imprisonment, any person, who shall remove into any election district, or precinct of any ward of the City of Baltimore, not for the purpose of acquiring a *bona fide* residence therein, but for the purpose of voting at an approaching election, or, who shall vote in any election district, or ward, in which he does not reside (except in the case provided for in this Article), or shall, at the same election, vote in more than one election district, or

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Sec. 2.05. Election Procedure.

The General Assembly shall by law define residence, establish a uniform system of permanent registration of voters, provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting and protect the integrity of the election process.

Sec. 2.06. General Elections.

A general election shall be held on the Tuesday following the first Monday in November in the year 1970, and on the same day every even year thereafter. The candidates receiving the highest number of votes shall be elected to the offices for which they were candidates.

Sec. 2.07. Local Elections.

Voting qualifications for local elections shall be as provided in Section 2.01 of this Article except that a municipal corporation may establish a period of minimum residence not exceeding one year and may extend the right to vote to nonresidents owning taxable property within its limits.

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precinct, or shall vote, or offer to vote, in any name not his own, or in place of any other person of the same name, or shall vote in any county in which he does not reside.	
Sec. 5. The General Assembly shall provide by Law for a uniform Registration of the names of all the voters in this State, who possess the qualifications prescribed in this Article, which Registration shall be conclusive evidence to the Judges of election of the right of every person, thus registered, to vote at any election thereafter held in this State; but no person shall vote, at any election, Federal or State, hereafter to be held in this State, or at any municipal election in the City of Baltimore, unless his name appears in the list of registered voters; the names of all persons shall be added to the list of qualified voters by the officers of Registration, who have the qualifications prescribed in the first section of this Article, and who are not disqualified under the provisions of the second and third sections thereof.	
Sec. 6. Every person elected, or appointed, to any office of profit or trust, under this Constitution, or under the Laws, made pursuant thereto, shall, before he enters upon the duties of such office, take and subscribe the following oath, or affirmation: I, ..., do swear, (or affirm, as the case may be), that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of ....., according to the Constitution and Laws of this State (and, if a Governor, Senator, Member of the House of Delegates, or Judge), that I will not directly or indirectly, receive the profits or any part of the profits of any other office during the term of my acting as	**Section 8.07. Oath of Office.** Every person elected or appointed to any office of profit or trust under the Constitution or laws of this State shall, before he enters upon the duties of such office, take and subscribe the following oath or affirmation: "I, ..., do swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of Maryland and support the Constitution and laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of ....., according to the Constitution and laws of this State." No other oath or political test shall be required.
Sec. 7. Every person, hereafter elected, or appointed, to office, in this State, who shall refuse, or neglect, to take the oath, or affirmation of office, provided for in the sixth section of this Article, shall be considered as having refused to accept the said office; and a new election, or appointment, shall be made, as in case of refusal to	

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accept, or resignation of an office; and any person violating said oath, shall, on conviction thereof, in a Court of Law, in addition to the penalties now, or hereafter, to be imposed by Law, be thereafter incapable of holding any office of profit or trust in this State.	
ARTICLE II. *EXECUTIVE DEPARTMENT.*	*ARTICLE IV. EXECUTIVE BRANCH*
Section 1. The executive power of the State shall be vested in a Governor, whose term of office shall commence on the fourth Wednesday of January next ensuing his election, and continue for four years, and until his successor shall have qualified; and a person who has served two consecutive popular elective terms of office as Governor shall be ineligible to succeed himself as Governor for the term immediately following the second of said two consecutive popular elective terms.	**Section 4.01. Executive Power.** The executive power of the State is vested in the governor, who shall be responsible for the faithful execution of the laws. **Sec. 4.02. Duties of Lieutenant Governor.** There shall be a lieutenant governor who shall perform such duties as may be prescribed by law and such other duties as may be delegated to him by the governor. **Sec. 4.03. Governor.** (Second Sentence) No person elected governor for two full consecutive terms shall be eligible to hold that office again until one full term has intervened. **Sec. 4.04. Lieutenant Governor.** (Second Sentence) No person elected governor for two consecutive terms shall be eligible to hold the office of lieutenant governor until one full term has intervened. **Sec. 4.05. Election of Governor and Lieutenant Governor.** (First Sentence) The governor shall be elected to serve for a term of four years beginning on the third Wednesday of January following his election. (Third Sentence) Each candidate for lieutenant governor shall run jointly in the general election with a candidate for governor and the votes cast for one shall be considered as cast also for the other. (Fourth Sentence) The candidate for lieutenant governor whose name appears on the ballot jointly with that of the successful candidate for

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	governor shall be elected lieutenant governor.
Sec. 2. An election for Governor, under this Constitution, shall be held on the Tuesday next after the first Monday of November, in the year nineteen hundred and fifty-eight, and on the same day and month in every fourth year thereafter, at the places of voting for Delegates to the General Assembly; and every person qualified to vote for Delegates, shall be qualified and entitled to vote for Governor; the election to be held in the same manner as the election of Delegates, and the returns thereof, under seal, to be addressed to the Speaker of the House of Delegates, and enclosed and transmitted to the Secretary of State, and delivered to said Speaker, at the commencement of the session of the General Assembly, next ensuing said election.	**Section 2.06. General Elections.** (First Sentence) A general election shall be held on the Tuesday following the first Monday in November in the year 1970, and on the same day every even year thereafter.
Sec. 3. The Speaker of the House of Delegates shall then open the said Returns, in the presence of both Houses; and the person having the highest number of votes, and being constitutionally eligible, shall be the Governor, and shall qualify, in the manner herein prescribed, on the fourth Wednesday of January next ensuing his election, or as soon thereafter as may be practicable.	**Sec. 2.06. General Elections.** (Second Sentence) The candidates receiving the highest number of votes shall be elected to the offices for which they were candidates.
Sec. 4. If two or more persons shall have the highest and an equal number of votes for Governor, one of them shall be chosen Governor by the Senate and House of Delegates; and all questions in relation to the eligibility of Governor, and to the Returns of said election, and to the number and legality of votes therein given, shall be determined by the House of Delegates; and if the person, or persons, having the highest number of votes, be ineligible, the Governor shall be chosen by the Senate and House of Delegates. Every election of Governor by the General Assembly shall be determined by a joint majority of the Senate and House of Delegates; and the vote shall be taken *viva voce*. But if two or more persons shall have the highest and an equal number of votes, then, a second vote shall be taken, which shall be confined to the persons having an equal number; and if the vote should again be equal, then the election of Governor shall be determined	**Section 4.05. Election of Governor and Lieutenant Governor.** (Second Sentence) In the event of a tie vote, the governor shall be elected from the candidates having received the tie vote by the affirmative vote in joint session of a majority of the combined membership of both houses as the first order of business after their organization.

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by lot between those, who shall have the highest and an equal number on the first vote.	
Sec. 5. A person to be eligible to the office of Governor, must have attained the age of thirty years, and must have been for ten years a citizen of the State of Maryland, and for five years next preceding his election, a resident of the State, and, at the time of his election, a qualified voter therein.	**Sec. 4.03. Governor.** (First Sentence) To be eligible for election as governor, a person shall have attained the age of thirty years at the time of his election, and shall have been a qualified voter in the State for at least two years immediately preceding his election. **Sec. 4.04. Lieutenant Governor.** (First Sentence) To be eligible for election as lieutenant governor, a person shall have attained the age of thirty years at the time of his election, and shall have been a qualified voter in the State at least two years immediately preceding his election.
Sec. 6. In case of the death, resignation, removal from the State, or other disqualification of the Governor, the General Assembly, if in session with a quorum present, or if not, at its next session with a quorum present, shall elect some other qualified person to be Governor for the residue of the term for which the said Governor had been elected.	**Sec. 4.06. Failure of Governor to Take Office.** When the governor-elect is disqualified, resigns or dies following his election, but prior to taking office, the lieutenant governor-elect shall succeed to the office of governor for the full term. When the governor-elect fails to assume office for any other reason, the lieutenant governor-elect shall serve as acting governor, but if the governor-elect does not assume office within the first six months of the term, the office of governor shall be vacant.
Sec. 7. In case of any vacancy in the office of Governor, and until the General Assembly meets in session with a quorum present and elects a Governor as provided for in Section 6, the President of the Senate, at the time such vacancy occurred, shall discharge the duties of said office; and in case there be no President of the Senate or in the case of his refusal to serve, and in the case of his death, resignation, removal from the State, or other disqualification while discharging the duties of said office of Governor, then the duties of said office shall, in like manner and for the same interval, devolve upon the Speaker of the House of Delegates, at the time such vacancy occurred; and in case there be no Speaker of the House of Delegates or in the case of his refusal to serve, and in the case of his death, resignation, removal from the State, or other disqualification while discharging the duties of said office of Governor, then the duties of said office shall, in like manner and for the same interval, devolve upon the Comptroller of the State, at the time such vacancy occurred; and in	**Sec. 4.07. Lieutenant Governor as Acting Governor.** When the governor notifies the lieutenant governor in writing that he will be temporarily unable to carry out the duties of his office or when the governor is disabled and thereby unable to communicate such inability to the lieutenant governor, the lieutenant governor shall serve as acting governor until the governor notifies the lieutenant governor in writing that he is able to carry out the duties of his office. If the governor does not notify the lieutenant governor in writing that he is able to carry out the duties of his office within six months from the time the lieutenant governor begins serving as acting governor, the office of governor shall be vacant. **Sec. 4.08. Legislative Determination of Disability.** The General Assembly may, by the

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case there be no Comptroller of the State, or in the case of his refusal to serve, and in the case of his death, resignation, removal from the State or other disqualification while discharging the duties of said office of Governor, then the duties of said office shall, in like manner and for the same interval, devolve upon the Attorney General of the State, at the time such vacancy occurred. And the Legislature may provide by Law, for the impeachment of the Governor; and in case of his conviction, or his inability, may declare what person shall perform the Executive duties; and for any vacancy in said office not herein provided for, provision may be made by Law; and if such vacancy should occur without such provision being made, the Legislature shall be convened by the Secretary of State, for the purpose of filling said vacancy.	affirmative vote in joint session of three-fifths of the combined membership of both houses, pass a resolution stating that the governor is unable to carry out the duties of his office by reason of a physical or mental disability. Upon the written request of a majority of the members of each house the General Assembly shall be convened by the presiding officers of both houses to determine whether such a resolution should be passed. If the General Assembly passes such a resolution, it shall be delivered to the Supreme Court which shall then have exclusive jurisdiction to determine whether the governor is unable to discharge the duties of his office by reason of a disability. If the Supreme Court determines that the governor is unable to discharge the duties of his office by reason of a disability, the office shall be vacant. **Sec. 4.09. Judicial Determination of Vacancy.** The Supreme Court shall have exclusive jurisdiction to determine the existence of a vacancy under this Constitution in the offices of governor and lieutenant governor and all questions arising under this Article concerning the right to office or the exercise of the powers thereof. **Sec. 4.10. Succession to Office of Governor.** When a vacancy occurs in the office of governor, the lieutenant governor shall succeed to the office of governor for the unexpired term. If a vacancy exists in the office of lieutenant governor when the lieutenant governor is to succeed to the office of governor or to serve as acting governor, the president of the Senate shall succeed to the office of governor for the unexpired term or serve as acting governor. If a vacancy exists in the office of president of the Senate when the president of the Senate is to succeed to the office of governor or to serve as acting governor, the Senate shall convene and fill the vacancy. **Sec. 4.11. Powers and Duties of Successor.** When the lieutenant governor or the president of the Senate succeeds to the office of governor, he shall have the title, powers, duties and emoluments of the office; but when the lieutenant governor or the president of the Senate serves as acting governor, he shall have only the powers and duties of the office. When the president

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	of the Senate serves as acting governor, he shall continue to be president of the Senate; but during his service as acting governor, his duties as president shall be performed by such person as the Senate shall select.
Sec. 8. The Governor shall be the Commander-in-Chief of the land and naval forces of the State; and may call out the Militia to repel invasions, suppress insurrections, and enforce the execution of the Laws; but shall not take the command in person, without the consent of the Legislature.	**Section 8.05. Militia.** The General Assembly may provide by law for a militia. The governor shall be its commander-in-chief and shall appoint its officers. The governor may call out the militia to repel invasions, suppress insurrections, and enforce the execution of the laws. The military power of the State shall be and remain subject to civil control at all times, and only members of the militia when in actual service may be subject to trial by a military court of this State.
Sec. 9. He shall take care that the Laws are faithfully executed.	See Section 4.01, p. 304.
Sec. 10. He 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.	**Section 4.18. Organization of Principal Departments.** All offices, agencies and instrumentalities of the legislative and executive branches of the state government exercising executive and administrative functions, powers or duties shall be allocated by law among and within principal departments. Regulatory and quasi-judicial agencies shall be assigned by law to either the legislative or executive branch and may, but need not, be established within a principal department. The head of each principal department shall be either a single executive or a board or commission. When a board or commission is at the head of a principal department, a chief administrative officer may be provided for it by law. **Sec. 4.19. Reorganization of Principal Departments.** The functions, powers and duties of the principal departments and of the agencies of the State within the legislative and executive branches shall be prescribed by law. The governor may reallocate the functions, powers and duties of the principal departments and of the agencies within the executive branch for efficient administration. Proposed changes in the allocations prescribed by law shall be set forth in executive orders which shall be submitted to the General Assembly within the first

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	ten days of a regular session. A proposed change which is approved, or which is not specifically disapproved or modified by the General Assembly within fifty days after submission, shall become effective on a date designated by the governor and thereafter have the force of law.
	Sec. 4.20. Appointment and Removal of Administrative Officers.
	The governor shall appoint each executive serving as the head of a principal department and each chief administrative officer serving under a board or commission which is the head of a principal department, except the head or chief administrative officer of an institution of higher education, of the state public school system, or of a principal department within the legislative or judicial branches. Each gubernatorial appointee shall have the professional qualifications which may be prescribed by law and shall serve at the pleasure of the governor.
	Sec. 4.21. Appointment and Removal of Administrative Boards and Commissions.
	The members of each board or commission which serves as the head of a principal department, except the governing board of an institution of higher education, shall be appointed by the governor and their terms of office shall be prescribed by law in such manner that the governor, upon taking office following his election, shall be able forthwith to appoint at least one-half of them. Such members may be removed as prescribed by law.
	Sec. 4.22. Appointments and Removals Prescribed by Law.
	The members of the governing board of an institution of higher education, the head or chief administrative officer of an institution of higher education, of the state public school system, or of a principal department within the legislative or judicial branches, and the members of a regulatory or quasi-judicial agency which does not serve as the head of a principal department, shall be appointed and may be removed as prescribed by law.
	Sec. 4.23. Information from Administrative Officers.
	The governor may at any time require information, in writing or otherwise, from

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	any officer of any executive or administrative department, office, or agency upon any subject relating to that department, office, or agency.
Sec. 11. In case of any vacancy, during the recess of the Senate, in any office which the Governor has power to fill, he shall appoint some suitable person to said office, whose commission shall continue in force until the end of the next session of the Legislature, or until some other person is appointed to the same office, whichever shall first occur; and the nomination of the person thus appointed, during the recess, or, of some other person in his place, shall be made to the Senate on the first day of the next regular meeting of the Senate.	
Sec. 12. No person, after being rejected by the Senate, shall be again nominated for the same office at the same session, unless at the request of the Senate; or, be appointed to the same office during the recess of the Legislature.	
Sec. 13. All civil officers nominated by the Governor and subject to confirmation by the Senate, shall be nominated to the Senate within thirty days from the commencement of each regular session of the Legislature; and their term of office, except in cases otherwise provided for in this Constitution, shall commence on the first Monday of May next ensuing their appointment, and continue for two years, (unless removed from office), and until their successors, respectively, qualify according to Law.	
Sec. 14. If a vacancy shall occur, during the session of the Senate, in any office which the Governor and Senate have the power to fill, the Governor shall nominate to the Senate before its final adjournment, a proper person to fill said vacancy, unless such vacancy occurs within ten days before said final adjournment.	
Sec. 15. The Governor may suspend or arrest any military officer of the State for disobedience of orders, or other military offense; and may remove him in pursuance of the sentence of a Court-Martial; and may remove for incompetency, or misconduct, all civil officers who received appoint-	For the governor's power over the militia, see Section 8.05, p. 375. For the power to remove civil officers, see Sections 4.20-4.22, p. 309.

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ment from the Executive for a term of years.	
Sec. 16. The Governor shall convene the Legislature, or the Senate alone, on extraordinary occasions; and whenever from the presence of an enemy, or from any other cause, the Seat of Government shall become an unsafe place for the meeting of the Legislature, he may direct their sessions to be held at some other convenient place.	**Sec. 4.13. Convening General Assembly.** The governor may, on extraordinary occasions, convene the General Assembly or the Senate alone by proclamation, stating the purpose for which he has convened it. **Section 3.12. Legislative Sessions.** (Second Sentence) The governor may convene a special session of the General Assembly at any time and must convene a special session upon the written request of three-fifths of all the members of each house.
Sec. 17. To guard against hasty or partial legislation and encroachments of the Legislative Department upon the coordinate Executive and Judicial Departments, every Bill which shall have passed the House of Delegates, and the Senate shall, before it becomes a law, be presented to the Governor of the State; if he approve he shall sign it, but if not he shall return it with his objections to the House in which it originated, which House shall enter the objections at large on its Journal and proceed to reconsider the Bill; if, after such reconsideration, three-fifths of the members elected to that House shall pass the Bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered, and if it pass by three-fifths of the members elected to that House it shall become a Law; but in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the Governor within six days (Sundays excepted), after it shall have been presented to him, the same shall be a Law in like manner as if he signed it, unless the General Assembly shall, by adjournment, prevent its return, in which case it shall not be a Law. Any bill which is vetoed by the Governor following the adjournment of the General Assembly, or any bill which fails to become a law by reason of not having been signed by the Governor following the adjournment of the General Assembly, shall be returned	**Section 4.14. Veto by Governor.** All bills passed by the General Assembly shall be subject to veto by the governor, except budget bills and bills proposing amendments to the Constitution. **Sec. 4.15. Item Veto.** The governor may strike out or reduce any item in a supplementary appropriation bill and the procedure in such a case shall be the same as in the case of the veto of a bill by the governor. **Sec. 4.16. Presentation of Bills to Governor.** A bill subject to veto by the governor shall be presented to him within seven days after its final passage by the General Assembly. If the General Assembly is in session, the bill shall become law if the governor signs or fails to veto it within ten days of presentation. If the General Assembly adjourns *sine die* before presentation or during such ten-day period, the bill shall become law if the governor signs or fails to veto it within forty-five days of presentation. **Sec. 4.17. Return of Vetoed Bills.** When the governor vetoes a bill, he shall return it to the General Assembly within ten days of presentation if the General Assembly is in session. A bill that is returned by the governor may be reconsidered by the General Assembly; and if, upon reconsideration, the bill is passed by the affirmative vote of three-fifths of all the members of each house, it shall become law.

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to the House in which it originated, immediately after said House shall have organized at the next regular or special session of the General Assembly. Said bill may then be reconsidered according to the procedure specified hereinabove. If the bill is passed over the veto of the Governor, it shall take effect on June 1 following, unless the bill is an emergency measure to take effect when passed. No such vetoed bill shall be returned to the Legislature when a new General Assembly of Maryland has been elected and sworn since the passage of the vetoed bill. The Governor shall have power to disapprove of any item or items of any Bills making appropriations of money embracing distinct items, and the part or parts of the Bill approved shall be the law, and the item or items of appropriations disapproved shall be void unless repassed according to the rules or limitations prescribed for the passage of other Bills over the Executive veto.	
Sec. 18. It shall be the duty of the Governor, semi-annually (and oftener, if he deem it expedient) to examine under oath the Treasurer and Comptroller of the State on all matters pertaining to their respective offices; and inspect and review their Bank and other Account Books.	
Sec. 19. He shall, from time to time, inform the Legislature of the conditions of the State and recommend to their consideration such measures as he may judge necessary and expedient.	**Sec. 4.12. Messages to General Assembly.** The governor shall inform the General Assembly of the condition of the State and may recommend measures he considers necessary or desirable.
Sec. 20. He shall have power to grant reprieves and pardons, except in cases of impeachment, and in cases, in which he is prohibited by other Articles of this Constitution; and to remit fines and forfeitures for offences against the State; but shall not remit the principal or interest of any debt due the State, except in cases of fines and forfeitures; and before granting a *nolle prosequi*, or pardon, he shall give notice, in one or more newspapers, of the application made for it, and of the day on, or after which, his decision will be given; and in every case, in which he exercises this power, he shall report to either Branch of the Legislature, whenever required, the petitions, recommendations and reasons, which influenced his decision.	**Sec. 4.24. Executive Clemency.** The governor shall have power to grant reprieves and pardons, except in cases of conviction upon impeachment, and to remit fines and forfeitures for offenses against the State. He shall report to the General Assembly in writing, at least annually, of the instances of the exercise of this power.

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Sec. 21. The Governor shall reside at the seat of government, and, from and after the fourth Wednesday in January 1967, shall receive for his services an annual salary of Twenty-five Thousand Dollars.

Sec. 22. A Secretary of State shall be appointed by the Governor, by and with the advice and consent of the Senate, who shall continue in office, unless sooner removed by the Governor, till the end of the official term of the Governor from whom he received his appointment, and receive such annual salary as the General Assembly may from time to time by law prescribe.

Sec. 23. The Secretary of State shall carefully keep and preserve a Record of all official acts and proceedings, which may at all times be inspected by a committee of either Branch of the Legislature; and he shall perform such other duties as may be prescribed by Law, or as may properly belong to his office, together with all clerical duty belonging to the Executive Department.

ARTICLE III.
LEGISLATIVE DEPARTMENT.

Section 1. The Legislature shall consist of two distinct branches; a Senate, and a House of Delegates, and shall be styled the General Assembly of Maryland.

Sec. 2. The City of Baltimore shall be divided into six legislative districts as near as may be of equal population and of contiguous territory, and each of said legislative districts of Baltimore City, as they may from time to time be laid out, in accordance with the provisions hereof, and each county in the State, shall be entitled to one Senator, who shall be elected by the qualified voters of the said legislative districts of Baltimore City and of the counties of the State, respectively, and shall serve for four years from the date of his election.

Sec. 3. Vacant.

Sec. 4. The General Assembly shall have the power to provide by Law, from time to time, for altering and changing the boundaries of the existing Legislative Districts of the City of Baltimore, so as to make them as near as may be of equal

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ARTICLE III. LEGISLATIVE BRANCH

Section 3.01. Legislative Power.

The legislative power of the State is vested in the General Assembly, which shall consist of two houses, the Senate and the House of Delegates.

Sec. 3.02. Legislative Districts.

The State shall be divided by law into districts for the election of members of the Senate and into districts for the election of members of the House of Delegates. Each district shall consist of compact and adjoining territory, and the ratio of the number of legislators in each district to the population of such district shall be as nearly equal as practicable.

Sec. 3.03. Redistricting.

Within three months after official publication of the population figures of each decennial census of the United States, the governor shall present to the General Assembly plans of congressional districting and legislative districting and apportionment. If the General Assembly is not in session, the governor shall convene a special session. The General Assembly shall by law

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population; but said district shall always consist of contiguous territory.	enact plans of congressional districting and legislative districting and apportionment. If no plan has been enacted for any one for more of these purposes within four months prior to the final date for the filing of candidates for the next general election occurring after publication of such census figures, then the pertinent plan as presented to the General Assembly by the governor shall become law. Upon petition of any qualified voter, the Supreme Court shall have original jurisdiction to review the congressional districting and legislative districting and apportionment of the State and grant appropriate relief, if it finds that any of them does not fulfill constitutional requirements.
Sec. 5. The membership of the House of Delegates shall consist of one hundred and twenty-three (123) Delegates, apportioned as follows: Calvert, Caroline, Charles, Howard, Kent, Queen Anne's, and St. Mary's Counties, two Delegates each; Cecil, Garrett, Somerset, Talbot, and Worcester Counties, three Delegates each; Carroll, Dorchester, Harford, and Wicomico Counties, four Delegates each; Allegany, Anne Arundel, Baltimore, Frederick, Montgomery, Prince George's, and Washington Counties, and each of the six Legislative Districts of Baltimore City, six Delegates each.	**Sec. 3.04. District Representation.** At least one senator, but not more than two senators, shall represent each senatorial district. At least one delegate, but not more than six delegates, shall represent each house district. **Sec. 3.11. Size of General Assembly.** The number of members of each house of the General Assembly shall be as prescribed by law.
Sec. 6. The members of the House of Delegates shall be elected by the qualified voters of the Counties, and the Legislative Districts of Baltimore City, respectively, to serve for four years, from the day of their election.	**Sec. 3.06. Election of Legislators.** A member of the General Assembly shall be elected by the qualified voters of the legislative district from which he seeks election, to serve for a term of four years beginning on the third Wednesday of January following his election.
Sec. 7. The election for Senators and Delegates shall take place on the Tuesday next, after the first Monday in the month of November, nineteen hundred and fifty-eight, and in every fourth year thereafter.	See Section 2.06, p. 302.
Sec. 8. Vacant.	
Sec. 9. No person shall be eligible as a Senator or Delegate, who at the time of his election, is not a citizen of the State of Maryland, and who has not resided therein, for at least three years, next preceding the day of his election, and the last year thereof, in the County, or in the Legislative District of Baltimore City, which he may be chosen to represent, if such County, or Legislative District of said City, shall have been so long established; and if not, then	**Sec. 3.05. Qualifications of Legislators.** To be eligible as a senator or delegate, a person shall be a qualified voter of the State of Maryland at the time of his election or appointment, and shall have been a resident of the State for at least two years immediately preceding his election or appointment. To be eligible as a senator, a person shall have attained the age of twenty-five years, and, to be eligible as a delegate, he shall have attained the

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in the County, or City, from which, in whole, or in part, the same may have been formed; nor shall any person be eligible as a Senator, unless he shall have attained the age of twenty-five years, nor as a Delegate, unless he shall have attained the age of twenty-one years, at the time of his election.	age of twenty-one years, at the time of his election or appointment.
Sec. 10. No member of Congress, or person holding any civil, or military office under the United States, shall be eligible as a Senator, or Delegate; and if any person shall after his election as Senator, or Delegate, be elected to Congress, or be appointed to any office, civil, or military, under the Government of the United States, his acceptance thereof, shall vacate his seat.	
Sec. 11. No Minister or Preacher of the Gospel, or of any religious creed, or denomination, and no person holding any civil office of profit, or trust, under this State, except Justices of the Peace, shall be eligible as Senator, or Delegate.	
Sec. 12. No Collector, Receiver, or Holder of public money shall be eligible as Senator or Delegate, or to any office of profit, or trust, under this State, until he shall have accounted for, and paid into the Treasury all sums on the Books thereof, charged to, and due by him.	
Sec. 13. (a) In case of death, disqualification, resignation, refusal to act, expulsion, or removal from the county, or city, for which he shall have been elected, of any person, who shall have been chosen as a Delegate, or Senator, or in case of a tie between two or more such qualified persons, the Governor shall appoint a person to fill such vacancy from a person whose name shall be submitted to him in writing, within thirty days after the occurrence of the vacancy, by the State Central Committee of the political party with which the Delegate or Senator, so vacating, had been affiliated in the County or District from which he or she was elected, provided that the appointee shall be of the same political party as the person whose office is to be filled; and it shall be the duty of the Governor to make said appointment within fifteen days after the submission thereof to him. If a name is not submitted by the State Central Committee within thirty days after the occurrence of the vacancy, the	**Sec. 3.07. Vacancies.** A vacancy in the General Assembly shall be filled by appointment by the governor; provided that the appointee to succeed a party member shall be a member of the same party. The person appointed to fill the vacancy shall serve only until the next general election held more than ninety days after the vacancy occurs, at which election any remaining portion of the unexpired term shall be filled.

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Governor within another period of fifteen days shall appoint a person, who shall be of the same political party as the person whose office is to be filled, and who is otherwise properly qualified to hold the office of Delegate or Senator in the District or County. In the event there is no State Central Committee in the County or District from which said vacancy is to be filled, the Governor shall within fifteen days after the occurrence of such vacancy appoint a person who is otherwise properly qualified to hold the office of Delegate or Senator in such District or County. In every case when any person is so appointed by the Governor, his appointment shall be deemed to be for the unexpired term of the person whose office has become vacant.	
(b) In addition, and in submitting a name to the Governor to fill a vacancy in a Senatorial district or subdistrict, as the case may be, in any of the twenty-three counties of Maryland, the State Central Committee or committees shall follow these provisions:	
(1) If the vacancy occurs in a district or subdistrict having the same boundaries as a *county, the State Central Committee of* the county shall submit the name of a resident of the district or subdistrict.	
(2) If the vacancy occurs in a district or subdistrict which has boundaries comprising a portion of one county, the State Central Committee of that county shall submit the name of a resident of the district or subdistrict.	
(3) If the vacancy occurs in a district or subdistrict which has boundaries comprising a portion or all of two or more counties, the State Central Committee of each county involved shall have one vote for submitting the name of a resident of the district or subdistrict; and if there is a tie vote between or among the State Central Committees, the list of names there proposed shall be submitted to the Governor, and he shall make the appointment from the list.	
Sec. 14. The General Assembly shall meet on the third Wednesday of January, nineteen hundred and sixty-five, and on the same day in every year thereafter, and at *no other time, unless convened* by Proclamation of the Governor.	**Sec. 3.12. Legislative Sessions.** (First Sentence) The General Assembly shall convene in regular session on the third Wednesday of *January of each year, unless otherwise prescribed* by law, and may continue in session

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Sec. 15. The General Assembly may continue its session so long as in its judgment the public interest may require, for a period not longer than seventy days in each year; and on and after January 1, 1965, each member thereof shall receive a compensation of twenty-four hundred dollars ($2,400.00), per annum, payable quarterly, with a deduction of fifteen dollars ($15.00) per diem for each day of unexcused absence from any session; and he shall also receive such mileage as may be allowed by law, not exceeding twenty cents per mile; and the presiding officers of each House shall receive an additional compensation of two hundred and fifty dollars ($250.00) per annum. When the General Assembly shall be convened by Proclamation of the Governor, the session shall not continue longer than thirty days, but no additional compensation other than mileage and other allowances provided by Law shall be paid members of the General Assembly for special session.	for a period not longer than seventy days; provided, however, that by the affirmative vote of three-fifths of all the members of each house a session may be extended for a period not longer than thirty days. **Sec. 3.08. Compensation of Legislators.** The members of the General Assembly shall receive such salary and allowances as may be prescribed by law.
Sec. 16. No book, or other printed matter not appertaining to the business of the session, shall be purchased, or subscribed for, for the use of the members of the General Assembly, or be distributed among them, at the public expense.	
Sec. 17. No Senator or Delegate, after qualifying as such, notwithstanding he may thereafter resign, shall during the whole period of time, for which he was elected, be eligible to any office, which shall have been created, or the salary, or profits of which shall have been increased, during such term.	**Sec. 3.09. Appointment of Legislators to Other Offices.** No member of the General Assembly shall, during the term of office for which he was elected or appointed, be appointed to any office which shall have been created, or the salary or profits of which shall have been increased, by the General Assembly during such term.
Sec. 18. No Senator or Delegate shall be liable in any civil action, or criminal prosecution, whatever, for words spoken in debate.	**Sec. 3.10. Immunity of Legislators.** A member of the General Assembly shall not be liable in any civil action or criminal prosecution for any words used in any proceedings of the General Assembly.
Sec. 19. Each House shall be judge of the qualifications and elections of its members, as prescribed by the Constitution and Laws of the State; shall appoint its own officers, determine the rules of its own proceedings, punish a member for disorderly, or disrespectful behavior, and with the consent of two-thirds of its whole number of members elected, expel a member; but no member shall be expelled a second time for the same offence.	**Sec. 3.13. Organization of General Assembly.** (First Sentence) Each house shall be the judge of the qualifications and selection of its members, as prescribed by this Constitution and the laws of this State. (Second Sentence) Each house shall elect its own officers and determine its rules of procedure, and may

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	permit its committees to meet between sessions of the General Assembly. (Fifth Sentence) Each house may punish a member for disorderly or disrespectful behavior and may expel a member by the affirmative vote of three-fifths of all its members.
Sec. 20. A majority of the whole number of members elected to each House shall constitute a quorum for the transaction of business; but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as each House may prescribe.	**Sec. 3.14. Quorum.** A majority of all the members of each house shall constitute a quorum for the transaction of business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may prescribe.
Sec. 21. The doors of each House, and of the Committee of the Whole, shall be open, except when the business is such as ought to be kept secret.	
Sec. 22. Each House shall keep a Journal of its proceedings, and cause the same to be published. The yeas and nays of members on any question, shall at the call of any five of them in the House of Delegates, or one in the Senate, be entered on the Journal.	**Sec. 3.17. Journal and Passage of Bills.** Each house shall keep a current, daily journal of its proceedings which shall be open to public inspection at all times and shall be published as soon as practicable. No bill shall be enacted nor shall a resolution requiring the action of both houses be adopted, unless it is passed in each house by a majority of all the members of that house. A vote in joint session or by either house on any bill or resolution shall be taken only in public session. On final passage of a bill, including a bill proposing a constitutional amendment, or a resolution, the vote cast by each member shall be recorded in the journal of the house of which he is a member.
Sec. 23. Each House may punish by imprisonment, during the session of the General Assembly, any person, not a member, for disrespectful, or disorderly behavior in its presence, or for obstructing any of its proceedings, or any of its officers in the execution of their duties; provided, such imprisonment shall not, at any one time, exceed ten days.	
Sec. 24. The House of Delegates may inquire, on the oath of witnesses, into all complaints, grievances and offences, as the Grand Inquest of the State, and may commit any person, for any crime, to the public jail, there to remain, until discharged	**Sec. 3.13. Organization of General Assembly.** (Third Sentence) Each house may, by the affirmative vote of three-fifths of all its members, compel the

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by due course of Law. They may examine and pass all accounts of the State, relating either to the collection or expenditure of the revenue, and appoint Auditors to state and adjust the same. They may call for all public, or official papers and records, and send for persons, whom they may judge necessary in the course of their inquiries, concerning affairs relating to the public interest, and may direct all office bonds which shall be made payable to the State, to be sued for any breach thereof; and with a view to the more certain prevention, or correction of the abuses in the expenditures of the money of the State, the General Assembly shall create, at every session thereof, a joint Standing Committee of the Senate and House of Delegates, who shall have power to send for persons, and examine them on oath, and call for Public, or Official Papers and Records, and whose duty it shall be to examine and report upon all contracts made for printing stationery, and purchases for the Public offices, and the Library, and all expenditures therein, and upon all matters of alleged abuse in expenditures, to which their attention may be called by Resolution of either House of the General Assembly.	attendance and testimony of witnesses and the production of records and papers either before the house as a whole or before any of its committees, provided that the rights and the records and papers of all witnesses, in such cases, shall have been protected by law. (Fourth Sentence) No person's right to fair and just treatment in the course of legislative and executive investigations shall be infringed.
Sec. 25. Neither House shall, without the consent of the other, adjourn for more than three days, at any one time, nor adjourn to any other place, than that in which the House shall be sitting, without the concurrent vote of two-thirds of the members present.	
Sec. 26. The House of Delegates shall have the sole power of impeachment in all cases; but a majority of all the members elected must concur in the impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose, the Senators shall be on oath, or affirmation, to do justice according to the Law and evidence; but no person shall be convicted without the concurrence of two-thirds of all the Senators elected.	**Section 8.08. Impeachment.** The House of Delegates shall have the sole power of impeachment of elected officials, judges and any other state officers who may be designated by law, in cases of serious crimes or serious misconduct in office. The affirmative vote of three-fifths of all the members of the House of Delegates shall be required to impeach. Impeachments shall be tried by a special tribunal of ten judges appointed by the Supreme Court from among the judges of the State. The concurrence of three-fifths of the judges of the special tribunal shall be required to convict. Judgment upon conviction shall be removal from office and may include disqualification from holding any office of public trust, as well as deprivation of pension rights and other privileges of

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	office. A person tried upon impeachment, whether or not convicted, shall be liable to criminal prosecution and punishment according to law.
Sec. 27. Any bill may originate in either House of the General Assembly, and be altered, amended, or rejected by the other. No bill shall originate in either House during the last twenty-eight calendar days of a regular session, unless two-thirds of the members elected thereto shall so determine by yeas and nays, and in addition the two Houses by joint and similar rule may further regulate the right to introduce bills during this period; nor shall any bill become a law until it be read on three different days of the session in each House, unless two-thirds of the members elected to the House where such bill is pending shall so determine by yeas and nays, and no bill shall be read a third time until it shall have been actually engrossed or printed for a third reading.	**Section 3.16. Consideration of Bills.** A bill may originate in either house of the General Assembly and be altered, amended, passed, or rejected by the other. Except during the first two days of a special session, no vote on final passage of a bill shall be taken until the bill shall have been printed in final form nor until the third calendar day after introduction.
Sec. 28. No bill shall become a Law unless it be passed in each House by a majority of the whole number of members elected, and on its final passage, the yeas and nays be recorded; nor shall any Resolution, requiring the action of both Houses, be passed except in the same manner.	See Section 3.17, Second Sentence p. 318.
Sec. 29. The style of all Laws of this State shall be, "Be it enacted by the General Assembly of Maryland:" and all Laws shall be passed by original bill; and every Law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title; and no Law, nor section of Law, shall be revived, or amended by reference to its title, or section only; nor shall any Law be construed by reason of its title, to grant powers, or confer rights which are not expressly contained in the body of the Act; and it shall be the duty of the General Assembly, in amending any article, or section of the Code of Laws of this State, to enact the same, as the said article, or section would read when amended. And whenever the General Assembly shall enact any Public General Law, not amendatory of any section, or article in the said Code, it shall be the duty of the General Assembly to enact the same, in articles and sections, in the same manner, as the Code is arranged, and to provide for the publication of all additions	**Sec. 3.15. Form of Laws.** The style of every law of this State shall be, "Be it enacted by the General Assembly of Maryland"; and the General Assembly shall enact no law except by bill. Every law enacted by the General Assembly shall embrace only one subject, which shall be described in its title. No law, nor section of law, shall be revived or amended by reference to its title or section only; nor shall any law be construed by reason of its title, to grant powers or confer rights which are not expressly contained in the body of the act. It shall be the duty of the General Assembly, in amending any article or section of the code or law of this State, to enact the article, section or law as it would read when amended.

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and alterations, which may be made to the said Code.	
Sec. 30. Every bill, when passed by the General Assembly, and sealed with the Great Seal, shall be presented to the Governor, who, if he approves it, shall sign the same in the presence of the presiding officers and Chief Clerks of the Senate and House of Delegates. Every Law shall be recorded in the office of the Court of Appeals, and in due time, be printed, published and certified under the Great Seal, to the several Courts, in the same manner as has been heretofore usual in this State.	
Sec. 31. No Law passed by the General Assembly shall take effect, until the first day of June, next after the Session, at which it may be passed, unless it be otherwise expressly declared therein.	
Sec. 32. No money shall be drawn from the Treasury of the State, by any order or resolution, nor except in accordance with an appropriation by Law; and every such Law shall distinctly specify the sum appropriated, and the object, to which it shall be applied; provided, that nothing herein contained shall prevent the General Assembly from placing a contingent fund at the disposal of the Executive, who shall report to the General Assembly, at each Session, the amount expended, and the purposes to which it was applied. An accurate statement of the receipts and expenditures of the public money, shall be attached to, and published with the Laws, after each regular Session of the General Assembly.	For budget and appropriations provisions generally, see Sections 6.03-6.10, beginning p. 329.
Sec. 33. The General Assembly shall not pass local, or special Laws, in any of the following enumerated cases, viz.: For extending the time for the collection of taxes; granting divorces; changing the name of any person; providing for the sale of real estate, belonging to minors, or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees; giving effect to informal, or invalid deeds or wills; refunding money paid into the State Treasury, or releasing persons from their debts, or obligations to the State, unless recommended by the Governor, or officers of the Treasury Department. And the General Assembly shall pass no special Law, for any case, for which provision has	**Section 7.09. General Application of Laws.** Except as otherwise specifically provided in this Constitution, the General Assembly may not enact any public local laws and, except with respect to appropriations, may enact only public general laws which in their terms and in their effects apply without exception to all counties or to all counties in a class. No county shall be exempt from any public general law applicable to counties in its class. See also Sections 7.07-7.12, beginning at p. 378.

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been made, by an existing General Law. The General Assembly, at its first Session after the adoption of this Constitution, shall pass General Laws, providing for the cases enumerated in this section, which are not already adequately provided for, and for all other cases, where a General Law can be made applicable.	
Sec. 34. 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; and the taxes laid for this purpose shall not be repealed or applied to any other object until the said debt and interest thereon shall be fully discharged. The credit of the State shall not in any manner be given, or loaned to, or in aid of any individual, association or corporation; nor shall the General Assembly have the power in any mode to involve the State in the construction of Works of Internal Improvement, nor in granting any aid thereto, which shall involve the faith or credit of the State; nor make any appropriation therefor, except in aid of the construction of Works of Internal Improvement in the counties of St. Mary's, Charles and Calvert, which have had no direct advantage from such Works as have been heretofore aided by the State; and provided, that such aid, advances or appropriations shall not exceed in the aggregate the sum of five hundred thousand dollars. And they shall not use or appropriate the proceeds of the Internal Improvement Companies, or of the State tax, now levied, or which may hereafter be levied, to pay off the public debt (or) to any other purpose until the interest and debt are fully paid, or the sinking fund shall be equal to the amount of the outstanding debt; but the General Assembly may authorize the Board of Public Works to direct the State Treasurer to borrow in the name of the State, in anticipation of the collection of taxes, such sum or sums as may be necessary to meet temporary deficiencies in the Treasury, to preserve the best interest of the State in the conduct of the various State institutions, departments, bureaus, and agencies during each fiscal year. Subject	**Section 6.01. State Indebtedness.** The State shall have the power to incur indebtedness for any public purpose in the manner and upon the terms and conditions as the General Assembly may prescribe by law. All such indebtedness shall be secured by an irrevocable pledge of the full faith and credit and unlimited taxing power of the State. Unless the law authorizing the creation of an obligation includes such an irrevocable pledge, the obligation shall not be considered an indebtedness of the State. If at any time the General Assembly shall fail to appropriate sufficient funds to provide for the timely payment of the interest upon and installments of principal of all state indebtedness, there shall be set apart from the first revenues thereafter received applicable to the general funds of the State a sum sufficient to pay such interest and installments of principal. All state indebtedness shall mature within twenty-five years from the time when such indebtedness is incurred. **Sec. 6.02. Gift or Loan of Assets or Credit.** The assets or credit of the State shall not in any manner be given or loaned to any individual, association, or corporation unless a public purpose will be served thereby and unless authorized by an act of the General Assembly stating the public purpose and, in the case of a gift or loan of credit or a loan of assets, passed by the affirmative vote of three-fifths of all the members of each house.

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to the approval of the Board of Public Works and as provided by Law, the State Treasurer is authorized to make and sell short-term notes for temporary emergencies, but such notes must only be made to provide for appropriations already made by the General Assembly. The General Assembly may contract debts to any amount that may be necessary for the defense of the State. And provided further that nothing in this section shall be construed to prohibit the raising of funds for the purpose of aiding or compensating in such manner or way as the General Assembly of the State shall deem proper, those citizens of the State who have served, with honor, their Country and State in time of War; provided, however, that such action of the General Assembly shall be effective only when submitted to and approved by a vote of the people of the State at the General Election next following the enactment of such legislation.	
Sec. 35. No extra compensation shall be granted or allowed by the General Assembly to any Public Officer, Agent, Servant or Contractor, after the service shall have been rendered, or the contract entered into; nor shall the salary or compensation of any public officer be increased or diminished during his term of office. Provided, however, from and after January 1, 1956, for services rendered after that date, that the salary or compensation of any appointed public officer of the Mayor and City Council of Baltimore may be increased or diminished at any time during his term of office; except that as to officers in the Classified City Service, when the salary of any appointed public officer of the Mayor and City Council of Baltimore shall be so increased or decreased, it shall not again be increased or decreased, as the case may be, during the term of such public officer.	**Sec. 6.07. Amendment of Budget Bill.** (Second Sentence) The compensation of a public officer may not be decreased during his term of office.
Sec. 35A. Nothing in this Constitution shall exempt the salary or compensation of any judge or other public officer from the imposition by the General Assembly of a non-discriminatory tax upon income.	
Sec. 36. No Lottery grant shall ever hereafter be authorized by the General Assembly.	
Sec. 37. The General Assembly shall pass no Law providing for payment by this	

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State, for Slaves emancipated from servitude in this State; but they shall adopt such measures, as they may deem expedient, to obtain from the United States, compensation for such Slaves, and to receive, and distribute the same, equitably, to the persons entitled.	
Sec. 38. No person shall be imprisoned for debt, but a valid decree of a court of competent jurisdiction or agreement approved by decree of said court for the support of a wife or dependent children, or for the support of an illegitimate child or children, or for alimony, shall not constitute a debt within the meaning of this section.	
Sec. 39. The Books, papers and accounts of all Banks shall be open to inspection under such regulations as may be prescribed by Law.	
Sec. 40. The General Assembly shall enact no Law authorizing private property to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid, or tendered, to the party entitled to such compensation.	**Section 1.05. Eminent Domain.** Private property shall not be taken for public use without just compensation.
Sec. 40A. The General Assembly shall enact no law authorizing private property to be taken for public use without just compensation, to be agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation, but where such property is situated in Baltimore City and is desired by this State or by the Mayor and City Council of Baltimore, the General Assembly may provide that such property may be taken immediately upon payment therefor to the owner or owners thereof by the State or by the Mayor and City Council of Baltimore, or into court, such amount as the State or the Mayor and City Council of Baltimore, as the case may be, shall estimate to be the fair value of said property, provided such legislation also requires the payment of any further sum that may subsequently be added by a jury; and further provided that the authority and procedure for the immediate taking of property as it applies to the Mayor and City Council of Baltimore on June 1, 1961, shall remain in force and effect to and including June 1, 1963, and where such property is	

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situated in Baltimore County and is desired by Baltimore County, Maryland, the County Council of Baltimore County, Maryland, may provide for the appointment of an appraiser or appraisers by a Court of Record to value such property and that upon payment of the amount of such evaluation, to the party entitled to compensation, or into Court, and securing the payment of any further sum that may be awarded by a jury, such property may be taken; and where such property is situated in Montgomery County and in the judgment of and upon a finding by the County Council of said County that there is immediate need therefor for right of way for County roads or streets, the County Council may provide that such property may be taken immediately upon payment therefor to the owner or owners thereof, or into Court, such amount as a licensed real estate broker appointed by the County Council shall estimate to be the fair market value of such property, provided that the Council shall secure the payment of any further sum that may subsequently be awarded by a jury. In the various municipal corporations within Cecil County, where in the judgment of and upon a finding by the governing body of said municipal corporation that there is immediate need therefor for right of way for municipal roads, streets and extension of municipal water and sewage facilities, the governing body may provide that such property may be taken immediately upon payment therefor to the owner or owners thereof, or into Court, such amount as a licensed real estate broker appointed by the particular governing body shall estimate to be a fair market value of such property, provided that the municipal corporation shall secure the payment of any further sum that subsequently may be awarded by a jury. This sectiin 40A shall not apply in Montgomery County or any of the various municipal corporations within Cecil County, if the property actually to be taken includes a building or buildings. **Sec. 40B.** The General Assembly shall enact no law authorizing private property to be taken for public use without just compensation, to be agreed upon between the parties or awarded by a jury, being first paid or tendered to the party entitled to such compensation, except that where	

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such property in the judgment of the State Roads Commission is needed by the State for highway purposes, the General Assembly may provide that such property may be taken immediately upon payment therefor to the owner or owners thereof by said State Roads Commission, or into Court, such amount as said State Roads Commission shall estimate to be of the fair value of said property, provided such legislation also requires the payment of any further sum that may subsequently be awarded by a jury.	
Sec. 40C. The General Assembly shall enact no law authorizing private property to be taken for public use without just compensation, to be agreed upon between the parties or awarded by a jury, being first paid or tendered to the party entitled to such compensation, except that where such property, located in Prince George's County in this State, is in the judgment of the Washington Suburban Sanitary Commission needed for water supply, sewerage and drainage systems to be extended or constructed by the said Commission, the General Assembly may provide that such property, except any building or buildings may be taken immediately upon payment therefor by the condemning authority to the owner or owners thereof or into the Court to the use of the person or persons entitled thereto, such amount as the condemning authority shall estimate to be the fair value of said propery, provided such legislation requires that the condemning authority's estimate be not less than the appraised value of the property being taken as evaluated by at least one qualified appraiser, whose qualifications have been accepted by a Court of Record of this State, and also requires the payment of any further sum that may subsequently be awarded by a jury, and provided such legislation limits the condemning authority's utilization of the acquisition procedures specified in this section to occasions where it has acquired or is acquiring by purchase or other procedures one-half or more of the several takings of land or interests in land necessary for any given water supply, sewerage or drainage extension or construction project.	
Sec. 41. Any citizen of this State, who shall after the adoption of this Constitu-	

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tion, either in, or out of this State, fight a duel with deadly weapons, or send, or accept a challenge so to do, or who shall act as a second, or knowingly aid or assist in any manner, those offending, shall, ever thereafter, be incapable of holding any office of profit or trust, under this State, unless relieved from the disability by an act of the Legislature.	
Sec. 42. The General Assembly shall pass Laws necessary for the preservation of the purity of Elections.	See Section 2.05, p. 302.
Sec. 43. The property of the wife shall be protected from the debts of her husband.	
Sec. 44. Laws shall be passed by the General Assembly, to protect from execution a reasonable amount of the property of the debtor, not exceeding in value, the sum of five hundred dollars.	
Sec. 45. The General Assembly shall provide a simple and uniform system of charges in the offices of Clerks of Courts, and Registers of Wills, in the Counties of this State, and the City of Baltimore, and for the collection thereof; provided, the amount of compensation to any of the said officers in the various Counties and in the City of Baltimore shall be such as may be prescribed by law.	
Sec. 46. The General Assembly shall have power to receive from the United States, any grant, or donation of land, money, or securities for any purpose designated by the United States, and shall administer, or distribute the same according to the conditions of the said grant.	
Sec. 47. The General Assembly, shall make provisions for all cases of contested elections of any of the officers, not herein provided for.	
Sec. 48. Corporations may be formed under general Laws, but shall not be created by special act, except for municipal purposes and except in cases where no general Laws exist, providing for the creation of corporations of the same general character, as the corporation proposed to be created; and any act of incorporation passed in violation of this section shall be void. All charters granted, or adopted, in pursuance of this section, and all charters heretofore granted and created, subject to repeal or	

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modification, may be altered, from time to time, or be repealed; provided, nothing herein contained shall be construed to extend to Banks, or the incorporation thereof. The General Assembly shall not alter or amend the charter of any corporation existing at the time of the adoption of this Article, or pass any other general or special law for the benefit of such corporation except upon the condition that such corporation shall surrender all claim to exemption from taxation or from the repeal or modification of its charter, and that such corporation shall thereafter hold its charter subject to the provisions of this Constitution; and any corporation chartered by this State which shall accept, use, enjoy, or in any wise avail itself of any rights, privileges, or advantages that may hereafter be granted or conferred by any general or special Act, shall be conclusively presumed to have thereby surrendered any exemption from taxation to which it may be entitled under its charter, and shall be thereafter subject to taxation as if no such exemption has been granted by its charter.	
Sec. 49. The General Assembly shall have power to regulate by Law, not inconsistent with this Constitution, all matters which relate to the Judges of election, time, place and manner of holding elections in this State, and of making returns thereof.	See Section 2.05, p. 302.
Sec. 50. It shall be the duty of the General Assembly, at its first session, held after the adoption of this Constitution, to provide by Law for the punishment, by fine, or imprisonment in the Penitentiary, or both, in the discretion of the Court, of any person, who shall bribe, or attempt to bribe, any Executive, or Judicial officer of the State of Maryland, or any member, or officer of the General Assembly of the State of Maryland, or of any Municipal Corporation in the State of Maryland, or any Executive officer of such corporation, in order to influence him in the performance of any of his official duties; and, also, to provide by Law for the punishment, by fine, or imprisonment in the Penitentiary, or both, in the discretion of the Court, of any of said officers, or members, who shall demand, or receive any bribe, fee, reward, or testimonial, for the performance of his official duties, or for neglecting, or failing	

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to perform the same; and, also, to provide by Law for compelling any person, so bribing, or attempting to bribe, or so demanding, or receiving a bribe, fee, reward, or testimonial, to testify against any person, or persons, who may have committed any of said offences; provided, that any person, so compelled to testify, shall be exempted from trial and punishment for the offence, of which he may have been guilty; and any person, convicted of such offence, shall, as part of the punishment thereof, be forever disfranchised and disqualified from holding any office of trust, or profit, in this State.	
Sec. 51. The personal property of residents of this State, shall be subject to taxation in the county or city where the resident *bona fide* resides for the greater part of the year for which the tax may or shall be levied, and not elsewhere, except goods and chattels permanently located, which shall be taxed in the city or county where they are so located, but the General Assembly may by law provide for the taxation of mortgages upon property in this State and the debts secured thereby, in the county or city where such property is situated.	
Sec. 52. (1) The General Assembly shall not appropriate any money out of the Treasury except in accordance with the provisions of this section.	**Section 6.03. Appropriations.** The General Assembly may not appropriate any money out of the treasury except by a budget bill or a supplementary appropriation bill.
(2) Every appropriation bill shall be either a Budget Bill, or a Supplementary Appropriation Bill, as hereinafter provided.	
(3) On the third Wednesday in January in each year, (except in the case of a newly elected Governor, and then not later than ten days after the convening of the General Assembly), unless such time shall be extended by the General Assembly, the Governor shall submit to the General Assembly a Budget for the next ensuing fiscal year. Each Budget shall contain a complete plan of proposed expenditures and estimated revenues for said fiscal year and shall show the estimated surplus or deficit of revenues at the end of the preceding fiscal year. Accompanying each Budget shall be a statement showing: (a) the revenues and expenditures for the preceding fiscal year; (b) the current assets, liabilities, reserves and surplus or deficit of the State; (c) the debts and funds of the	**Sec. 6.04. The Budget.** On the third Wednesday in January in each year (except in the case of a newly elected governor, and then not later than twelve days after the convening of the General Assembly into regular session), unless such time be extended by the General Assembly, the governor shall submit to the General Assembly a budget for the ensuing fiscal year. The budget shall show the estimated surplus or deficit of revenues at the end of the preceding year and shall contain, for the fiscal year covered thereby, an estimate of revenues, a complete plan of proposed expenditures by program including all appropriations required by this Constitution or by law, and any additional information prescribed by law, all in such form and detail as the governor shall determine. The total of the proposed expenditures shall be limited to funds available therefor as shown in the budget.

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State; (d) an estimate of the State's financial condition as of the beginning and end of the preceding fiscal year; (e) any explanation the Governor may desire to make as to the important features of the Budget and any suggestions as to methods for reduction or increase of the State's revenue.

(4) Each Budget shall embrace an estimate of all appropriations in such form and detail as the Governor shall determine or as may be prescribed by Law, as follows: (a) for the General Assembly as certified to the Governor in the manner hereinafter provided; (b) for the Executive Department; (c) for the Judiciary Department, as provided by Law, certified by the Comptroller; (d) to pay and discharge the principal and interest of the debt of the State in conformity with Section 34 of Article 3 of the Constitution, and all Laws enacted in pursuance thereof; (e) for the salaries payable by the State and under the Constitution and Laws of the State; (f) for the establishment and maintenance throughout the State of a thorough and efficient system of public schools in conformity with Article 8 of the Constitution and with the Laws of the State; (g) for such other purposes as are set forth in the Constitution or Laws of the State.

(5) The Governor shall deliver to the presiding officer of each House the Budget and a bill for all the proposed appropriations of the Budget classified and in such form and detail as he shall determine or as may be prescribed by Law; and the presiding officer of each House shall promptly cause said bill to be introduced therein, and such bill shall be known as the "Budget Bill." The Governor may, with the consent of the General Assembly, before final action thereon by the General Assembly, amend or supplement said Budget to correct an oversight, provide funds contingent on passage of pending legislation or, in case of an emergency, by delivering such an amendment or supplement to the presiding officers of both Houses; and such amendment or supplement shall thereby become a part of said Budget Bill as an addition to the items of said bill or as a modification of or a substitute for any item of said bill such amendment or supplement may affect.

(6) The General Assembly shall not amend the Budget Bill so as to affect either

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Sec. 6.05. Mandatory Appropriations.

The estimates of appropriations for the legislative branch, certified by the presiding officer of each house, and for the judicial branch, certified by the chief judge of the Superior Court, shall be transmitted to the governor, in such form and at such time as he shall direct. To the extent that appropriations for the legislative and judicial branches and for state support of public school systems are required by law, the estimates therefor shall be included in the budget without revision.

Sec. 6.06. Presentation of Budget Bill.

The governor shall deliver to the presiding officer of each house the budget and a bill for all the proposed appropriations of the budget, classified and in such form and detail as he shall determine or as may be prescribed by law. The presiding officer of each house shall promptly cause the bill, called the budget bill, to be introduced. The governor may, before final action thereon by the General Assembly, amend or supplement the budget bill to correct an oversight, to appropriate funds contingent on passage of pending legislation or to provide for an emergency. Such amendment or supplement shall be delivered to the presiding officers of both houses, and it shall thereafter become a part of the budget bill as an addition, substitute or modification thereof or any item thereof. Each amendment shall be accompanied by a statement by the governor explaining the reasons therefor.

Sec. 6.07. Amendment of Budget Bill.

The General Assembly may amend the budget bill by increasing any item relating to the legislative or judicial branches, or by reducing or striking out any item except the appropriation of sufficient funds to provide for the timely payment of the interest upon and installments of principal of all state indebtedness and the appropriations required by law for state support of public school systems; but it may not otherwise amend the budget bill or change the estimate of revenues. The compensation of a public officer may not be decreased during his term of office.

Sec. 6.08. Enactment of Budget Bill.

The budget bill shall become law when passed by both houses of the General

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the obligations of the State under Section 34 of Article 3 of the Constitution, or the provisions made by the Laws of the State for the establishment and maintenance of a system of public schools or the payment of any salaries required to be paid by the State of Maryland by the Constitution thereof; and the General Assembly may amend the bill by increasing or diminishing the items therein relating to the General Assembly, and by increasing the items therein relating to the judiciary, but except as hereinbefore specified, may not alter the said bill except to strike out or reduce items therein, provided, however, that the salary or compensation of any public officer shall not be decreased during his term of office; and such bill, when and as passed by both Houses, shall be a law immediately without further action by the Governor.

(7) The Governor and such representatives of the executive departments, boards, officers and commissions of the State expending or applying for State's moneys, as have been designated by the Governor for this purpose, shall have the right, and when requested by either House of the General Assembly, it shall be their duty to appear and be heard with respect to any Budget Bill during the consideration thereof, and to answer inquiries relative thereto.

(8) Supplementary Appropriation Bill. Either House may consider other appropriations but both houses shall not finally act upon such appropriations until after the Budget Bill has been finally acted upon by both Houses, and no such other appropriation shall be valid except in accordance with the provisions following: (a) Every such appropriation shall be embodied in a separate bill limited to some single work, object or purpose therein stated and called herein a Supplementary Appropriation Bill; (b) Each Supplementary Appropriation Bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be levied and collected as shall be directed in said bill; (c) No Supplementary Appropriation Bill shall become a law unless it be passed in each House by a vote of a majority of the whole number of the members elected, and the yeas and nays recorded on its final passage; (d) Each Supplementary Appropriation Bill shall be presented to the Governor of the State as provided in Section

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Assembly and shall not be subject to veto by the governor. If the budget bill has not been enacted within fifty days after its introduction, it shall become law in the form in which it was introduced and any amendment or supplement thereto shall be treated as a supplementary appropriation bill.

Sec. 6.09. Testimony on Budget Bill.

Either house of the General Assembly may require any person in any branch or agency of the state government, other than the governor, to appear and testify with respect to the budget bill or a supplementary appropriation bill. The governor or a person designated by him shall have the right to appear and testify with respect to the budget bill or a supplementary appropriation bill.

Sec. 6.10. Supplementary Appropriations.

Any other appropriation shall be embodied in a separate bill, called a supplementary appropriation bill, which shall be limited to some single work, object or purpose clearly defined therein. A supplementary appropriation bill may not be considered by either house until the budget bill has become law, but may be considered and enacted thereafter in a regular session or at any time in a special session. A supplementary appropriation bill shall provide the revenue necessary to pay the appropriation by a tax, direct or indirect, to be levied and collected as prescribed therein, or in the case of a budget bill amendment or supplement which has not become law by funds available therefor in conformity with the estimate of revenues contained in the budget or any supplement thereto.

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17 of Article 2 of the Constitution and thereafter all the provisions of said section shall apply. (9) Nothing in this section shall be construed as preventing the General Assembly from passing at any time, in accordance with the provisions of Section 28 of Article 3 of the Constitution and subject to the Governor's power of approval as provided in Section 17 of Article 2 of the Constitution, an appropriation bill to provide for the payment of any obligation of the State within the protection of Section 10 of Article 1 of the Constitution of the United States. (10) If the Budget Bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session, the Governor may, and it shall be his duty to issue a proclamation extending the session for some further period as may, in his judgment, be necessary for the passage of such bill; but no other matter than such bill shall be considered during such extended session except a provision for the cost thereof. (11) The Governor for the purpose of making up his Budget shall have the power, and it shall be his duty, to require from the proper State officials, including herein all executive departments, all executive and administrative offices, bureaus, boards, commissions and agencies, expending or supervising the expenditure of, and all institutions applying for State moneys and appropriations, such itemized estimates and other information, in such form and at such times as he shall direct. The estimates for the Legislative Department, certified by the presiding officer of each House, of the Judiciary, as provided by Law, certified by the Comptroller, and for the public schools, as provided by law, shall be transmitted to the Governor, in such form and at such times as he shall direct, and shall be included in the Budget without revision. (12) The Governor may provide for public hearings on all estimates and may require the attendance at such hearings of representatives of all agencies, and for all institutions applying for State moneys. After such public hearings he may, in his discretion, revise all estimates except those for the legislative and judiciary departments, and for the public schools, as provided by Law.	

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(13) The General Assembly may, from time to time, enact such Laws not inconsistent with this section, as may be necessary and proper to carry out its provisions.	
(14) In the event of any inconsistency between any of the provisions of this Section and any of the other provisions of the Constitution, the provisions of this Section shall prevail. But nothing herein shall in any manner affect the provisions of Section 34 of Article 3 of the Constitution or of any laws heretofore or hereafter passed in pursuance thereof, or be construed as preventing the Governor from calling extraordinary sessions of the General Assembly, as provided by Section 16 of Article 2, or as preventing the General Assembly at such extraordinary sessions from considering any emergency appropriation or appropriations.	
(15) If any item of any appropriation bill passed under the provisions of this Section shall be held invalid upon any ground, such invalidity shall not affect the legality of the bill or of any other item of such bill or bills.	
Sec. 53. No person shall be incompetent, as a witness, on account of race or color, unless hereafter so declared by Act of the General Assembly.	**Section 1.04. Due Process.** No person shall be deprived of life, liberty or property without due process of law, or be denied the equal protection of the laws, or be subject to discrimination by law or other governmental action because of religion, race, color or national origin.
Sec. 54. No County of this State shall contract any debt, or obligation, in the construction of any Railroad, Canal, or other Work of Internal Improvement, nor give, or loan its credit to, or in aid of any association, or corporation, unless authorized by an Act of the General Assembly.	
Sec. 55. The General Assembly shall pass no Law suspending the privilege of the Writ of *Habeas Corpus*.	**Sec. 1.12. Habeas Corpus.** The privilege of the writ of habeas corpus shall not be suspended and the provisions of this Constitution shall apply both in time of war and in time of peace.
Sec. 56. The General Assembly shall have power to pass all such Laws as may be necessary and proper for carrying into execution the powers vested, by this Constitution, in any Department, or office of the Government, and the duties imposed upon them thereby.	

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Sec. 57. The Legal Rate of Interest shall be six per cent per annum; unless otherwise provided by the General Assembly.	
Sec. 58. The Legislature shall provide by Law for State and municipal taxation upon the revenues accruing from business done in the State by all foreign corporations.	
Sec. 59. The office of "State Pension Commissioner" is hereby abolished; and the Legislature shall pass no law creating such office, or establishing any general pension system within this State.	
Sec. 60. The General Assembly of Maryland shall have the power to provide by suitable general enactment (a) for the suspension of sentence by the Court in criminal cases; (b) for any form of the indeterminate sentence in criminal cases, and (c) for the release upon parole in whatever manner the General Assembly may prescribe, of convicts imprisoned under sentence for crimes.	
Sec. 61. (a) The General Assembly may authorize and empower any county or any municipal corporation, by public local law: (1) To carry out urban renewal projects which shall be limited to slum clearance in slum or blighted areas and redevelopment or the rehabilitation of slum or blighted areas, and to include the acquisition, within the boundary lines of such county or municipal corporation, of land and property of every kind and any right, interest, franchise, easement or privilege therein, by purchase, lease, gift, condemnation or any other legal means. The term "slum area" shall mean any area where dwellings predominate which, by reason of depreciation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to the public safety, health or morals. The term "blighted area" shall mean an area in which a majority of buildings have declined in productivity by reason of obsolescence, depreciation or other causes to an extent they no longer justify fundamental repairs and adequate maintenance. (2) To sell, lease, convey, transfer or otherwise dispose of any of said land or property, regardless of whether or not it has been developed, redeveloped, altered or improved and irrespective of the manner or	For the general powers of counties and municipal corporations, see Sections 7.07-7.13, beginning at p. 378, and Section 7.14 at p. 387.

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means in or by which it may have been acquired, to any private, public or quasi public corporation, partnership, association, person or other legal entity. No land or property taken by any county or any municipal corporation for any of the aforementioned purposes or in connection with the exercise of any of the powers which may be granted to such county or municipal corporation pursuant to this section by exercising the power of eminent domain shall be taken without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation. All land or property needed, or taken by the exercise of the power of eminent domain, by any county or any municipal corporation for any of the aforementioned purposes or in connection with the exercise of any of the powers which may be granted pursuant to this section is hereby declared to be needed or taken for public uses and purposes. Any or all of the activities authorized pursuant to this section shall constitute governmental functions undertaken for public uses and purposes and the power of taxation may be exercised, public funds expended and public credit extended in furtherance thereof. (b) The General Assembly may grant to any county or any municipal corporation, by public local law, any and all additional power and authority necessary or proper to carry into full force and effect any and all of the specific powers authorized by this section and to fully accomplish any and all of the purposes and objects contemplated by the provisions of this section, provided such additional power or authority is not inconsistent with the terms and provisions of this section or with any other provision or provisions of the Constitution of Maryland. (c) The General Assembly of Maryland, by public local law, may establish or authorize the establishment of a public body or agency to undertake in a county or municipal corporation (other than Baltimore City) the activities authorized by this section, and may provide that any or all of the powers, except the power of taxation, herein authorized to be granted to such county or municipal corporation shall be vested in such public body or agency or in any existing public body or agency.	

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(d) The General Assembly may place such other and further restrictions or limitations on the exercise of any of the powers provided for in this section, as it may deem proper and expedient.	
(e) The provisions of this section are independent of, and shall in no way affect, the powers granted under Article XIB of the Constitution of Maryland, title "City of Baltimore—Land Development and Redevelopment." Also, the power provided in this section for the General Assembly to enact public local laws authorizing any municipal corporation or any county to carry out urban renewal projects prevails over the restrictions contained in Article 11A "Local Legislation" and in Article 11E "Municipal Corporations" of this Constitution.	
ARTICLE IV. ***JUDICIARY DEPARTMENT.***	***ARTICLE IV.*** ***JUDICIAL BRANCH***
Part I. General Provisions.	
Section 1. The Judicial power of this State shall be vested in a Court of Appeals, and such intermediate courts of appeal, as shall be provided by law by the General Assembly, Circuit Courts, Orphans' Courts, such Courts for the City of Baltimore, as are hereinafter provided for, and Justices of the Peace; all said Courts shall be Courts of Record, and each shall have a seal to be used in the authentication of all process issuing therefrom. The process and official character of Justices of the Peace shall be authenticated as hath heretofore been practiced in this State, or may hereafter be prescribed by Law.	**Section 5.01. Judicial Power.** The judicial power of the State is vested exclusively in a unified judicial system composed of the Supreme Court, the Appellate Court, the Superior Court and the District Court.
Sec. 2. The Judges of all of the said Courts shall be citizens of the State of Maryland, and qualified voters under this Constitution, and shall have resided therein not less than five years, and not less than six months next preceding their election, or appointment, as the case may be, in the city, county, judicial circuit, intermediate appellate judicial circuit or appellate judicial circuit for which they may be, respectively, elected, or appointed. They shall be not less than thirty years of age at the time of their election, or appointment, and shall be selected from those who have been admitted to practice Law in this State, and who are most distinguished for integrity, wisdom and sound legal knowledge.	**Sec. 5.13. Eligibility for Appointment as Judge.** To be eligible for nomination and appointment as judge, a person shall be a citizen of the State and shall have been a member of the bar of the State for at least five years immediately prior to his nomination, and shall be a resident of the circuit where the Supreme Court or the Appellate Court vacancy exists, a resident of the district where the District Court vacancy exists, or a resident of, or have his principal office for the practice of law in, the county where the Superior Court vacancy exists.

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Sec. 3. The Judges of the said several Courts other than the Court of Appeals or any intermediate courts of appeal shall, subject to the provisions of Section 5 of this Article of the Constitution, be elected in Baltimore City and in each county, by the qualified voters of the city and of each county, respectively, except that in the First and Second Judicial Circuits the said Judges of the several Courts shall be elected by the qualified voters in each respective Judicial Circuit as hereinafter provided, all of the said Judges to be elected at the general election to be held on the Tuesday after the first Monday in November, as now provided for in the Constitution. Each of the said Judges shall hold his office for the term of fifteen years from the time of his election, and until his successor is elected and qualified, or until he shall have attained the age of seventy years, whichever may first happen, and be re-eligible thereto until he shall have attained the age of seventy years, and not after. In case of the inability of any of said Judges to discharge his duties with efficiency, by reason of continued sickness, or of physical or mental infirmity, it shall be in the power of the General Assembly, two-thirds of the members of each House concurring, with the approval of the Governor to retire said Judge from office.	**Sec. 5.21. Term of Office of Judge.** At the next general election following the expiration of two years from the date of appointment, and every ten years thereafter so long as he retains his office, each judge shall be subject to approval or rejection by the electorate. *Each justice of the* Supreme Court and each judge of the Appellate Court shall be subject to approval or rejection by the electorate of the entire State. Each judge of the Superior Court and of the District Court shall be subject to approval or rejection by the electorate of the county or district, respectively, for which the office then exists. Provision may be made by rule for the taking of a poll of the lawyers of the area in which the judge is required to stand for election as to whether he should be retained in office for a full or additional term, and for publication of the results thereof. In the event of the rejection of a judge by the electorate, the office shall be vacant. **Sec. 5.22. Retirement of Judge.** Each judge shall retire at the age of seventy. The chief justice of the Supreme Court, with the approval of a majority of the members of that court, may authorize a retired judge temporarily to perform judicial duties in any court. For the selection of judges, see Sections 5.14-5.20, beginning at p. 340. For the removal of judges, see Section 5.25, p. 337.
Sec. 4. Any Judge shall be removed from office by the Governor, on conviction in a Court of Law, of incompetency, of wilful neglect of duty, misbehavior in office, or any other crime, or on impeachment, according to this Constitution, or the Laws of the State; or on the address of the General Assembly, two-thirds of each House concurring in such address, and the accused having been notified of the charges against him, and having had opportunity of making his defence. Sec. 4A. (a) There is created a Commission on Judicial Disabilities, composed of five persons appointed by the Governor of Maryland. The members of the Commission shall be citizens and residents of this State. Three members of the Commission shall be appointed from among the judges of the Court of Appeals, the Circuit Court for the Counties and of the Supreme	**Sec. 5.25. Removal of Judge** The Supreme Court shall have power, after hearing, to remove any judge from office upon a finding of misconduct in office or persistent failure to perform the duties of his office, or to retire any judge upon a finding of disability seriously interfering with the performance of his duties which is, or is likely to become, of a permanent character. A justice shall not sit in any hearing involving his own removal or retirement. Implementation and enforcement of this section may be by rule or order of the Supreme Court. A judge retired under this section shall have the rights and privileges prescribed by law for other retired judges. *A judge removed under this section,* and his surviving spouse, shall have the rights and privileges accruing from his judicial service only to the extent prescribed by the order of removal.

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Bench of Baltimore City; one member shall be appointed from among those persons who are admitted to the practice of Law in the State, who have been so engaged for at least fifteen years, and who is not a judge of any Court; and one member shall represent the public, who shall not be a judge, active or retired, and who is not admitted to the practice of Law in this State. The term of office of each member shall be for four years commencing on January 1, except that of those persons first appointed to the Commission one shall be appointed for a term of one year, one for two years, one for three years, and two for four years and thereafter all terms shall be for four years. Whenever any member of the Commission appointed from among judges in the State ceases to be a judge, when any member appointed from among those admitted to the practice of Law becomes a judge, when any member representing the public becomes a judge or is admitted to the practice of Law in this State, or when any member ceases to be a resident of the State, in such case the membership of this member shall forthwith terminate. Any vacancies on the Commission shall be filled for the unexpired term by the Governor in the same manner as for making of appointments to the Commission and subject to the same qualifications which were applicable to the person causing the vacancy. No member of the Commission shall receive any compensation for his services as such but shall be allowed any expenses necessarily incurred in the performance of his duties as such member. (b) The concurrence of a majority of the appointed members shall be sufficient for the validity of any act of the Commission. The Commission shall select one of its members to serve as Chairman. **Sec. 4B.** (a) A judge of the Court of Appeals, of the Circuit Courts for the Counties, of the Supreme Bench of Baltimore City, of the Orphans' Courts and all other judges elected or subject to election, and those appointed if the full term of the particular office is for not less than four years, (including a judge holding office on the date of adoption of this Amendment) may, in accordance with the procedure described in this section, be removed for misconduct in office, persistent failure to perform the duties of his office or con-	

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duct which shall prejudice the proper administration of justice, or may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. The Commission may, after such investigation as it deems necessary, order a hearing to be held before it concerning the removal or retirement of a judge. If, after hearing, the Commission finds good cause therefor as aforesaid, it shall recommend to the General Assembly the removal or retirement, as the case may be, of the judge.	
(b) The General Assembly shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and by a joint resolution passed by a two-thirds vote of the members elected in each House thereof, shall order removal or retirement, as it finds just and proper, or wholly reject the recommendation. Upon an order for retirement, the judge shall thereby be retired with the rights and privileges provided by Law. Upon an order of removal, the judge shall thereby be removed from office, his salary shall cease from the date of such order, and neither he nor his widow, upon his death, shall receive any benefits, pension, or retirement allowance accruing from judicial service.	
(c) All papers filed with and proceedings before the Commission on Judicial Disabilities, pursuant to this section shall be confidential, and the filing of papers with and the giving of testimony before the Commission shall be privileged. No other publication of such papers or proceedings shall be privileged in any action for defamation except that (a) the record filed by the Commission in the General Assembly continues to be privileged and upon such filing loses its confidential character and (b) a writing which was privileged prior to its filing with the Commission does not lose such privilege by such filing. The Commission and the General Assembly shall have the power to issue and enforce process to compel the attendance of witnesses and the production of evidence. The General Assembly shall by statute provide for procedure under this section before the Commission on Judicial Disabilities and by rule shall provide for procedure under this section in the General Assembly. A judge who	

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is a member of the Commission shall not participate in any proceedings involving his own removal or retirement, and the Governor shall appoint a substitute member of the Commission for the purpose of said particular proceedings. (d) This section is alternative to, and cumulative with, the methods of retirement and removal provided in Sections 3 and 4 of this Article, and in Section 26 of Article III of this Constitution.	
Sec. 5. Upon every occurrence or recurrence of a vacancy through death, resignation, removal, disqualification by reason of age or otherwise, or expiration of the term of fifteen years of any judge, or creation of the office of any judge, or in any other way, the Governor shall appoint a person duly qualified to fill said office, who shall hold the same until the election and qualification of his successor; except that when a vacancy shall exist in the office of Chief Judge of the Supreme Bench of Baltimore City, the Governor may designate an Associate Judge of said Supreme Bench as Chief Judge of said Supreme Bench, and such appointee as Chief Judge shall hold such office for the residue of the term for which he was last elected an Associate Judge of said Supreme Bench. His successor shall be elected at the first biennial general election for Representatives in Congress after the expiration of the term of fifteen years (if the vacancy occurred in that way) or the first such general election after one year after the occurrence of the vacancy in any other way than through expiration of such term. Except in case of reappointment of a judge upon expiration of his term of fifteen years, no person shall be appointed who will become disqualified by reason of age and thereby unable to continue to hold office until the prescribed time when his successor would have been elected.	**Sec. 5.14. Nomination and Appointment.** A vacancy in the office of judge shall be filled by the governor from a list of no fewer than two nor more than five eligible persons nominated by a judicial nominating commission. The commission shall make nominations to fill a vacancy not more than thirty days prior to nor more than sixty days after the occurrence of the vacancy. If the governor fails to make the appointment within sixty days after receiving the list of nominees, his power to make the appointment shall end and the chief justice of the Supreme Court shall appoint one of the nominees. **Sec. 5.15. Appellate Courts Nominating Commission.** Nominations to fill a vacancy on the Supreme Court or on the Appellate Court shall be made by the Appellate Courts Nominating Commission. The commission shall be composed of six lay persons, six lawyers, and the chief justice of the Supreme Court. The terms of the non-judicial members shall be four years. **Sec. 5.16. Trial Courts Nominating Commission.** Nominations to fill a vacancy on the Superior Court and on the District Court shall be made by a trial courts nominating commission. The number and composition of trial courts nominating commissions and the terms of their members shall be prescribed by law, but each commission shall have no fewer than five members and shall be composed of an equal number of lay and lawyer members, and a judge. Each commission shall make nominations to fill vacancies on the Superior Court in one or more counties, or on the District Court in one or more districts, or both, as prescribed by law.

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	Sec. 5.17. Lawyer Members of Nominating Commission. Lawyer members of the Appellate Courts Nominating Commission shall be elected by lawyers throughout the State. Lawyer members of each trial courts nominating commission shall be elected by the lawyers of the area for which such commission is established. Eligibility and elections of lawyer members of nominating commissions and eligibility of their electors shall be governed by rule. **Sec. 5.18. Lay Members of Nominating Commission.** Lay members of the Appellate Courts Nominating Commission shall be appointed by the governor from the qualified voters of the State. Lay members of each trial courts nominating commission shall be appointed by the governor from the qualified voters of the area for which such commission is established. **Sec. 5.19. Judicial Member of Nominating Commission.** The judicial member of a trial courts nominating commission shall be selected in the manner prescribed by law. **Sec. 5.20. Rules Governing Nominating Commission.** A nominating commission may act only upon the concurrence of a majority of its members. Each commission shall elect one of its members as chairman. A non-judicial member of a commission may not hold any state or local public office of profit or office in a political party while a member of a commission and for six months thereafter. A member of a commission shall receive no compensation for his service. **Sec. 5.21. Term of Office of Judge.** At the next general election following the expiration of two years from the date of appointment, and every ten years thereafter so long as he retains his office, each judge shall be subject to approval or rejection by the electorate. Each justice of the Supreme Court and each judge of the Appellate Court shall be subject to approval or rejection by the electorate of the entire State. Each judge of the Superior Court and of the District Court shall be subject to approval or rejection by the electorate of the county or district, respectively, for

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	which the office then exists. Provision may be made by rule for the taking of a poll of the lawyers of the area in which the judge is required to stand for election as to whether he should be retained in office for a full or additional term, and for publication of the results thereof. In the event of the rejection of a judge by the electorate, the office shall be vacant.
Sec. 6. All Judges shall, by virtue of their offices, be Conservators of the Peace throughout the State; and no fees, or perquisites, commission, or reward of any kind; shall be allowed to any Judge in this State, besides his annual salary, for the discharge of any Judicial duty.	**Sec. 5.24. Restriction of Non-Judicial Activities.** No judge shall engage in the practice of law, or run for elective office other than the judicial office he then holds, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive any remuneration for his judicial service except as provided herein. No retired judge while engaging in such activities shall be paid any pension for his judicial service.
Sec. 7. No Judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him, by affinity or consanguinity, within such degrees as now are, or may hereafter be prescribed by Law, or where he shall have been of counsel in the case.	
Sec. 8. The parties to any cause may submit the same to the Court for determination without the aid of a jury, and in all suits or actions, at law issues from the Orphans' Court, or from any court sitting in equity and in all cases of Presentments or indictments for offences, which are or may be punishable by death, pending in any of the courts of law in this State having jurisdiction thereof upon suggestion in writing under oath of either of the parties to said proceedings that such party cannot have a fair and impartial trial in the court in which the same may be pending, the said court shall order and direct the record of proceedings in such suit or action, issue presentment, or indictment, to be transmitted to some other court having jurisdiction in such case for trial, but in all other cases of presentment or indictment, pending in any of the Courts of law in this State having jurisdiction thereof, in addition to the suggestion in writing of either of the parties to such presentment or indictment that such party cannot have	For the power of the Supreme Court and General Assembly to prescribe regulations governing practice and procedure in all courts, see Section 5.29, p. 348.

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a fair and impartial trial in the court in which the same may be pending, it shall be necessary for the party making such suggestion to make it satisfactorily appear to the Court that such suggestion is true, or that there is reasonable ground for the same, and thereupon the said court shall order and direct the record of proceedings in such presentment or indictment to be transmitted to some other Court having jurisdiction in such cases for trial and such right of removal shall exist upon suggestion in cases where all the Judges of said Court may be disqualified under the provisions of this Constitution to sit in any such case and said Court to which the record of proceedings in such suit, or action, issue, presentment or indictment may be so transmitted shall hear and determine the same in like manner as if such suit or action, issue, presentment or indictment had been originally instituted therein, and the General Assembly shall make such modification of existing law as may be necessary to regulate and give force to this provision.	
Sec. 9. The Judge, or Judges of any Court, may appoint such officers for their respective Courts as may be found necessary; and such officers of the Courts in the City of Baltimore shall be appointed by the Judges of the Supreme Bench of Baltimore City. It shall be the duty of the General Assembly to prescribe, by Law, a fixed compensation for all such officers; and said Judge, or Judges shall, from time to time, investigate the expenses, costs and charges of their respective courts, with a view to a change or reduction thereof, and report the result of such investigation to the General Assembly for its action.	For the administration of the courts, see Sections 5.26-5.29, beginning at p. 347.
Sec. 10. The Clerks of the several Courts, created, or continued by this Constitution, shall have charge and custody of the records and other papers, shall perform all the duties, and be allowed the fees, which appertain to their several offices, as the same now are, or may hereafter be regulated by Law. And the office and business of said Clerks, in all their departments, shall be subject to the visitorial power of the Judges of their respective Courts, who shall exercise the same, from time to time, so as to insure the faithful performance of the duties of said officers; and it shall be the duty of the Judges of said Courts respectively, to make, from time to time,	For the administration of the courts, see Sections 5.26-5.29, beginning at p. 347.

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such rules and regulations as may be necessary and proper for the government of said Clerks, and for the performance of the duties of their offices, which shall have the force of Law until repealed, or modified by the General Assembly.	
Sec. 11. The election for Judges, hereinbefore provided, and all elections for Clerks, Registers of Wills, and other officers, provided in this Constitution, except State's Attorneys, shall be certified, and the returns made, by the Clerks of the Circuit Courts of the Counties, and the Clerk of the Superior Court of Baltimore City, respectively, to the Governor, who shall issue commissions to the different persons for the offices to which they shall have been, respectively, elected; and in all such elections, the person having the greatest number of votes shall be declared to be elected.	
Sec. 12. If in any case of election for Judges, Clerks of the Courts of Law, and Registers of Wills, the opposing candidates shall have an equal number of votes, it shall be the duty of the Governor to order a new election; and in case of any contested election, the Governor shall send the returns to the House of Delegates, which shall judge of the election and qualification of the candidates at such election; and if the judgment shall be against the one who has been returned elected, or the one who has been commissioned by the Governor, the House of Delegates shall order a new election within thirty days.	
Sec. 13. All Public Commissions and Grants shall run thus: "The State of Maryland, etc.," and shall be signed by the Governor, with the Seal of the State annexed; all writs and process shall run in the same style, and be tested, sealed and signed, as heretofore, or as may hereafter be, provided by Law; and all indictments shall conclude, "against the peace, government and dignity of the State."	
Sec. 13A. The General Assembly shall provide by General Law for the assignment by the Court of Appeals of any of the Chief Judges and any of the Associate Judges of the several Judicial Circuits of this State, including any Judge of the Court of Appeals from Baltimore City, and any of the Judges of the Supreme Bench of Baltimore, to sit in any other or different	**Sec. 5.26. Administrative Functions of Chief Justice.** (Fourth Sentence) The chief justice shall have the power to assign any judge to sit temporarily in any court.

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Judicial Circuits for designated and limited periods, for the purpose of relieving accumulation of business or because of the indisposition or disqualification of any judge. And any judge so assigned by the Court of Appeals shall have all the power and authority pertaining to the judge of the court to which he is assigned.	
Part II. Court of Appeals.	
Sec. 14. The Court of Appeals shall be composed of seven judges, one from the First Appellate Judicial Circuit consisting of Cecil, Kent, Queen Anne's, Caroline, Talbot, Dorchester, Wicomcio, Worcester and Somerset counties; one from the Second Appellate Judicial Circuit consisting of Baltimore and Harford counties; one from the Third Appellate Judicial Circuit, consisting of Allegany, Frederick, Garrett, Montgomery and Washington counties; one from the Fourth Appellate Judicial Circuit, consisting of Prince George's, Calvert, Charles and St. Mary's counties; one from the Fifth Appellate Judicial Circuit, consisting of Anne Arundel, Carroll and Howard counties; and two from the Sixth Appellate Judicial Circuit, consisting of Baltimore City. The Judges of the Court of Appeals shall be residents of and be elected by the qualified voters of their respective Appellate Judicial Circuits. The term of each Judge of the Court of Appeals shall begin on the date of his qualification except that each of the judges of the Court of Appeals in office at the time this amendment to the Constitution takes effect shall continue to hold office for the balance of the term for which he was elected or appointed or until he shall have attained the age of seventy years, whichever may first happen. One of the Judges of the Court of Appeals shall be designated by the Governor as the Chief Judge. The jurisdiction of the Court of Appeals shall be co-extensive with the limits of the State and such as now is or may hereafter be prescribed by law. It shall hold its sessions in the City of Annapolis at such time or times as it shall from time to time by rule prescribe. Its session or sessions shall continue not less than ten months in each year, if the business before it shall so require, and it shall be competent for the judges temporarily to transfer their sittings elsewhere upon sufficient cause. The salary	**Sec. 5.02. Jurisdiction of Supreme Court.** The Supreme Court shall be the highest court of the State and shall have the jurisdiction prescribed by law. **Sec. 5.03. Composition of Supreme Court.** The Supreme Court shall be composed of seven justices. Five justices shall constitute a quorum, and the concurrence of four shall be necessary for the decision of a case. **Sec. 5.04. Chief Justice.** The governor shall designate one of the justices of the Supreme Court to be chief justice for the remainder of his service on the court, or until he resigns the office of chief justice. During a vacancy in the office of chief justice, or during a period, as determined by the Supreme Court, when the chief justice is unable to serve, the associate justice senior in service on the Supreme Court shall have the powers and duties of the office of chief justice. **Sec. 5.12. Judicial Circuits.** The State shall be divided by law into circuits of the Supreme Court and into circuits of the Appellate Court. **Sec. 5.23. Compensation of Judge.** Each judge shall be compensated for his judicial service solely by the State and his salary shall not be reduced during his continuance in office. A pension payable to a retired judge or his surviving spouse pursuant to provisions in effect during his continuance in office shall not be reduced. All judges of the same court shall be paid the same compensation, including any pension based upon length of service, except that a uniform reduction in compensation may be made applicable to all judges of the same court appointed after the effective date of the reduction.

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of each Judge of the Court of Appeals shall be that now or hereafter prescribed by the General Assembly and shall not be diminished during his continuance in office. Five of the judges shall constitute a quorum, and five judges shall sit in each case unless the Court shall direct that an additional judge or judges sit for any case. The concurrence of a majority of those sitting shall be sufficient for the decision of any cause, and an equal division of those sitting in a case has the effect of affirming the decision appealed from if there is no application for re-argument as hereinafter provided. In any case where there is an equal division or a three to two division of the Court a re-argument before the full Court of seven judges shall be granted to the losing party upon application as a matter of right.	For eligibility for appointment of judges, see Section 5.13, p. 336. For nomination, appointment and tenure of judges, see Sections 5.14-5.15, 5.17-5.21, beginning at p. 340.
Sec. 14A. The General Assembly may by Law create such intermediate courts of appeal, as may be necessary. The General Assembly may prescribe the intermediate appellate jurisdiction of these courts of appeal, and all other powers necessary for the operation of such courts.	**Sec. 5.05. Jurisdiction of Appellate Court.** The Appellate Court shall have the jurisdiction prescribed by law.
Sec. 14B. No member of the General Assembly at which the addition of Section 14A was proposed, if otherwise qualified, shall be ineligible for appointment or election as a judge of any intermediate court of appeal, established by law by the General Assembly pursuant to said Section 14A, by reason of his membership in such General Assembly.	**Sec. 5.06. Composition of Appellate Court.** The Appellate Court shall be composed of no fewer than five judges, as prescribed by law. The Appellate Court may sit in panels of no fewer than three judges in each case, as prescribed by rule.
Sec. 15. Any judge of the Court of Appeals or of an intermediate court of appeal who heard the cause below either as a trial judge or as a judge of any intermediate court of appeal as the case may be shall not participate in the decision. In every case an opinion, in writing, shall be filed within three months after the argument, or submission of the cause; and the judgment of the Court of Appeals shall be final and conclusive.	**Sec. 5.12. Judicial Circuits.** The State shall be divided by law into circuits of the Supreme Court and into circuits of the Appellate Court. For eligibility for appointment of judges, see Section 5.13, p. 336. For nomination, appointment and tenure of judges, see Sections 5.14-5.15, 5.17-5.21, beginning at p. 340.
Sec. 16. Provision shall be made by Law for publishing Reports of all causes, argued and determined in the Court of Appeals and in the intermediate courts of appeal, which the judges thereof, respectively, shall designate as proper for publication.	

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Sec. 17. There shall be a Clerk of the Court of Appeals, who shall be appointed by and shall hold his office at the pleasure of said Court of Appeals.	For the administration of the courts, see Sections 5.26-5.29, beginning at p. 347.
Sec. 18. It shall be the duty of the Judges of the Court of Appeals to make and publish rules and regulations for the prosecution of appeals to the appellate Courts, whereby they shall prescribe the periods within which appeals may be taken, what part or parts of the proceedings in the Court below shall constitute the record on appeal, and the manner in which such appeals shall be brought to hearing or determination, and shall regulate, generally, the practice of said Court of Appeals and any intermediate courts of appeal so as to prevent delays, and promote brevity in all records and proceedings brought into said Courts, and to abolish and avoid all unnecessary costs and expenses in the prosecution of appeals therein; and the said Judges shall make such reduction in the fees and expenses of the said Courts, as they may deem advisable. It shall also be the duty of said Judges of the Court of Appeals to devise, and promulgate by rules, or orders, forms and modes of framing and filing bills, answers, and other proceedings and pleadings in Equity; and also forms and modes of taking and obtaining evidence, to be used in Equity cases; and to revise and regulate, generally, the practice in the Courts of Equity of this State, so as to prevent delays, and to promote brevity and conciseness in all pleadings and proceedings therein, and to abolish all unnecessary costs and expenses attending the same. And all rules and regulations hereby directed to be made, shall, when made, have the force of Law, until rescinded, changed, or modified by the said Judges, or the General Assembly.	For the administration of the courts, see Sections 5.26-5.29, beginning at p. 347.
Sec. 18A. The Chief Judge of the Court of Appeals shall be the administrative head of the judicial system of the State. He shall from time to time require, from each of the judges of the Circuit Courts for the several counties and of the Supreme Bench of Baltimore City, and of any intermediate courts of appeal, reports as to the judicial work and business of each of the judges and their respective courts. He may, in case of a vacancy or of the illness, disqualification or other absence of any judge of the Court of Appeals or of any intermediate court of appeal, or for the purpose of relieving an	**Sec. 5.26. Administrative Functions of Chief Justice.** The chief justice of the Supreme Court shall be the administrative head of the judicial system. He shall designate one Appellate Court judge, one Superior Court judge and one District Court judge as chief judge of their respective courts. Each shall serve as chief judge at the pleasure of the chief justice. The chief justice shall have the power to assign any judge to sit temporarily in any court.

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accumulation of business in any of said courts, designate and assign any judge of the Court of Appeals (if the assignment is to be made to an intermediate court of appeal), any judge of any intermediate court of appeal (other than that to which the assignment is to be made), any judge of any of the Circuit Courts for the counties, or any judge of the Supreme Bench of Baltimore City to sit in any case or cases or for a specified period as a judge of the Court of Appeals or of any intermediate court of appeal (as the case may be) in lieu of a judge of such Court. The Chief Judge of the Court of Appeals also may designate and assign, to sit as a judge of the Circuit Court for any county or the Supreme Bench of Baltimore City and of any other Court or Courts of Baltimore City which may be held by a judge of said Supreme Bench, either alone or with one or more other judges, in any case or cases or for a specified period, any judge of the Court of Appeals or of any intermediate court of appeal or of any other Circuit Court or of the Supreme Bench of Baltimore City. Any judge designated and assigned by the Chief Judge of the Court of Appeals pursuant to this section shall have all the power and authority pertaining to a judge of the Court to which he is so assigned; and his power and authority shall continue with respect to all cases (including any motions or other matters incidental thereto) which may come before him by virtue of such designation and assignment until his action thereon shall be completed. In the absence of the Chief Judge of the Court of Appeals the provisions of this section shall be applicable to the senior judge present in said Court of Appeals. The powers of the Chief Judge under the aforegoing provisions of this section shall be subject to such rules and regulations, if any, as the Court of Appeals may make. The Court of Appeals from time to time shall make rules and regulations to revise the practice and procedure in the appellate courts and in the other courts of this State, which shall have the force of law until rescinded, changed or modified by the Court of Appeals or otherwise by law. The power of the courts other than the Court of Appeals to make rules of practice and procedure shall be subject to the rules and regulations prescribed by the Court of Appeals or otherwise by law.

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Sec. 5.27. Administrative Functions of Chief Judges.

The chief judge of the Appellate Court shall assist the chief justice in the administration of the Appellate Court. The chief judge of the Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice. The chief judge of the District Court shall assist the chief judge of the Superior Court in the administration of the District Court.

Sec. 5.28. Clerks of Court.

The chief justice of the Supreme Court and the chief judges of the Appellate, Superior and District courts shall each appoint a chief clerk of his court who shall serve at the pleasure of the appointing judge. There shall be a clerk of the Superior Court in each county and of the District Court in each district. Their appointment and terms shall be governed by rule.

Sec. 5.29. Rule-Making Power.

Except as to matters specifically provided to be prescribed by rule the Supreme Court by rule, and the General Assembly by law shall have concurrent power to prescribe regulations governing practice and procedure in all courts, governing the admission of persons to practice law in this State and the discipline of persons so admitted, and governing administration of the courts, officers of the judicial branch and officers of the executive branch, to the extent that their duties directly relate to the enforcement of judicial orders. In the event a rule and a law prescribing a regulation of any of the three foregoing classes conflict, the rule, if adopted or readopted after the enactment of the law, shall take precedence over the prior law to the extent of the conflict. "Rule" as used in this Article means a rule adopted by the Supreme Court.

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Part III. Circuit Courts.	
Sec. 19. The State shall be divided into eight Judicial Circuits, in manner following, viz: the Counties of Worcester, Wicomico, Somerset, and Dorchester, shall constitute the First Circuit; the Counties of Caroline, Talbot, Queen Anne's, Kent and Cecil, the Second; the Counties of Baltimore and Harford, the Third; the Counties of Allegany, Garrett, and Washington, the Fourth; the Counties of Carroll, Howard and Anne Arundel, the Fifth; the Counties of Montgomery and Frederick, the Sixth; the Counties of Prince George's, Charles, Calvert, and St. Mary's, the Seventh; and Baltimore City, the Eighth.	**Section 5.07. Jurisdiction of Superior Court.** The Superior Court shall have original jurisdiction in all judicial proceedings, *except as otherwise prescribed by this Constitution* or by law, and shall have such other jurisdiction as is prescribed by law. Jurisdiction of the Superior Court shall be uniform throughout the State. **Section 5.08. Composition of Superior Court.** The Superior Court shall be composed of the number of judges prescribed by law and the number shall be allocated among the counties by law. There shall be at least one Superior Court judge resident in each county. See Sections 5.07-5.08, p. 349.
Sec. 20. A Court shall be held in each County of the State, to be styled the Circuit Court for the County, in which it may be held. The said Circuit Courts shall have and exercise, in the respective counties, all the power, authority and jurisdiction, original and appellate, which the present Circuit Courts of this State now have and exercise, or which may hereafter be prescribed by law. The several judges of the Circuit Court for Montgomery County on and after the Tuesday next after the first Monday in November, nineteen hundred and sixty-six, shall each, alternately and in rotation and on schedules to be established by the said judges, sit as an Orphan's Court for said County, and shall have and exercise all the power, authority and jurisdiction which the present Orphans' Courts now have and exercise, or which may hereafter be prescribed by law.	
Sec. 21. From and after January 1,1955, there shall be in the third, fourth, fifth, sixth and seventh circuits at least one judge for each county, who shall be a resident of the county in which he shall hold office, and who shall be elected by the voters thereof, to be styled judges of the Circuit Court, to be elected or appointed as herein provided. The number of judges for any of the circuits or for any of the counties, may be increased or decreased by the General Assembly from time to time, and any vacancy so created shall be filled as	For composition of the courts, see Section 5.08, p. 349. For eligibility for appointment of judges, see Section 5.13, p. 336. For nomination, appointment and tenure of judges, see Sections 5.14, 5.16-5.21, beginning at p. 340.

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provided in Section 5 of this Article except that in the third, fourth, fifth, sixth, and seventh judicial circuits there shall never be less than one judge for each county and in all of the circuits there shall never be less than four for each circuit. The senior judge in length of service shall be the chief judge of the circuit; the other judge or judges shall be associate judges. In the first and second judicial circuits no two of said judges of the Circuit Court shall at the time of their election or appointment, or during the term for which they may have been elected or appointed, reside in any one county, except in Cecil County wherein two said judges may reside at one time provided that each of the other counties within the second judicial circuit shall have at least one judge resident therein. In the first and second judicial circuits, in case any candidate or candidates for judge at any election shall receive sufficient votes to cause such candidate or candidates to be declared elected, but the election of such candidate or candidates would cause more judges than herein permitted to reside in any county of the circuit, then and in that event there shall be declared elected only that candidate or those candidates residing in said county, in the order of the votes received, whose election would provide the permitted number of judges from said county, and also the candidate or candidates residing in some other county, and not similarly disqualified, who shall have the next highest number of votes in said election. If, by reason of such a condition or by reason of an equal vote for two or more candidates a sufficient number of judges duly qualified as to residence shall not be elected at any election, then it shall be the duty of the Governor to order a new election for such unfilled office or offices. From and after December 1, 1954, there shall be not less than two judges resident in Anne Arundel County, and not less than three judges resident in Baltimore County. From and after December 1, 1960, there shall be not less than four judges resident in Prince George's County. From and after December 1, 1960, there shall be not less than five judges resident in Montgomery County. Notwithstanding any other provision of this Article the vacancy in Montgomery County created by the adoption of this	For compensation of judges, see Section 5.23, p. 345.

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amendment shall not be filled by appointment as provided in Section 5 of this Article, but at the first biennial general election for Representatives in Congress, after the adoption of this amendment a judge shall be elected by the qualified voters of Montgomery County to fill such vacancy in such county. Any other vacancy in the office of Judge of the Circuit Court for Montgomery County and any vacancy in the second judicial circuit shall be filled as provided in Sections 3 and 5 of this Article, except that the person initially appointed to fill the vacancy in the second judicial circuit shall be a resident of Kent County.	
The said judges shall hold such terms of the Circuit Court in each of the counties composing their respective circuits, at such times as are now prescribed or may hereafter be prescribed by rules or regulations by the Court of Appeals or otherwise by law. One judge in each of the first seven circuits shall constitute a quorum for the transaction of any business; and the said judges, or any of them, may hold special terms of their Courts, when in their discretion, the business of the several counties renders such terms necessary.	
All provisions of the Constitution of Maryland and all Acts of the General Assembly relating to the Court of Appeals or any other courts, and all rules heretofore adopted by the Court of Appeals, not inconsistent with the provisions of the sections amended or added by this amendment, shall remain in full force and effect unless and until amended or repealed by proper authority. All salaries now prescribed by law for associate judges of the Circuit Courts shall continue to apply to all judges (including chief judges) of the Circuit Court. No member of the General Assembly at which either of these amendments was proposed, or at which the number or salary of judges for any of the eight circuits or for any of the counties may be or may have been increased or decreased by the General Assembly from time to time, if otherwise qualified, shall be ineligible for appointment or election as judge of the Court of Appeals or any other court by reason of his membership in such General Assembly.	
In the event and to the extent of any inconsistency between the provisions of any section amended or added by these amend-	

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mends and any of the other provisions of this Constitution or the provisions of any existing law, the provisions of the sections amended or added shall prevail, and such other provisions shall be repealed or abrogated to the extent of such inconsistency, except Section 35A of Article III of this Constitution; provided, however, that in the event of any inconsistency between the provisions of the sections thus amended or added and any of the other provisions of the sections thus amended or added and any of the other provisions of this Constitution as amended by any other amendments which may be adopted at the same time or times as these amendments, i.e. at the election held in November, 1944, or at the election held in November, 1954, or at the election held in November, 1960, the changes made by these amendments and all such other amendments to this Constitution shall all be given effect.	
Sec. 22. Where any Term is held, or trial conducted by less than the whole number of said Circuit Judges, upon the decision, or determination of any point, or question, by the Court, it shall be competent to the party, against whom the ruling or decision is made, upon motion, to have the point, or question reserved for the consideration of the three Judges of the Circuit, who shall constitute a court in *banc* for such purpose; and the motion for such reservation shall be entered of record, during the sitting, at which such decision may be made; and the several Circuit Courts shall regulate, by rules, the mode and manner of presenting such points, or questions to the court in *banc,* and the decision of the said Court in *banc* shall be the effective decision in the premises, and conclusive, as against the party, at whose motion said points, or questions were reserved; but such decision in *banc* shall not preclude the right of Appeal, or writ of error to the adverse party, in those cases, civil or criminal, in which appeal, or writ of error to the Court of Appeals may be allowed by Law. The right of having questions reserved shall not, however, apply to trials of Appeals from judgments of Justices of the Peace, nor to criminal cases below the grade of felony, except when the punishment is confinement in the Penitentiary; and this Section shall be subject to such provisions as may hereafter be made by Law.	For administration of the courts, see Sections 5.26-5.29, beginning at p. 347.

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Sec. 23. The Judges of the respective Circuit Courts of this State, and of the Courts of Baltimore City, shall render their decisions, in all cases argued before them, or submitted for their judgment, within two months after the same shall have been so argued or submitted.	For administration of the courts, see Sections 5.26-5.29, beginning at p. 347.
Sec. 24. The salary of each Chief Judge and of each Associate Judge of the Circuit Court shall not be diminished during his continuance in office.	See Section 5.23, p. 345.
Sec. 25. There shall be a Clerk of the Circuit Court for each County, who shall be elected by a plurality of the qualified voters of said County, and shall hold his office for four years from the time of his election, and until his successor is elected and qualified, and be re-eligible, subject to be removed for wilful neglect of duty, or other misdemeanor in office, on conviction in a Court of Law. In case of a vacancy in the office of Clerk of a Circuit Court, the Judges of said Court shall have power to fill such vacancy until the general election for Delegates to the General Assembly, to be held next thereafter, when a successor shall be elected for the term of four years.	For administration of the courts, see Sections 5.26-5.29, beginning at p. 347.
Sec. 26. The said Clerks shall appoint, subject to the confirmation of the Judges of their respective Courts, as many deputies under them, as the said Judges shall deem necessary to perform, together with themselves, the duties of the said office, who shall be removable by the said Judges for incompetency, or neglect of duty, and whose compensation shall be according to existing, or future provisions of the General Assembly.	For administration of the courts, see Sections 5.26-5.29, beginning at p. 347.
Part IV. Courts of Baltimore City.	
Sec. 27. There shall be in the Eighth Judicial Circuit, six Courts, to be styled the Supreme Bench of Baltimore City, the Superior Court of Baltimore City, the Court of Common Pleas, the Baltimore City Court, the Circuit Court of Baltimore City and the Criminal Court of Baltimore.	See those provisions of the proposed constitution applicable to the Superior and District Courts.
Sec. 28. The Superior Court of Baltimore City, the Court of Common Pleas, and the Baltimore City Court shall, each, have concurrent jurisdiction in all civil common Law cases, and, concurrently, all the jurisdiction which the Superior Court of Balti-	See those provisions of the proposed constitution applicable to the Superior Court.

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more City and the Court of Common Pleas now have, except jurisdiction in Equity, and except in applications for the benefit of the Insolvent Laws of Maryland, and in cases of Appeal from judgements of Justices of the Peace in said city, whether civil or criminal, or arising under the ordinances of the Mayor and City Council of Baltimore, of all of which appeal cases the Baltimore City Court shall have exclusive jurisdiction; and the said Court of Common Pleas shall have exclusive jurisdiction in all applications for the benefit of the Insolvent Laws of Maryland, and the supervision and control of the Trustees thereof.	
Sec. 29. The Circuit Court of Baltimore City shall have exclusive jurisdiction in Equity within the limits of said city, and all such jurisdiction as the present Circuit Court of Baltimore City has; provided, the said Court shall not have jurisdiction in applications for the writ of *habeas corpus* in cases of persons charged with criminal offenses.	See those provisions of the proposed constitution applicable to the Superior Court.
Sec. 30. The Criminal Court of Baltimore shall have and exercise all the jurisdiction, now held and exercised by the Criminal Court of Baltimore, except in such Appeal Cases as are herein assigned to the Baltimore City Court.	See those provisions of the proposed constitution applicable to the Superior Court.
Sec. 31. There shall be elected by the legal and qualified voters of said City, at the election, hereinbefore provided for, one Chief Judge, and four Associate Judges, who, together, shall constitute the Supreme Bench of Baltimore City, and shall hold their offices for the term of fifteen years, subject to the provisions of this Constitution with regard to the election and qualifications of Judges, and their removal from office, and shall exercise the jurisdiction, hereinafter specified, and shall each receive an annual salary of three thousand five hundred dollars, payable quarterly, which shall not be diminished during their term of office; but authority is hereby given to the Mayor and City Council of Baltimore to pay to each of the said Judges an annual addition of five hundred dollars to their respective salaries; provided, that the same, being once granted, shall not be diminished, nor increased, during the continuance of said Judges in office.	See those provisions of the proposed constitution applicable to the Superior Court.
Sec. 31A. In addition to the authority granted to the Mayor and City Council of	See those provisions of the proposed constitution applicable to the Superior Court.

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Baltimore by the preceding section to pay to each of the Judges of the Supreme Bench the annual sum of five hundred dollars, authority is hereby given to said Mayor and City Council to pay to each of said Judges such further annual sum as an addition to their respective salaries as the Mayor and City Council of Baltimore shall from time to time deem right and proper, provided, that any such sum being once granted shall not be diminished during the continuance of said Judges in office.	
Sec. 32. It shall be the duty of the said Supreme Bench of Baltimore City, as soon as the Judges thereof shall be elected and duly qualified, and from time to time, to provide for the holding of each of the aforesaid Courts, by the assignment of one, or more of their number to each of the said Courts, who may sit either, separately, or together, in the trial of cases; and the said Supreme Bench of Baltimore City may, from time to time, change the said assignment, as circumstances may require, and the public interest may demand; and the Judge, or Judges, so assigned to the said several Courts, shall, when holding the same, have all the powers and exercise all the jurisdiction, which may belong to the Court so being held; and it shall also be the duty of the said Supreme Bench of Baltimore City, in case of the sickness, absence, or disability of any Judge or Judges, assigned as aforesaid, to provide for the hearing of the cases, or transaction of the business assigned to said Judge, or Judges, as aforesaid, before some one, or more of the Judges of said Court.	See those provisions of the proposed constitution applicable to the Superior Court.
Sec. 33. The said Supreme Bench of Baltimore City shall have power, and it shall be its duty, to provide for the holding of as many general Terms as the performance of its duties may require, such general Terms to be held by not less than three Judges; to make all needful rules and regulations for the conduct of business in each of the said Courts, during the session thereof, and in vacation, or in Chambers, before any of said Judges.	See those provisions of the proposed constitution applicable to the Superior Court.
Sec. 34. No appeal shall lie to the Supreme Bench of Baltimore City from the decision of the Judge, or Judges, holding the Baltimore City Court, in case of appeal from a Justice of the Peace; but the decision by said Judge, or Judges, shall be final; and	See those provisions of the proposed constitution applicable to the Superior Court.

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all writs and other process issued out of either of said Courts, requiring attestation, shall be attested in the name of the Chief Judge of the said Supreme Bench of Baltimore City.	
Sec. 35. Three of the Judges of said Supreme Bench of Baltimore City, shall constitute a quorum of said Court.	See those provisions of the proposed constitution applicable to the Superior Court.
Sec. 36. All causes depending, at the adoption of this Constitution, in the Superior Court of Baltimore City, the Court of Common Pleas, the Criminal Court of Baltimore, and the Circuit Court of Baltimore City shall be proceeded in, and prosecuted to final judgment, or decree, in the Courts, respectively, of the same name established by this Constitution, except cases belonging to that class, jurisdiction over which is by this Constitution transferred to the Baltimore City Court, all of which shall, together with all cases now pending in the City Court of Baltimore, be proceeded in, and prosecuted to final judgment in said Baltimore City Court.	See those provisions of the proposed constitution applicable to the Superior Court.
Sec. 37. There shall be a Clerk of each of the said Courts of Baltimore City, except the Supreme Bench, who shall be elected by the legal and qualified voters of said City, at the election to be held in said City on the Tuesday next after the First Monday of November, in the year nineteen hundred and fifty-eight, and shall hold his office for four years from the time of his election, and until his successor is elected and qualified, and be re-eligible thereto, subject to be removed for willful neglect of duty, or other misdemeanor in office, on conviction in a Court of Law. The salary of each of the said Clerks shall be payable as provided in Section 45 of Article 3 of this Constitution, and they shall be entitled to no other perquisites, or compensation. In case of a vacancy in the office of Clerk of any of said Courts, the Judges of said Supreme Bench of Baltimore City shall have power to fill such vacancy until the general election of Delegates to the General Assembly, to be held next thereafter, when a Clerk of said Court shall be elected to serve for four years thereafter; and the provisions of this Article in relation to the appointment of Deputies by the Clerks of the Circuit Courts in the Counties shall apply to the Clerks of the Courts in Baltimore City.	See those provisions of the proposed constitution applicable to the Superior Court.

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Sec. 38. The Clerk of the Court of Common Pleas shall have authority to issue within said city, all marriage and other licenses required by Law, subject to such provisions as are now, or may be prescribed by Law. The Clerk of the Superior Court of said city shall receive and record all Deeds, Conveyances, and other papers, which are, or may be required by Law, to be recorded in said City. He shall also have custody of all papers connected with the proceedings on the Law, or Equity side of Baltimore County Court, and of the Dockets thereof, so far as the same have relation to the City of Baltimore, and shall also discharge the duties of Clerk to the Supreme Bench of Baltimore City, unless otherwise provided by Law.	See those provisions of the proposed constitution applicable to the Superior Court.
Sec. 39. The General Assembly shall, as often, as it may think the same proper and expedient, provide by Law for the election of an additional Judge of the Supreme Bench of Baltimore City, and whenever provision is so made by the General Assembly, there shall be elected by the voters of said City another Judge of the Supreme Bench of Baltimore City, who shall be subject to the same constitutional provisions, hold his office for the same term of years, receive the same compensation and have the same powers as are, or shall be provided by the Constitution, or Laws of this State, for the Judges of said Supreme Bench of Baltimore City, and the General Assembly may provide by Laws, or the Supreme Bench by its rules, for requiring causes in any of the Courts of Baltimore City to be tried before the Court without a jury, unless the litigants or some one of them shall within such reasonable time or times as may be prescribed, elect to have their causes tried before a jury. And the General Assembly may reapportion, change or enlarge the jurisdiction of the several Courts in said City.	See those provisions of the proposed constitution applicable to the Superior Court.
Part V. Orphans' Court.	
Sec. 40. The qualified voters of the City of Baltimore, and of the several Counties, except Montgomery County, shall on the Tuesday next after the first Monday in November, (nineteen hundred and fifty-eight) nineteen hundred and sixty-six, and on the same day in every fourth year thereafter, elect three men to be Judges of	See those provisions of the proposed constitution applicable to the Superior Court.

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the Orphans' Courts of said City and Counties, respectively, who shall be citizens of the State, and residents for the twelve months preceding, in the City, or County, for which they may be elected. They shall have all the powers now vested in the Orphans' Courts of the State, subject to such changes as the Legislature may prescribe. Each of said Judges shall be paid such compensation as may be regulated by Law, and to be paid by the said City, or Counties, respectively. In case of a vacancy in the office of Judge of the Orphans' Court, the Governor shall appoint, subject to confirmation, or rejection by the Senate, some suitable person to fill the same for the residue of the term.	
Sec. 41. There shall be a Register of Wills in each county of the State, and the City of Baltimore, to be elected by the legal and qualified voters of said counties and city, respectively, who shall hold his office for four years from the time of his election, and until his successor is elected and qualified; he shall be re-eligible, and subject at all times to removal for willful neglect of duty, or misdemeanor in office in the same manner that the Clerks of the Courts are removable. In the event of any vacancy in the office of the Register of Wills, said vacancy shall be filled by the Judges of the Orphans' Court, in which such vacancy occurs, until the next general election for Delegates to the General Assembly when a Register shall be elected to serve for four years thereafter.	See those provisions of the proposed constitution applicable to the Superior Court.
Part V-A. People's Courts.	
Sec. 41A. There is hereby created a People's Court of Baltimore City. Said Court shall consist originally of a Chief Judge and two Associate Judges; the number of such Judges may thereafter be increased or decreased by the General Assembly by Law but no such decrease shall affect the term of any Judge then in office or his right to stand for election for further terms as hereinafter provided. The Judges of said Court shall have the qualifications prescribed by Section 2 of this Article and shall have practiced Law in the City of Baltimore for a total period of at least five years; shall hold office subject to the provisions of Sections 3 and 4 of this Article with regard to retirement and removal from office; and	See those provisions of the proposed constitution applicable to the District Court.

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shall receive from the Mayor and City Council of Baltimore City such compensation as shall be fixed by Law by the General Assembly, which shall not be diminished during continuance in office.	
The Governor shall appoint to said Court, to take office on the first Monday of May, 1941, one Associate Judge for a term expiring December 31, 1942, one Associate Judge for a term expiring December 31, 1944, and a Chief Judge for a term expiring December 31, 1946; and, upon the creation of any additional office on said Court by increase in the number of Judges pursuant to this Section, shall appoint an Associate Judge for such term, not exceeding eight years and expiring on the thirty-first day of December immediately following a Congressional election, as the Law creating such office shall prescribe. If any vacancy occurs during any such original term, the Governor shall appoint a successor to serve for the remainder of such term. After the expiration of said original terms, the terms of office of said Court shall be for eight years from the expiration of the preceding term, and shall be filled as follows:	
(1) Any incumbent Judge of said Court shall be eligible, at the Congressional election immediately preceding the expiration of his period of appointment or term, for election or re-election to succeed himself (a) for a full term of eight years, except as provided in (b) hereof; or (b) for the unexpired remainder of the current eight year term, if his appointment will expire before the end of such term. Any qualified person including an incumbent Judge shall be eligible for election to said Court. Provided, however, that any Judge who is in office when this act takes effect shall be entitled to have his name placed upon the ballot with no party designation and with no opposing candidate; and the voters shall cast their votes for or against the continuation in office of said Judge.	
(2) Whenever a vacancy shall occur on said Court from any cause the Governor shall appoint to said Court a Judge who shall hold office under such appointment until the thirty-first day of December immediately following the first Congressional election occurring six months or more after the date of his appointment. No Judge of said Court, who has stood for election to succeed himself, and not been elected, shall thereafter	

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be appointed to said Court, and no Judge of said Court, who has failed to stand for election when eligible, shall be appointed to succeed himself. (3) In order to qualify for election or re-election all candidates shall file with the Supervisors of Elections of Baltimore City not later than thirty days before the date of the applicable election a certificate of candidacy in a form to be supplied by the Supervisors. Unless his office shall have been abolished pursuant to this section, each Judge of said Court shall continue to hold office after the expiration of his period of appointment or term until a successor shall qualify. As used in this section, "Congressional election" means any of the biennial elections at which members of the House of Representatives are regularly chosen. Said Court shall have such jurisdiction (which may be made exclusive as to any class or classes of civil cases in Baltimore City), with such right of appeal, therefrom, and the Chief Judge and Associate Judges thereof shall have such powers and duties, as the General Assembly shall prescribe from time to time by Law. The Judges of said Court shall have full power to regulate by rules the administration, procedure and practice of said Court; such rules shall have the force of law until rescinded or modified by said Judges or the General Assembly. Unless otherwise provided by Law, (1) all powers granted by this section or by Law to said Court or the Judges thereof as a body may be exercised by a majority of the Judges thereof, and (2) said Court shall not be a Court of Record. There shall be a Chief Constable of said Court, who shall perform therein the duties prescribed for Clerks of Court by Section 10 of this Article and such other duties as shall be prescribed by Law or by rule of said Court. Such Chief Constable shall be appointed, in the manner hereinafter prescribed, by the Judges of said Court; and such Chief Constable shall appoint, in the manner hereinafter prescribed, all original, subsequent and additional constables and clerks employed pursuant to this section, and shall supervise and direct the work of all such constables and clerks. There shall be appointed originally fourteen such constables and sixteen such clerks; the number of either may, on the joint recommendation	

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of said Court and said Chief Constable, be increased by the Mayor and City Council of Baltimore City; no vacancy in the position of any constable or clerk, however arising, shall be filled by said Chief Constable unless the Judges of said Court and said Chief Constable shall expressly find that the filling of such vacancy is necessary for the efficient operation of said Court. The positions of said Chief Constable and of all such constables and clerks shall be positions in the Classified City Service of Baltimore and the provisions of the Charter of said City with respect to said City Service are hereby expressly made applicable thereto, provided that, the Chief Constable at the time this amendment becomes effective shall continue and remain in said position and immediately become a member of said Classified City Service of Baltimore; all such positions shall be classified by the City Service Commission and all appointments, promotions, transfers, reinstatements, and removals with respect to such positions shall be made only in accordance with the provisions, rules and regulations of said Classified City Service in force from time to time. Such Chief Constable and all of such other constables and all such clerks shall receive from the Mayor and City Council of Baltimore City such compensation as said Mayor and City Council shall prescribe. Such constables and clerks shall perform such duties as may now or hereafter be prescribed by Law or rule of Court. After adoption of this section no constable shall be appointed by the Mayor and City Council of Baltimore City pursuant to Section 42 or Section 43 of this Article IV, but constables in office upon the adoption of this section shall hold office for the remainder of their terms, and the constables first appointed under this section shall take office at the expiration of such terms.	
Sec. 41B. The General Assembly shall have power by Law to establish a People's Court in any county, or any part thereof, incorporated city or town in this State, except Baltimore City, and to prescribe and from time to time to alter (1) the number, qualifications, tenure, and method of selection of the Judges of any such Court, and their powers, duties and compensation, except that the term of office or compensation of any Judge shall not be reduced during his continuance in office; (2) the	**See those provisions of the proposed constitution applicable to the District Court.**

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jurisdiction of any such Court (which may be made exclusive as to any class or classes of civil cases in such county, or any part thereof, city or town) and the right of appeal therefrom; (3) the number, qualifications, tenure, method of selection, duties, and compensation of all constables, clerks or other employees for such Court; and (4) all other matters relating to such Court. After adoption of this Section the Governor shall not be required to appoint any particular number of Justices of the Peoce in any county or in any of the several election districts of the counties as now provided in Section 42 of the Constitution.	
Part V-B. Municipal Court.	
Sec. 41C. (a) There is hereby created a Municipal Court of Baltimore City. Said Court shall consist originally of eleven Judges; the number of such Judges may thereafter be increased or decreased by the General Assembly by Law, but no such decrease shall affect the term of any Judge then in office or his right to stand for election for further terms as hereinafter provided. The Judges of said Court shall have the qualifications prescribed by Section 2 of this Article, shall each have practiced law in the City of Baltimore for a total period of at least five years and shall devote their full time to the duties of said Court; they shall hold office subject to the provisions of Sections 3 and 4 of this Article with regard to retirement and removal from office; and they shall receive such compensation from such sources as shall be provided by Law by the General Assembly, which shall not be diminished during their continuance in office. Authority is hereby given to the Mayor and City Council of Baltimore to pay to each of the Judges of the Court herein created such annual sum as an addition to their respective salaries as the Mayor and City Council of Baltimore shall from time to time deem right and proper, provided that any such sum, being once granted, shall not be diminished during the continuance of said Judges in office.	See those provisions of the proposed constitution applicable to the District Court.
(b) The Governor shall appoint to said Court, to take office on the first Monday of May, 1961, four Associate Judges for a term expiring December 31, 1962; four Associate Judges for a term expiring December 31, 1964; and three Associate Judges, one of whom shall be designated Chief Judge, for a	

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term expiring December 31, 1966; and upon the creation of any additional office in said Court by increase in the number of Judges pursuant to this section, the Governor shall appoint an Associate Judge for a term expiring on the thirty-first day of December in the year of the first biennial general election for Representatives in Congress after one year from the effective date of the legislation creating the additional office. If any vacancy occurs during any such original term, the Governor shall appoint a successor to serve for the remainder of such term. After the expiration of said original terms, the terms of office of said Court shall be for ten years from the expiration of the preceding term, and shall be filled as follows: (1) Any qualified person, including an incumbent Judge holding office by any such initial or subsequent appointment or election, shall be eligible for election for a term of ten years, at the biennial election for Representatives in Congress immediately preceding the expiration of a term of office. (2) Whenever a vacancy shall occur in said Court (other than in an original term or other than upon expiration of a term), for any cause, the Governor shall appoint to said Court a Judge who shall hold office under such appointment until the thirty-first day of December immediately following the first Congressional election occurring at least one year after the date of his appointment. (3) In order to qualify for election or re-election a candidate shall file a certificate of candidacy with the Supervisors of Elections of Baltimore City not later than midnight of the day which is ten weeks or seventy days prior to the day on which the primary election should be held. (4) The names of all candidates for judge of the Municipal Court created herein shall be placed in the voting machines without any party label or other distinguishing mark or location which might directly or indirectly indicate the party affiliation of any such candidate. (5) When a vacancy shall exist in the Chief Judgeship of said Court, the Governor may designate an Associate Judge of said Court as Chief Judge, and such appointee as Chief Judge shall continue as such for the residue of the term for which he was originally appointed or subsequently elected	

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an Associate Judge of said Court; or the Governor may designate as Chief Judge the person appointed to fill the vacancy on said Court under sub-section (b) (2) herein.	
(c) The jurisdiction of said Court shall consist originally of the jurisdiction vested on the day immediately preceding the first Monday of May, 1961, in the Justices of the Peace of Baltimore City, including the Police Magistrates, the Chief Police Magistrate of Baltimore City, the Magistrates-at-Large of Baltimore City, and the Traffic Court of Baltimore City, and thereafter shall consist of such greater or lesser jurisdiction (which may be made exclusive as to any class or classes of cases), with such right of appeal therefrom, as the General Assembly shall prescribe from time to time by Law. The Chief Judge and the Associate Judges thereof shall have such powers and duties as the General Assembly shall prescribe from time to time by Law. The Judges of said Court shall have full power to regulate by rules the administration, procedure and practice of said Court, including, but not limited to, the creation of divisions of said Court to hear exclusively any class or classes of cases and the assignment of a particular judge or judges exclusively to such divisions and the vesting of administrative duties in the Chief Judge; such rules shall have the force of Law until rescinded or modified by said Judges or the General Assembly. Unless otherwise provided by Law, all powers granted by this section or by Law to said Court or the Judges thereof as a body may be exercised by a majority of the Judges thereof. Said Court shall not be a Court of Record.	
(d) There shall be a Chief Clerk of said Court who shall be appointed by said Court and who shall perform such duties as may be prescribed from time to time by said Court or by Law by the General Assembly. He shall be paid such compensation from such sources as the General Assembly shall prescribe from time to time by Law. There shall be such deputy and assistant clerks, clerical, probationary, stenographic and other employees as may be prescribed from time to time by the General Assembly by Law and such Law shall prescribe the method of selection, amount and manner of compensation and tenure of such employees and that such employees and the Chief Clerk shall be or become members of the	

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Classified City Service of Baltimore or the Classified Service of the State or another classified service or merit system which may be hereafter established. Such employees shall perform such duties as may be prescribed from time to time by said Court or by Law by the General Assembly. The employees of the Traffic Court of Baltimore City shall be transferred from the Traffic Court to the Municipal Court, as of the first Monday in May, 1961.

(e) After the day immediately preceding the first Monday in May, 1961, no Justice of the Peace of Baltimore City, including the Police Magistrates of Baltimore City, the Chief Police Magistrate of Baltimore City, the Magistrates-at-Large for Baltimore City, the Magistrates of the Traffic Court of Baltimore City, and the Chief Magistrate of the Traffic Court of Baltimore City, shall exercise any of the jurisdiction, or have any of the powers or duties conferred on the Court herein created.

(f) No member of the General Assembly at which this amendment is proposed, if otherwise qualified, shall be ineligible for appointment or election as judge of the Municipal Court of Baltimore City by reason of his membership in such General Assembly.

Part VI. Justices of the Peace.

Sec. 42. The Governor, by and with the advice and consent of the Senate, shall appoint such number of Justices of the Peace, and the County Commissioners of the several counties, and the Mayor and City Council of Baltimore, respectively, shall appoint such number of Constables, for the several Election Districts of the Counties, and Wards of the City of Baltimore, as are now, or may hereafter be prescribed by Law; and Justices of the Peace and Constables, so appointed, shall be subject to removal by the Judge, or Judges having criminal jurisdiction in the county, or city, for incompetency, wilful neglect of duty, or misdemeanor in office, on conviction in a Court of Law. The Justices of the Peace and Constables, so appointed, and commissioned, shall be Conservators of the Peace, shall hold their office for two years, and shall have such jurisdiction, duties and compensation, subject to such right of appeal, in all cases, from the judgment of Justices of

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Section 5.09. Jurisdiction of District Court.

The District Court shall have the original jurisdiction prescribed by law. Jurisdiction of the District Court shall be uniform throughout the State.

Section 5.10. Composition of District Court.

The District Court shall be composed of the number of judges prescribed by law. The State shall be divided by law into districts. Each district shall be composed of one or more entire and adjoining counties. There shall be at least one District Court judge resident in each district.

Section 5.11. Commissioners.

There may be commissioners of the District Court in the number and with the qualifications prescribed by rule. Commissioners in a district shall be appointed by and serve at the pleasure of that judge of the District Court who shall be desig-

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the Peace, as hath been heretofore exercised, or shall be hereafter prescribed by Law.	nated by rule to appoint commissioners therein. Commissioners may exercise powers only with respect to arrest, bail, collateral and incarceration pending hearing, and then only as may be prescribed by rule.
Sec. 43. In the event of a vacancy in the office of a Justice of the Peace, the Governor shall appoint a person to serve, as Justice of the Peace, for the residue of the term; and in case of a vacancy in the office of Constable, the County Commissioners of the county in which the vacancy occurs, or the Mayor and City Council of Baltimore, as the case may be, shall appoint a person to serve as Constable for the residue of the term.	For eligibility for appointment of judges, see Section 5.13, p. 336. For nomination, appointment and tenure of judges, see Sections 5.14, 5.16-5.21, beginning at p. 340. For administration of the courts, see Sections 5.26-5.29, beginning at p. 347.
Part VII. Sheriffs.	
Sec. 44. There shall be elected in each county and in Baltimore City in the year 1946 and in every fourth year thereafter, one person, resident in said county, or City, above the age of twenty-five years and at least five years preceding his election, a citizen of the State, to the office of Sheriff. He shall hold office for four years, and until his successor is duly elected and qualified; shall give such bond, exercise such powers and perform such duties as now are or may hereafter be fixed by Law. In case of vacancy by death, resignation, refusal to serve, or neglect to qualify, or give bond, or by disqualification or removal from the County or City, the Governor shall appoint a person to be Sheriff for the remainder of the official term. The Sheriff in each county and in Baltimore City shall receive such salary or compensation and such expenses necessary to the conduct of his office as may be fixed by Law. All fees collected by the Sheriff shall be accounted for and paid to the Treasury of the several counties and of Baltimore City, respectively.	For administration of the courts, see Sections 5.26-5.29, beginning at p. 347.
Sec. 45. Coroners, Elisors, and Notaries Public may be appointed for each county, and the City of Baltimore, in the manner, for the purpose, and with the powers now fixed, or which may hereafter be prescribed by Law.	
ARTICLE V. ATTORNEY GENERAL AND STATE'S ATTORNEYS.	
Attorney General.	
Section 1. There shall be an Attorney General elected by the qualified voters of	

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the State, on general ticket, on the Tuesday next after the first Monday in the month of November, nineteen hundred and fifty-eight, and on the same day, in every fourth year thereafter, who shall hold his office for four years from the time of his election and qualification, and until his successor is elected and qualified, and shall be re-eligible thereto, and shall be subject to removal for incompetency, willful neglect of duty or misdemeanor in office, on conviction in a Court of Law.	
Sec. 2. All elections for Attorney General shall be certified to, and returns made thereof by the Clerks of the Circuit Courts for the several counties, and the Clerk of the Superior Court of Baltimore City, to the Governor of the State, whose duty it shall be to decide on the election and qualification of the person returned; and in case of a tie between two or more persons, to designate which of said persons shall qualify as Attorney General, and to administer the oath of office to the person elected.	
Sec. 3. It shall be the duty of the Attorney General to prosecute and defend on the part of the State all cases, which at the time of his appointment and qualification and which thereafter may be depending in the Court of Appeals and the intermediate courts of appeal, or in the Supreme Court of the United States, by or against the State, or wherein the State may be interested; and he shall give his opinion in writing whenever required by the General Assembly or either Branch thereof, the Governor, the Comptroller, the Treasurer, or any State's Attorney, on any legal matter or subject depending before them, or either of them; and when required by the Governor or General Assembly, he shall aid any State's Attorney in prosecuting any suit or action brought by the State in any Court of this State, and he shall commence and prosecute or defend any suit or action in any of said Courts, on the part of the State, which the General Assembly, or the Governor, acting according to law, shall direct to be commenced, prosecuted or defended, and he shall have and perform such other duties and shall appoint such number of deputies or assistants as the General Assembly may from time to time by law prescribe: And he shall receive for his service an annual salary of three thousand dollars, or such annual	

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salary as the General Assembly may from time to time by law prescribe: but he shall not be entitled to receive any fees, perquisites or rewards whatever, in addition to the salary aforesaid, for the performance of any official duty; nor shall the Governor employ any additional Counsel, in any Case whatever, unless authorized by the General Assembly.

Sec. 4. No person shall be eligible to the office of Attorney General, who is not a citizen of this State, and a qualified voter therein, and has not resided and practiced Law in this State for at least ten years.

Sec. 5. In case of vacancy in the office of Attorney General, occasioned by death, resignation, removal from the State, or from office, or other disqualification, the said vacancy shall be filled by the Governor, for the residue of the term thus made vacant.

Sec. 6. It shall be the duty of the Clerk of the Court of Appeals and the Clerks of any intermediate courts of appeal and of the Commissioner of the Land Office, respectively, whenever a case shall be brought into said Courts, or office, in which the State is a party, or has interest, immediately to notify the Attorney General thereof.

The State's Attorneys.

Sec. 7. There shall be an Attorney for the State in each county, and the City of Baltimore, to be styled "The State's Attorney," who shall be elected by the voters thereof, respectively, on the Tuesday next after the first Monday of November, in the year, nineteen hundred and fifty-eight, and on the same day every fourth year thereafter; and shall hold his office for four years from the first Monday in January next ensuing his election, and until his successor shall be elected and qualified; and shall be re-eligible thereto, and be subject to removal therefrom, for incompetency, willful neglect of duty, or misdemeanor in office, on conviction in a Court of Law, or by a vote of two-thirds of the Senate, on the recommendation of the Attorney General.

Sec. 8. All elections for the State's Attorney shall be certified to, and Returns made thereof, by the Clerks of the said counties and city, to the Judges thereof, having criminal jurisdiction, respectively, whose duty it shall be to decide upon the elections and qualifications of the Persons

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returned; and, in case of a tie between two or more Persons, to designate which of said Persons shall qualify as State's Attorney, and to administer the oaths of office to the Person elected.	
Sec. 9. The State's Attorney shall perform such duties and receive such salary as shall be prescribed by Law; and if any State's Attorney shall receive any other fee or reward than such as is or may be allowed by Law, he shall, on conviction thereof, be removed from office; provided, that the State's Attorney for Baltimore City shall have the power to appoint a Deputy and such other Assistants as the Supreme Bench of Baltimore City may authorize or approve and until otherwise provided by the General Assembly, the said State's Attorney, Deputy and Assistants shall receive the following annual salaries: State's Attorney, seven thousand five hundred dollars; Deputy State's Attorney, five thousand dollars; Assistant State's Attorneys, four thousand dollars each; said salaries, or such salaries as the General Assembly may subsequently provide, and such expenses for conducting the office of the State's Attorney as the Supreme Bench of Baltimore City may authorize or approve shall be paid by the Mayor and City Council of Baltimore to the extent that the total of them exceeds the fees of his office, or as the General Assembly shall otherwise provide, and the Mayor and City Council of Baltimore shall not be liable for appearance fees to the State's Attorney.	
Sec. 10. No person shall be eligible to the office of State's Attorney, who has not been admitted to practice Law in this State, and who has not resided, for at least two years, in the county, or city, in which he may be elected.	
Sec. 11. In case of a vacancy in the office of State's Attorney, or, of his removal from the county, or city in which he shall have been elected, or on his conviction as herein specified, the said vacancy shall be filled by the Judge or Judges resident in the county or, if there be no resident Judge, the Judge or Judges having jurisdiction in the Circuit Court of the county in which the vacancy occurs, or by the Supreme Bench of Baltimore City for a vacancy occurring in Baltimore City, for the residue of the term thus made vacant.	

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Sec. 12. The State's Attorney in each County, and the City of Baltimore, shall have authority to collect, and give receipt, in the name of the State, for such sums of money as may be collected by him, and forthwith make return of and pay over the same to the proper accounting officer. And the State's Attorney of each county, and the City of Baltimore, before he shall enter on the discharge of his duties, and from time to time thereafter, shall give such corporate surety bond as may hereafter be prescribed by Act of the General Assembly.	
ARTICLE VI. ***TREASURY DEPARTMENT.***	
Section 1. There shall be a Treasury Department, consisting of a Comptroller chosen by the qualified electors of the State, at each general election at which the Governor is chosen, who shall receive such salary as may be fixed by Law; and a Treasurer, to be appointed by the two Houses of the Legislature, at each regular session thereof, in which begins the term of the Governor, on joint ballot, who shall receive such salary as may be fixed by Law; and the terms of office of the said Comptroller and Treasurer shall be for four years, and until their successors shall qualify; and neither of the said officers shall be allowed, or receive any fees, commissions or perquisites of any kind in addition to his salary for the performance of any duty or services whatsoever. In case of a vacancy in either of the offices by death or otherwise, the Governor, by and with the advice and consent of the Senate, shall fill such vacancy by appointment, to continue until another election or a choice by the Legislature, as the case may be, and until the qualification of the successor. The Comptroller and the Treasurer shall keep their offices at the seat of government, and shall take such oath, and enter into such bonds for the faithful discharge of their duties as are now, or may hereafter be prescribed by Law.	
Sec. 2. The Comptroller shall have the general superintendence of the fiscal affairs of the State; he shall digest and prepare plans for the improvement and management of the revenue, and for the support of the public credit; prepare and report estimates of the revenue and expenditures of the State; superintend and enforce the prompt collection of all taxes and revenue; adjust and	

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settle, on terms prescribed by Law, with delinquent collectors and receivers of taxes and State revenue; preserve all public accounts; and decide on the forms of keeping and stating accounts. He, or such of his deputies as may be authorized to do so by the Legislature, shall grant, under regulations prescribed by Law, all warrants for money to be paid out of the Treasury, in pursuance of appropriations by Law, and countersign all checks drawn by the Treasurer upon any bank or banks in which the moneys of the State, may, from time to time, be deposited. He shall prescribe the formalities of the transfer of stock, or other evidence of the State debt, and countersign the same, without which such evidence shall not be valid; he shall make to the General Assembly full reports of all his proceedings, and of the state of the Treasury Department within ten days after the commencement of each session; and perform such other duties as shall be prescribed by Law.	
Sec. 3. The Treasurer shall receive the moneys of the State, and, until otherwise prescribed by Law, deposit them, as soon as received, to the credit of the State, in such bank or banks as he may, from time to time, with the approval of the Governor, select (the said bank or banks giving security, satisfactory to the Governor, for the safekeeping and forthcoming, when required of said deposits), and he or such of his deputies as may be authorized to do so by the Legislature shall disburse the same for the purposes of the State according to Law, upon warrants drawn by the Comptroller, or his duly authorized deputy, and on checks countersigned by the Comptroller, or his duly authorized deputy, and not otherwise. The Treasurer or such of his deputies as may be authorized to do so by the Legislature shall take receipts for all moneys paid from the Treasury Department; and receipt for moneys received by him shall be endorsed upon warrants signed, by the Comptroller, or such deputy as may be authorized to do so by Law, without which warrants, so signed, no acknowledgment of money received into the Treasury shall be valid; and upon warrants issued by the Comptroller, or his duly authorized deputy, the Treasurer shall make arrangements for the payment of the interest of the public debt, and for the purchase thereof, on account of the sinking fund. Every bond,	

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certificate, or other evidence of the debt of the State shall be signed by the Treasurer, Chief Deputy Treasurer, or a Deputy Treasurer, and countersigned by the Comptroller, Chief Deputy Comptroller, or a Deputy Comptroller; and no new certificate or other evidence intended to replace another shall be issued until the old one shall be delivered to the Treasurer, and authority executed in due form for the transfer of the same filed in his office, and the transfer accordingly made on the books thereof, and the certificate or other evidence cancelled; but the Legislature may make provisions for the loss of certificates, or other evidences of the debt; and may prescribe, by Law, the manner in which the Treasurer shall receive and keep the moneys of the State.	
Sec. 4. The Treasurer shall render his Accounts, quarterly, to the Comptroller; and shall publish, monthly, in such newspapers as the Governor may direct, an abstract thereof, showing the amount of cash on hand, and the place, or places of deposit thereof; and on the third day of each regular session of the legislature, he shall submit to the Senate and House of Delegates fair and accurate copies of all Accounts by him, from time to time, rendered and settled with the Comptroller. He shall, at all times, submit to the Comptroller the inspection of the money in his hands, and perform all other duties that shall be prescribed by Law.	
Sec. 5. The Comptroller shall qualify, and enter on the duties of his office, on the third Monday of January next succeeding the time of his election, or as soon thereafter as practicable. And the Treasurer shall qualify within one month after his appointment by the Legislature.	
Sec. 6. Whenever during the recess of the Legislature charges shall be preferred to the Governor against the Comptroller or Treasurer, for incompetency, malfeasance in office, wilful neglect of duty, or misappropriation of the funds of the State, it shall be the duty of the Governor forthwith to notify the party so charged, and fix a day for a hearing of said charges; and if, from the evidence taken, under oath, on said hearing before the Governor, the said allegations shall be sustained, it shall be the duty of the Governor to remove said offend-	

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ing officer, and appoint another in his place, who shall hold the office for the unexpired term of the officer so removed.	
ARTICLE VII. SUNDRY OFFICERS.	
Section 1. County Commissioners shall be elected on general ticket of each county by the qualified voters of the several counties of the State on the Tuesday next after the first Monday in the month of November, commencing in the year nineteen hundred and fifty-eight; their number in each county, their compensation, powers and duties shall be such as now or may be hereafter prescribed by Law; they shall be elected at such times, in such numbers and for such periods, not exceeding four years, as may be prescribed by Law.	
Sec. 2. The qualified voters of each County, and of the City of Baltimore, shall, on the Tuesday next after the first Monday in the month of November, in the year nineteen hundred and fifty-eight, and on the same day in every fourth year thereafter, elect a Surveyor for each County and the City of Baltimore, respectively, whose term of office shall commence on the first Monday of January next ensuing their election, and whose duties and compensation shall be the same as are now or may hereafter be prescribed by Law. And any vacancy in the office of Surveyor, shall be filled by the Commissioners of the counties, or by the Mayor and City Council of Baltimore, respectively, for the residue of the term.	
Sec. 3. The State Librarian shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall hold his office during the term of the Governor, by whom he shall have been appointed, and until his successor shall be appointed and qualified. His salary shall be fifteen hundred dollars a year; and he shall perform such duties as are now, or may hereafter be prescribed by Law; and no appropriation shall be made by Law, to pay for any Clerk, or assistant to the Librarian. And it shall be the duty of the Legislature, at its first Session after the adoption of this Constitution, to pass a Law regulating the mode and manner in which the Books in the Library shall be kept and accounted for by the Librarian, and requiring the Librarian to give a Bond, in such penalty as the	

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Legislature may prescribe, for the proper discharge of his duties. The office of the State Librarian shall be abolished as of the end of the term of the present incumbent.	
Sec. 4. There shall be a Commissioner of the Land Office, who shall be appointed by the Governor, by and with the advice and consent of the Senate, who shall hold his office during the term of the Governor, by whom he shall have been appointed, and until his successor shall be appointed and qualified. He shall perform such duties as are now required of the Commissioner of the Land Office, or such as may hereafter be prescribed by Law, and shall also be the Keeper of the Chancery Records. He shall receive a salary of one thousand five hundred dollars per annum, to be paid out of the Treasury, and shall charge such fees as are now, or may be hereafter fixed by Law. He shall make a semi-annual report of all the fees of his office, both as Commissioner of the Land Office, and as Keeper of the Chancery Records, to the Comptroller of the Treasury, and shall pay the same semi-annually into the Treasury. The office of the Commissioner of the Land Office shall be abolished at the end of the term of the present incumbent.	
Sec. 5. The Commissioner of the Land Office shall also, without additional compensation, collect, arrange, classify, have charge of, and safely keep all Papers, Records, Relics, and other Memorials connected with the Early History of Maryland, not belonging to any other office.	
Sec. 6. Vacant.	
ARTICLE VIII. EDUCATION.	
Section 1. The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.	**Section 8.03. Public Education.** The State shall provide by law for a statewide system of free public schools sufficient for the education of, and open to, all children of school age, and shall also provide for such other public educational institutions as may be desirable for the intellectual, cultural and occupational development of the people of this State.
Sec. 2. The System of Public Schools, as now constituted, shall remain in force until the end of the said First Session of the General Assembly, and shall then expire; except so far as adopted, or continued, by the General Assembly.	**Section 8.04. Higher Education.** The University of Maryland shall be managed by the regents of the University of Maryland in accordance with law, and the regents shall have exclusive general supervision of the institution and the control and direction of all expenditures from
Sec. 3. The School Fund of the State shall be kept inviolate, and appropriated only to the purposes of Education.	

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	the institution's funds. The governing boards of the state colleges and other state institutions of higher education shall formulate policies for their respective institutions and shall by law be granted such additional powers of supervision, direction and control of their respective institutions and institutional funds as may be feasible and consistent with their status as public agencies.
ARTICLE IX. MILITIA AND MILITARY AFFAIRS.	
Section 1. The General Assembly shall make, from time to time, such provisions for organizing, equipping and disciplining the Militia, as the exigency may require, and pass such Laws to promote Volunteer Militia Organizations as may afford them effectual encouragement.	**Section 8.05. Militia.** The General Assembly may provide by law for a militia. The governor shall be its commander-in-chief and shall appoint its officers. The governor may call out the militia to repel invasions, suppress insurrections, and enforce the execution of the laws. The military power of the State shall be and remain subject to civil control at all times, and only members of the militia when in actual service may be subject to trial by a military court of this State.
Sec. 2. There shall be an Adjutant General, appointed by the Governor, by and with the advice and consent of the Senate. He shall hold his office until the appointment and qualification of his successor, or until removed in pursuance of the sentence of a Court Martial. He shall perform such duties, and receive such compensation, or emoluments, as are now, or may be prescribed by Law. He shall discharge the duties of his office at the seat of Government, unless absent, under orders, on duty; and no other officer of the General Staff of the Militia shall receive salary or pay, except when on service, and mustered in with troops.	
Sec. 3. Vacant.	
ARTICLE X. VACANT.	
ARTICLE XI. CITY OF BALTIMORE.	
Section 1. The Inhabitants of the City of Baltimore, qualified by Law to vote in said city for members of the House of Delegates, shall on the Tuesday after the first Monday of November, eighteen hundred and eighty-nine, and on the same day and month in every second year thereafter, elect a person to be Mayor of the City of Baltimore, who shall have such qualifications, receive such compensation, discharge such duties, and have such powers as are now, or may hereafter be prescribed by Law; and the term of whose office shall commence on the third Wednesday in the November	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."

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of the year of his election, and shall continue for two years, and until his successor shall have qualified.	
Sec. 2. The City Council of Baltimore shall consist of Two Branches, one of which shall be called the First Branch, and the other the Second Branch; and each shall consist of such number of members, having such qualification, receiving such compensation, performing such duties, possessing such powers, holding such terms of office, and elected in such manner, as are now, or may hereafter be prescribed by Law.	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."
Sec. 3. In election for members of the First Branch of the City Council of Baltimore shall be held in the City of Baltimore on the Tuesday after the first Monday of November, eighteen hundred and eighty-nine, and on the same day in every year thereafter; and for members of the Second Branch on the Tuesday after the first Monday of November, eighteen hundred and eighty-nine, and on the same day in every second year thereafter; and the qualification for electors of the members of the City Council shall be the same as those prescribed for the electors of Mayor.	For the provisions of the proposed constution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."
Sec. 4. The regular sessions of the City Council of Baltimore (which shall be annual,) shall commence on the third Monday of January of each year, and shall not continue more than ninety days, exclusive of Sundays; but the Mayor may convene the City Council in extra session whenever, and as often as it may appear to him that the public good may require; but no called, or extra session shall last longer than twenty days, exclusive of Sundays.	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."
Sec. 5. No person elected and qualified as Mayor, or as a member of the City Council, shall, during the term for which he was elected, hold any other office of profit or trust, created, or to be created, by the Mayor and City Council of Baltimore, or by any Law relating to the Corporation of Baltimore, or hold any employment, or position, the compensation of which shall be paid, directly or indirectly, out of the City Treasury; nor shall any such person be interested, directly or indirectly, in any contract, to which the City is a party; nor shall it be lawful for any person, holding any office, under the City, to be interested, while holding such office, in any contract, to which the City is a party.	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."

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Sec. 6. The Mayor shall, on conviction in a Court of Law, of wilful neglect of duty, or misbehavior in office, be removed from office by the Governor of the State, and a successor shall thereafter be elected, as in a case of vacancy.	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."
Sec. 7. From and after the adoption of this Constitution, no debt (except as hereinafter excepted), shall be created by the Mayor and City Council of Baltimore; nor shall the credit of the Mayor and City Council of Baltimore be given, or loaned to, or in aid of any individual, association, or corporation; nor shall the Mayor and City Council of Baltimore have the power to involve the City of Baltimore in the construction of works of internal improvement, nor in granting any aid thereto, which shall involve the faith and credit of the city, nor make any appropriation therefor, unless such debt or credit be authorized by an Act of the General Assembly of Maryland, and by an ordinance of the Mayor and City Council of Baltimore, submitted to the legal voters of the City of Baltimore, at such time and place as may be fixed by said ordinance, and approved by a majority of the votes cast at such time and place; such ordinance shall provide for the discharge of any such debt or credit within the period of forty (40) years from the time of contracting the same; but the Mayor and City Council may, temporarily, borrow any amount of money to meet any deficiency in the City Treasury, and may borrow any amount at any time to provide for any emergency arising from the necessity of maintaining the police, or preserving the health, safety and sanitary condition of the City, and may make due and proper arrangements and agreements for the renewal and extension, in whole or in part, of any and all debts and obligations created according to law before the adoption of this Constitution.	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."
Sec. 8. All Laws and Ordinances, now in force, applicable to the City of Baltimore, not inconsistent with this Article, shall be, and they are hereby continued until changed in due course of Law.	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."
Sec. 9. The General Assembly may make such changes in this Article, except in Section seventh thereof, as it may deem best; and this Article shall not be so construed, or taken as to make the political Corporation	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."

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of Baltimore independent of, or free from the control, which the General Assembly of Maryland has over all such Corporations in this State.	
ARTICLE XI-A. LOCAL LEGISLATION.	*ARTICLE VII. LOCAL GOVERNMENT*
Section 1. On demand of the Mayor of Baltimore and City Council of the City of Baltimore, or on petition bearing the signatures of not less than 20% of the registered voters of said city or any county (Provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition), the Board of Election Supervisors of said city or county shall provide at the next general or congressional election, occurring after such demand or the filing of such petition, for the election of a charter board of eleven registered voters of said city or five registered voters in any such counties. Nominations for members for said charter board may be made not less than forty days prior to said election by the Mayor of Baltimore and City Council of the City of Baltimore or the County Commissioners of such county, or not less than twenty days prior to said election by petition bearing the signatures written in their own handwriting (and not by their mark) of not less than 5% of the registered voters of the said City of Baltimore or said county; provided, that in any case two thousand signatures of registered voters shall be sufficient to complete any such nominating petition, and if not more than eleven registered voters of the City of Baltimore or not more than five registered voters in any such county are so nominated their names shall not be printed on the ballot, but said eleven registered voters in the City of Baltimore or five in such county shall constitute said charter board from and after the date of said election. At said election the ballot shall contain the names of said nominees in alphabetical order without any indication of the source of their nomination, and shall also be so arranged as to permit the voter to vote for or against the creation of said charter board, but the vote cast against said creation shall not be held to bar the voter from expressing his choice among the nominees for said board, and if the majority of the votes cast for and against the creation of said charter board shall be against said creation the election of the members of said charter board shall	**Section 7.07. Powers of Counties.** A county may exercise any power, other than judicial power, or perform any function which is not denied to it by this Constitution, by its charter or by a public general law which in its terms and in its effects is applicable to all counties or to all counties of the county's class, and which has not been transferred exclusively to another governmental unit. **Section 7.08. Classification of Counties.** Classes of counties, based upon population as determined by the most recent United States Census or upon other criteria, may be prescribed by law with not more than five classes and not less than three counties in any one class. No more than one classification shall be in effect at any one time but the classification may be changed at any time. **Section 7.09. General Application of Laws.** Except as otherwise specifically provided in this Constitution, the General Assembly may not enact any public local laws and, except with respect to appropriations, may enact only public general laws which in their terms and in their effects apply without exception to all counties or to all counties in a class. No county shall be exempt from any public general law applicable to counties in its class. **Section 7.10. Structure of County Governments.** Within one year following adoption of this Constitution, the General Assembly shall provide by law alternative procedures by which an instrument of government of a county may be proposed: by enactment of the local governing body, by petition of ten per cent of the qualified voters of the county, by board created by enactment of the local governing body or created by the voters of the county approving a voters' petition for such a board, or by such other methods as may be prescribed. An instrument of government shall be submitted for adoption by the affirmative vote

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be void; but if such majority shall be in favor of the creation of said charter board, then and in that event the eleven nominees of the City of Baltimore or five nominees in the county receiving the largest number of votes shall constitute the charter board, and said charter board, or a majority thereof, shall prepare within twelve months from the date of said election a charter or form of government for said city or such county and present the same to the Mayor of Baltimore or President of the Board of County Commissioners of such county, who shall publish the same in at least two newspapers of general circulation published in the City of Baltimore or county within thirty days after it shall be reported to him. Such charter shall be submitted to the voters of said city or county at the next general or congressional election after the report of said charter to said Mayor of Baltimore or President of the Board of County Commissioners; and if a majority of the votes cast for and against the adoption of said charter shall be in favor of such adoption, the said charter from and after the thirtieth day from the date of such election shall become the Law of said city or county, subject only to the Constitution and Public General Laws of this State, and any public local laws inconsistent with the provisions of said charter and any former charter of the City of Baltimore or county shall be thereby repealed.

Sec. 2. The General Assembly at its first session after the adoption of this amendment shall by public general law provide a grant of express powers for such county or counties as may thereafter form a charter under the provisions of this Article. Such express powers granted to the counties and the powers heretofore granted to the City of Baltimore, as set forth in Article 4, Section 6, Public Local Laws of Maryland, shall not be enlarged or extended by any charter formed under the provisions of this Article, but such powers may be extended, modified, amended or repealed by the General Assembly.

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of a majority of the voters of the county voting thereon. The General Assembly shall provide by law an instrument of government which shall become effective on the first day of January of the fourth year following the effective date of this Constitution for those counties which have not previously adopted an instrument of government as provided in this section.

Section 7.11. Continuance of Existing County Governments.

County governments existing at the effective date of this Constitution shall continue unless changed pursuant to this Constitution.

Section 7.12. Change of Structure of County Government.

An instrument of government of a county may be amended by the affirmative vote of a majority of the voters of the county voting on an amendment submitted by the governing body or submitted upon petition of voters in accordance with the provisions of the instrument of government.

Section 7.13. Gift or Loan of Assets or Credit of Local Governments.

The assets or credit of a county, representative regional government, or intergovernmental authority shall not in any manner be given or loaned to any individual, association, or corporation unless a public purpose will be served thereby and unless authorized by its governing or authorizing body by act stating the public purpose, and in the case of a gift or loan of credit or a loan of assets, passed by the affirmative vote of three-fifths of all its members.

See Sections 7.07-7.13, beginning at p. 378.

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Sec. 3. Every charter so formed shall provide for an elective legislative body in which shall be vested the lawmaking power of said city or county. Such legislative body in the City of Baltimore shall be known as the City Council of the City of Baltimore, and in any county shall be known as the County Council of the county. The chief executive officer, if any such charter shall provide for the election of such executive officer, or the presiding officer of said legislative body, if such charter shall not provide for the election of a chief executive officer, shall be known in the City of Baltimore as Mayor of Baltimore, and in any county as the President of the County Council of the county, and all references in the Constitution and Laws of this State to the Mayor of Baltimore and City Council of the City of Baltimore or to the County Commissioners of the counties, shall be construed to refer to the Mayor of Baltimore and City Council of the City of Baltimore and to the President and County Council herein provided for whenever such construction would be reasonable. From and after the adoption of a charter by the City of Baltimore, or any county of this State, as hereinbefore provided, the Mayor of Baltimore and City Council of the City of Baltimore or the County Council of said county, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said city or county including the power to repeal or amend local laws of said city or county enacted by the General Assembly, upon all matters covered by the express powers granted as above provided; provided that nothing herein contained shall be construed to authorize or empower the County Council of any county in this State to enact laws or regulations for any incorporated town, village, or municipality in said county, on any matter covered by the powers granted to said town, village, or municipality by the Act incorporating it, or any subsequent Act or Acts amendatory thereto. Provided, however, that the charters for the various counties shall specify the number of days, not to exceed forty-five, which may but need not be consecutive, that the County Council of the counties may sit in each year for the purpose of enacting legislation for such counties, and all legislation shall be enacted at the times so designated for that purpose in the charter, and all laws and ordinances	See Sections 7.07-7.13, beginning at p. 378.

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so enacted shall be published once a week for three successive weeks in at least one newspaper published in such counties, so that the taxpayers and citizens may have notice thereof. This provision shall not apply to Baltimore City. All such local laws enacted by the Mayor of Baltimore and City Council of the City of Baltimore or the Council of the counties as hereinbefore provided, shall be subject to the same rules of interpretation as those now applicable to the Public Local Laws of this State, except that in case of any conflict between said local law and any Public General Law now or hereafter enacted the Public General Law shall control.	
Sec. 4. From and after the adoption of a charter under the provisions of this Article by the City of Baltimore or any county of this State, no public local law shall be enacted by the General Assembly for said city or county on any subject covered by the express powers granted as above provided. Any law so drawn as to apply to two or more of the geographical subdivisions of this State shall not be deemed a Local Law, within the meaning of this Act. The term "geographical sub-division" herein used shall be taken to mean the City of Baltimore or any of the counties of this State.	See Sections 7.07-7.13, beginning at p. 378.
Sec. 5. Amendments to any charter adopted by the City of Baltimore or by any county of this State under the provisions of this Article may be proposed by a resolution of the Mayor of Baltimore and the City Council of said the City of Baltimore, or the Council of said county, or by a petition signed by not less than 20% of the registered voters of said city or county, provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition, and filed with the Mayor of Baltimore or the President of the County Council, and when so proposed shall be submitted to the voters of said city or county at the next general or congressional election occurring after the passage of said resolution, or the filing of said petition; and if at said election the majority of the votes cast for and against said amendments shall be in favor thereof, said amendment shall be adopted and becomes a part of the charter of said city or county from and after the thirtieth day after said election. Said amendments shall be published by said Mayor of Baltimore or	See Sections 7.07-7.13, beginning at p. 378.

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President of the County Council once a week for five successive weeks prior to said election in at least one newspaper published in said city or county.	
Sec. 6. The power heretofore conferred upon the General Assembly to prescribe the number, compensation, powers and duties of the County Commissioners in each county, and the power to make changes in Sections 1 to 6 inclusive, Article XI of this Constitution, when expressly granted as hereinbefore provided, are hereby transferred to the voters of each county and the voters of City of Baltimore, respectively, provided that said powers so transferred shall be exercised only by the adoption or amendment of a charter as hereinbefore provided; and provided further that this Article shall not be construed to authorize the exercise of any powers in excess of those conferred by the legislature upon said counties or city as this Article sets forth.	See Sections 7.07-7.13, beginning at p. 378.
Sec. 7. The word "Petition" as used in this Article means one or more sheets written or printed, or partly written and partly printed; "Signature" means the signature of a registered voter written by himself in his own handwriting (and not by his mark), together with the ward or district and precinct in which he is registered. The authenticity of such signatures and the fact that the persons so signing are registered voters shall be evidenced by the affidavit of one or more registered voters of the city or county in which said voters so signing are registered, and one affidavit may apply to or cover any number of signatures to such petition. The false signing of any name, or the signing of any fictitious name to said petition shall be forgery, and the making of any false affidavit in connection with said petition shall be perjury.	See Sections 7.07-7.13, beginning at p. 378.
ARTICLE XI-B. CITY OF BALTIMORE—LAND DEVELOPMENT AND REDEVELOPMENT.	
Section 1. The General Assembly of Maryland, by public local law, may authorize and empower the Mayor and City Council of Baltimore:	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."
(a) To acquire, within the boundary lines of Baltimore City, land and property of every kind, and any right, interest, franchise, easement or privilege therein, by purchase, lease, gift, condemnation or any	

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other legal means, for development or redevelopment, including, but not limited to, the comprehensive renovation or rehabilitation thereof; and	
(b) To sell, lease, convey, transfer or otherwise dispose of any of said land or property, regardless of whether or not it has been developed, redeveloped, altered or improved and irrespective of the manner or means in or by which it may have been acquired, to any private, public or quasi public corporation, partnership, association, person or other legal entity.	
No land or property taken by the Mayor and City Council of Baltimore for any of the aforementioned purposes or in connection with the exercise of any of the powers which may be granted to the Mayor and City Council of Baltimore pursuant to this Article by exercising the power of eminent domain, shall be taken without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation.	
All land or property needed, or taken by the exercise of the power of eminent domain, by the Mayor and City Council of Baltimore for any of the aforementioned purposes or in connection with the exercise of any of the powers which may be granted to the Mayor and City Council of Baltimore pursuant to this Article is hereby declared to be needed or taken for a public use.	
Sec. 2. The General Assembly of Maryland may grant to the Mayor and City Council of Baltimore any and all additional power and authority necessary or proper to carry into full force and effect any and all of the specific powers which the General Assembly is authorized to grant to the Mayor and City Council of Baltimore pursuant to this Article and to fully accomplish any and all of the purposes and objects contemplated by the provisions of this Article, provided such additional power or authority is not inconsistent with the terms and provisions of this Article or with any other provision or provisions of the Constitution of Maryland. The General Assembly may place such other and further restrictions or limitations on the exercise of any of the powers which it may grant to the Mayor and City Council of Baltimore under the	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."

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provisions of this Article as it may deem proper and expedient.	
Sec. 3. The Baltimore Redevelopment Commission may continue in existence and shall have and may continue to exercise any of the power and authority which is now or hereafter may be vested in the Commission by Law, until such time as such power and authority of the Commission is validly repealed by an Act of the General Assembly of Maryland or by an ordinance or resolution of the Mayor and City Council of Baltimore and a new agency of the Mayor and City Council of Baltimore is created to carry out the objects and purposes for which the Baltimore Redevelopment Commission was originally created; and nothing contained in this Article shall be taken or construed to the contrary.	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."
ARTICLE XI-C. OFF-STREET PARKING.	
Section 1. The General Assembly of Maryland, by public local law, may authorize the Mayor and City Council of Baltimore: (a) Within the City of Baltimore to acquire land and property of every kind, and any right, interest, franchise, easement or privilege therein, by purchase, lease, gift, condemnation or any other legal means, for storing, parking and servicing self-propelled vehicles, provided, that no petroleum products shall be sold or offered for sale at any entrance to or exit from, any land so acquired or at any entrance to, or exit from, any structure erected thereon, when any entrance to, or exit from, any such land or structure faces on a street or highway which is more than 25 feet wide from curb to curb; and (b) To sell, lease, convey, transfer or otherwise dispose of any of said land or property, regardless of whether or not it has been developed, redeveloped, altered, or improved and irrespective of the manner or means in or by which it may have been acquired, to any private, public or quasi public corporation, partnership, association, person or other legal entity. No land or property taken by the Mayor and City Council of Baltimore for any of the aforementioned purposes or in connection with the exercise of any of the powers which may be granted to the Mayor and City Council of Baltimore pursuant to this Article by exercising the power of eminent	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."

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domain, shall be taken without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation. All land or property needed, or taken by the exercise of the power of eminent domain, by the Mayor and City Council of Baltimore for any of the aforementioned purposes or in connection with the exercise of any of the powers which may be granted to the Mayor and City Council of Baltimore pursuant to this Article is hereby declared to be needed or taken for a public use.	
Sec. 2. The General Assembly of Maryland may grant to the Mayor and City Council of Baltimore any and all additional power and authority necessary or proper to carry into full force and effect any and all of the specific powers which the General Assembly is authorized to grant to the Mayor and City Council of Baltimore pursuant to this Article and to fully accomplish any and all of the purposes and objects contemplated by the provisions of this Article, provided such additional power or authority is not inconsistent with the terms and provisions of this Article or with any other provision or provisions of the Constitution of Maryland. The General Assembly may place such other and further restrictions or limitations on the exercise of any of the powers which it may grant to the Mayor and City Council of Baltimore under the provisions of this Article as it may deem proper and expedient.	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."
ARTICLE XI-D. PORT DEVELOPMENT.	
Section 1. The General Assembly of Maryland, by public local law, may authorize the Mayor and City Council of Baltimore: (a) To acquire land and property of every kind, and any right, interest, franchise, easement or privilege therein, in, adjoining or in the vicinity of the Patapsco River or its tributaries, by purchase, lease, gift, condemnation or any other legal means, for or in connection with extending, developing or improving the harbor or port of Baltimore and its facilities and the highways and approaches thereto; and providing, further, that the Mayor and City Council of Baltimore shall not acquire any such land or property, or any such right,	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."

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interest, franchise, easement or privilege therein, for any of said purposes, in any of the counties of this State without the prior consent and approval by resolution duly passed after a public hearing, by the Board of County Commissioners of the county in which such land or property, or such right, interest, franchise, easement or privilege therein, is situate; and provided, further, that Anne Arundel County shall retain jurisdiction and power to tax any land so acquired by the Mayor and City Council of Baltimore under the provisions of this Act. (b) To sell, lease, convey, transfer or otherwise dispose of any of said land or property, regardless of whether or not it is undeveloped or has been developed, redeveloped, altered, or improved and irrespective of the manner or means in or by which it may have been acquired, to any private, public or quasi public corporation, partnership, association, person or other legal entity. No land or property taken by the Mayor and City Council of Baltimore for any of the aforementioned purposes or in connection with the exercise of any of the powers which may be granted to the Mayor and City Council of Baltimore pursuant to this Article by exercising the power of eminent domain, shall be taken without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation. All land or property needed, or taken by the exercise of the power of eminent domain, by the Mayor and City Council of Baltimore for any of the aforementioned purposes or in connection with the exercise of any of the powers which may be granted to the Mayor and City Council of Baltimore pursuant to this Article is hereby declared to be needed or taken for a public use.	
Sec. 2. The General Assembly of Maryland may grant to the Mayor and City Council of Baltimore any and all additional power and authority necessary or proper to carry into full force and effect any and all of the specified powers which the General Assembly is authorized to grant to the Mayor and City Council of Baltimore pursuant to this Article and to fully accomplish any and all of the purposes	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."

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and objects contemplated by the provisions of this Article, provided such additional power or authority is not inconsistent with the terms and provisions of this Article or with any other provision or provisions of the Constitution of Maryland. The General Assembly may place such other and further restrictions or limitations on the exercise of any of the powers which it may grant to the Mayor and City Council of Baltimore under the provisions of this Article as it may deem proper and expedient.	
Sec. 3. Provided, however, that no public local law enacted under the provisions and authority of this Article shall be enacted or construed to authorize the Mayor and City Council of Baltimore to exercise or apply any of the powers or authority in this Article enumerated within the territorial limits of Howard County.	For the provisions of the proposed constitution applicable to the structure and powers of the local government of Baltimore City, see "Article VII. Local Government."
ARTICLE XI-E.	
Section 1. Except as provided elsewhere in this Article, the General Assembly shall not pass any law relating to the incorporation, organization, government, or affairs of those municipal corporations which are not authorized by Article 11-A of the Constitution to have a charter form of government which will be special or local in its terms or in its effect, but the General Assembly shall act in relation to the incorporation, organization, government, or affairs of any such municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes provided for in Section 2 of this Article. It shall be the duty of the General Assembly to provide by Law the method by which new municipal corporations shall be formed.	**Section 7.14. Municipal Corporations.** A county may provide by law for the incorporation, change, merger, dissolution and alteration of boundaries of municipal corporations located in the county, and may delegate powers of the county to any municipal corporation. No existing municipal corporation may be dissolved or have withdrawn any existing powers set forth in its charter without either the consent of its governing body or the consent of the General Assembly by law.
Sec. 2. The General Assembly, by Law, shall classify all such municipal corporations by grouping them into not more than four classes based on populations as determined by the most recent census made under the authority of the United States or the State of Maryland. No more than one such grouping of municipal corporations into four (or fewer) classes shall be in effect at any time, and the enactment of any such grouping of municipal corporations into four (or fewer) classes shall repeal any such grouping of municipal corporations into	See Section 7.14, p. 387.

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four (or fewer) classes then in effect. Municipal corporations shall be classified only as provided in this section and not otherwise.	
Sec. 3. Any such municipal corporation, now existing or hereafter created, shall have the power and authority, (a) to amend or repeal an existing charter or local laws relating to the incorporation, organization, government, or affairs of said municipal corporation heretofore enacted by the General Assembly of Maryland, and (b) to adopt a new charter, and to amend or repeal any charter adopted under the provisions of this Article.	See Section 7.14, p. 387.
Sec. 4. The adoption of a new charter, the amendment of any charter or local laws, or the repeal of any part of a charter or local laws shall be proposed either by a resolution of the legislative body of any such municipal corporation or by a petition containing the signatures of at least five per cent of the registered voters of a municipal corporation and filed with the legislative body of said municipal corporation. The General Assembly shall amplify the provisions of this section by general law in any manner not inconsistent with this Article.	See Section 7.14, p. 387.
Sec. 5. Notwithstanding any other provision in this Article, the General Assembly may enact, amend, or repeal local laws placing a maximum limit on the rate at which property taxes may be imposed by any such municipal corporation and regulating the maximum amount of debt which may be incurred by any municipal corporation. However, no such local law shall become effective in regard to a municipal corporation until and unless it shall have been approved at a regular or special municipal election by a majority of the voters of that municipal corporation voting on the question. No such municipal corporation shall levy any type of tax, license, fee, franchise tax or fee which was not in effect in such municipal corporation on January 1, 1954, unless it shall receive the express authorization of the General Assembly for such purpose, by a general law which in its terms and its effect applies alike to all municipal corporations in one or more of the classes provided for in Section 2 of this Article. All charter provisions enacted under the authority of Sec-	See Section 7.14, p. 387.

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tion 3 of this Article shall be subject to any local laws enacted by the General Assembly and approved by the municipal voters under the provisions of this section.	
Sec. 6. All charter provisions, or amendments thereto, adopted under the provisions of this Article, shall be subject to all applicable laws enacted by the General Assembly; except that any local laws, or amendments thereto, relating to the incorporation, organization, government, or affairs of any municipal corporation and enacted before this Article becomes effective, shall be subject to any charter provisions, or amendments thereto, adopted under the provisions of this Article. Any local law, or amendments thereto, relating to the incorporation, organization, government, or affairs of any municipal corporation and in effect at the time this Article becomes effective, shall be subject to any applicable State law enacted after this Article becomes effective. All laws enacted by the General Assembly and in effect at the time this Article becomes effective, shall remain in effect until amended or repealed in accordance with the provisions of this Constitution. Nothing in this Article shall be construed to authorize any municipal corporation, by any amendment or addition to its charter, to permit any act which is prohibited by the laws of this State concerning the observance of the Sabbath Day or the manufacture, licensing or sale of alcoholic beverages.	See Section 7.14, p. 387.
ARTICLE XI-F. ***HOME RULE FOR CODE COUNTIES.***	
Section 1. For the purposes of this Article, (1) "code county" means a county which is not a charter county under Article 11A of this Constitution and has adopted the optional powers of home rule provided under this Article; and (2) "public local law" means a law applicable to the incorporation, organization, or government of a code county and contained in the county's code of public local laws; but this latter term specifically does not include (i) the charters of municipal corporations under Article 11E of this Constitution, (ii) the laws or charters of counties under Article 11A of this Constitution, (iii) laws, whether or not Statewide in application, in the code of public general laws, (iv) laws which apply to more than one county, and (v)	See Sections 7.07-7.13, beginning at p. 378.

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ordinances and resolutions of the county government enacted under public local laws.	
Sec. 2. The governing body of any county, by a vote of at least two-thirds of the members elected thereto, may propose by resolution that the county become a code county and be governed by the provisions of this Article. Upon the adoption of such a resolution, it shall be certified to the Board of Supervisors of Elections in the county, which Board (pursuant to the election laws of the State) shall submit to the voters of the county at the next ensuing general election the question whether the resolution shall be approved or rejected. If in the referendum a majority of those persons voting on this question vote for the resolution, the resolution is approved, and the county shall become a code county under the provisions of this Article, on the thirtieth day after the election. If in the referendum a majority of those persons voting on this question vote against the resolution, the resolution is rejected, and of no further effect. Provided that if at the next ensuing general election there shall be submitted to the voters of the county a proposed charter under Article 11A of this Constitution, the proposed charter only shall be submitted to the voters at that next ensuing general election. If the proposed charter is adopted by the voters, this particular resolution to become a code county shall not be submitted to the voters and shall have no further effect. If the proposed charter is rejected by the voters, the code question under this Article shall be submitted to the voters at the general election two years later, and no charter question under Article 11A shall be submitted to the voters at that general election.	See Sections 7.07-7.13, beginning at p. 378.
Sec. 3. Except as otherwise provided in this Article, a code county may enact, amend, or repeal a public local law of that county, following the procedure in this Article.	See Sections 7.07-7.13, beginning at p. 378.
Sec. 4. Except as otherwise provided in this Article, the General Assembly shall not enact, amend, or repeal a public local law which is special or local in its terms or effect within a code county. The General Assembly may enact, amend, or repeal public local laws applicable to code counties only by general enactments which in	See Sections 7.07-7.13, beginning at p. 378.

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term and effect apply alike to all code counties in one or more of the classes provided for in Section 5 of this Article.	
Sec. 5. The General Assembly, by Law, shall classify all code counties by grouping them into not more than four classes based either upon population as determined in the most recent Federal or State census or upon such other criteria as determined by the General Assembly to be appropriate. Not more than one such grouping of code counties into four (or fewer) classes may be in effect at any one time, and the enactment of any grouping of code counties into four (or fewer) classes repeals any other such grouping then in effect. Code counties may be classified only as provided in this section.	See Sections 7.07-7.13, beginning at p. 378.
Sec. 6. A code county may enact, amend, or repeal a public local law of that county by a resolution of the board of county commissioners. The General Assembly may amplify the provisions of this section by general law in any manner not inconsistent with this Article.	See Sections 7.07-7.13, beginning at p. 378.
Sec. 7. Any action of a code county in the enactment, amendment, or repeal of a public local law is subject to a referendum of the voters in the county, as in this section provided. The enactment, amendment, or repeal shall be effective unless a petition of the registered voters of the county requires that it be submitted to a referendum of the voters in the county. The General Assembly shall amplify the provisions of this section by general law in any manner not inconsistent with this Article, except that in any event the number of signatures required on such a petition shall not be fewer than five percentum (5%) of the voters in a county registered for county and State elections.	See Sections 7.07-7.13, beginning at p. 378.
Sec. 8. Notwithstanding any other provisions of this Article, the General Assembly has exclusive power to enact, amend, or repeal any local law for a code county which (1) authorizes or places a maximum limit upon the rate of property taxes which may be imposed by the code county; or (2) authorizes or regulates the maximum amount of indebtedness which may be incurred by the code county. Public local laws enacted by the General Assembly under this section prevail over any public local laws enacted	See Sections 7.07-7.13, beginning at p. 378.

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by the code county under other sections in this Article.	
Sec. 9. A code county shall not levy any type of tax, license fee, franchise tax, or fee which was not in effect or authorized in the code county at the time it came under the provisions of this Article, until an express authorization of the General Assembly has been enacted for this purpose by a general law which in its terms and effect applies alike to all code counties in one or more of the classes provided for in Section 5 of this Article.	See Sections 7.07-7.13, beginning at p. 378.
Sec. 10. All laws enacted by the General Assembly and in effect when this Article was added to the Constitution shall remain in effect until amended or repealed under this Constitution. Every public local law enacted, amended, or repealed by a county under the provisions of this Article prevails over the previous public local law, except to the extent it is subject to an applicable law enacted by the General Assembly.	See Sections 7.07-7.13, beginning at p. 378.
ARTICLE XII. PUBLIC WORKS.	
Section 1. The Governor, the Comptroller of the Treasury, and the Treasurer, shall constitute the Board of Public Works in this State. They shall keep a journal of their proceedings, and shall hold regular sessions in the City of Annapolis, on the first Wednesday in January, April, July and October, in each year, and oftener, if necessary; at which sessions they shall hear and determine such matters as affect the Public Works of the State, and as the General Assembly may confer upon them the power to decide.	
Sec. 2. They shall exercise a diligent and faithful supervision of all Public Works in which the State may be interested as Stockholder or Creditor, and shall appoint the Directors in every Railroad and Canal Company, in which the State has the legal power to appoint Directors, which said Directors shall represent the State in all meetings of the Stockholders of the respective Companies for which they are appointed or elected. They shall require the Directors of all said Public Works to guard the public interest, and prevent the establishment of tolls which shall discriminate against the interest of the citizens or products of this State, and from time to time, and	

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as often as there shall be any change in the rates of toll on any of the said Works, to furnish the said Board of Public Works a schedule of such modified rates of toll, and so adjust them as to promote the agricultural interests of the State; they shall report to the General Assembly at each regular session, and recommend such legislation as they may deem necessary and requisite to promote or protect the interests of the State in the said Public Works; they shall perform such other duties as may be hereafter prescribed by Law, and a majority of them shall be competent to act. The Governor, Comptroller and Treasurer shall receive no additional salary for services rendered by them as members of the Board of Public Works.

Sec. 3. The Board of Public Works is hereby authorized, subject to such regulations and conditions as the General Assembly may from time to time prescribe, to sell the State's interest in all works of Internal Improvement, whether as a stockholder or a creditor, and also the State's interest in any banking corporation, receiving in payment the bonds and registered debt now owing by the State, equal in amount to the price obtained for the State's said interest.

ARTICLE XIII. NEW COUNTIES.

Section 1. The General Assembly may provide, by Law, for organizing new counties, locating and removing county seats, and changing county lines; but no new county shall be organized without the consent of the majority of the legal voters residing within the limits proposed to be formed into said new county; and whenever a new county shall be proposed to be formed out of portions of two or more counties, the consent of a majority of the legal voters of such part of each of said counties, respectively, shall be required; nor shall the lines of any county nor of Baltimore City be changed without the consent of a majority of the legal voters residing within the district, which under said proposed change, would form a part of a county or of Baltimore City different from that to which it belonged prior to said change; and no new county shall contain less than four hundred square miles, nor less than ten thousand white inhabitants; nor shall any change be made in the limits

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ARTICLE VII. LOCAL GOVERNMENT

Section 7.01. Units of Local Government.

For the purposes of this Constitution, Baltimore City shall be considered a county; "municipal corporation" shall mean an incorporated city, town or village, but shall not include Baltimore City or any county; "region" shall mean an area comprising all or parts of two or more counties.

Section 7.02. Establishment of Counties and Multi-County Governmental Units.

The General Assembly may provide by law for the establishment, incorporation, change, merger, dissolution and alteration of boundaries of counties and multi-county governmental units, including intergovernmental authorities and popularly elected regional representative governments, but excluding municipal corporations. A law altering the boundaries of a county shall be enacted only by the affirmative vote of at least three-fifths of all the members of each house.

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of any county, whereby the population of said county would be reduced to less than ten thousand white inhabitants, or its territory reduced to less than four hundred square miles.

Sec. 2. At the election to be held for the adoption, or rejection of this Constitution, in each Election District, in those parts of Worcester and Somerset Counties, comprised within the following limits, viz: Beginning at the point, where Mason and Dixon's line crosses the channel of Pocomoke River, thence following said line to the channel of the Nanticoke River, thence with the channel of said river to Tangier Sound, or the intersection of Nanticoke and Wicomico Rivers, thence up the channel of the Wicomico River to the mouth of Wicomico Creek, thence with the channel of said creek and Passerdyke Creek to Dashield's or Disharoon's Mills, thence with the mill-pond of said mills and Branch following the middle prong of said Branch, to Meadow Bridge, on the road, dividing the Counties of Somerset and Worcester, near the southwest corner of the farm of William P. Morris, thence due east to the Pocomoke River, thence with the channel of said river to the beginning, the Judges of election, in each of said Districts, shall receive the ballots of each elector, voting at said election, who has resided for six months, preceding said election within said limits, for or against a new county; and the Return Judges of said Election Districts shall certify the result of such voting, in the manner, now prescribed by Law, to the Governor, who shall by Proclamation make know the same; and if a majority of the legal votes, cast within that part of Worcester County, contained within said lines, and also a majority of the legal votes cast within that part of Somerset County, contained within said lines, shall be in favor of a new county, then said parts of Worcester and Somerset Counties shall become and constitute a new county, to be called Wicomico County; and Salisbury shall be the County Seat. And the Inhabitants thereof shall thenceforth have and enjoy all such rights and privileges as are held and enjoyed by the Inhabitants of the other counties of this State.

Sec. 3. When said new county shall have been so created, the Inhabitants thereof

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Section 7.03. Establishment of Regional Governments.

Upon the establishment by the General Assembly by law of the boundaries of a region, a popularly elected representative government for the region, and the instrument of government therefor, may be created by the General Assembly by law, or by the counties within or partly within the region acting concurrently by law, or by affirmative action of a majority of the registered voters of the region voting upon a plan proposed by a petition signed by a number of registered voters of the region equal to at least five per cent of the vote cast in the region for governor in the most recent gubernatorial election.

Section 7.04. Change of Structure of Regional Government.

The instrument of government for a region shall provide for amendment of the instrument by the affirmative vote of a majority of the voters of the region voting on an amendment submitted by the governing body or by petition of the voters in accordance with the provisions of the instrument.

Section 7.05. Powers of Regional Governments.

Powers may be vested in a regional government either by all counties within or partly within a region relinquishing powers to the regional government by law, by the General Assembly by law withdrawing specified powers from all counties within or partly within a region and conferring the powers upon the regional government, or by the General Assembly by law delegating powers of the State to the regional government. A power conferred upon a regional government may thereafter by law be relinquished by the regional government or be withdrawn by the General Assembly. In either event the power relinquished by or withdrawn from the regional government shall revert only to the respective counties or to the State, from which it originated.

Section 7.06. Powers of Intergovernmental Authorities.

The General Assembly or a popularly elected representative local government may by law grant to intergovernmental authorities the power to impose and collect service

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shall cease to have any claim to, or interest in the county buildings, and other public property of every description, belonging to said counties of Somerset and Worcester, respectively, and shall be liable for their proportionate shares of the then existing debts and obligations of the said counties, according to the last assessment in said counties, to be ascertained and apportioned by the Circuit Court of Somerset County, as to the debts and obligations of said county, and by the Circuit Court of Worcester County, as to the debts and obligations of Worcester County, on the petition of the County Commissioners of the said counties, respectively; and the property in each part of the said counties, included in said new county, shall be bound only for the share of the debts and obligations of the county from which it shall be separated; and the Inhabitants of said new county shall also pay the county taxes, levied upon them at the time of the creation of such new county, as if such new county had not been created; and on the application of twelve citizens of the proposed county of Wicomico, the Surveyor of Worcester County shall run and locate the line from Meadow Bridge to the Pocomoke River, previous to the adoption, or rejection of this Constitution, and at the expense of said petitioners.	charges, to borrow money and to collect taxes imposed by the General Assembly or by the popularly elected representative local government, but may not grant the power to impose taxes. **Section 7.15. Intrastate Intergovernmental Agreements.** A county, municipal corporation or other governmental unit may, except to the extent prohibited by law, agree with the State or with any other county, municipal corporation or governmental unit for the joint administration of any functions and powers and the sharing of the costs thereof. **Section 8.06. Interstate Intergovernmental Cooperation.** This Constitution shall be construed to permit, except to the extent prohibited by law, the cooperation of the government of this State with any other government and the cooperation of the government of any county or other governmental unit with one or more other governments outside the boundaries of the State in the administration of their functions and powers.
Sec. 4. At the first general election, held under this Constitution, the qualified voters of said new county shall be entitled to elect a Senator, and two Delegates to the General Assembly, and all such county, or other officers as this Constitution may authorize, or require to be elected by other counties of the State; a notice of such election shall be given by the Sheriffs of Worcester and Somerset Counties in the manner now prescribed by Law; and in case said new county shall be established, as aforesaid, then the counties of Somerset and Worcester shall be entitled to elect but two Delegates each to the General Assembly.	
Sec. 5. The County of Wicomico, if formed according to the provisions of this Constitution, shall be embraced in the First Judicial Circuit; and the times for holding the Courts therein shall be fixed and determined by the General Assembly.	

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Sec. 6. The General Assembly shall pass all such Laws as may be necessary more fully to carry into effect the provisions of this Article.	
ARTICLE XIV. AMENDMENTS TO THE CONSTITUTION.	*ARTICLE IX. AMENDMENT OF THE CONSTITUTION*
Section 1. The General Assembly may propose Amendments to this Constitution; provided that each Amendment shall be embraced in a separate bill, embodying the Article or Section, as the same will stand when amended and passed by three-fifths of all the members elected to each of the two Houses, by yeas and nays, to be entered on the Journals with the proposed Amendment. The bill or bills proposing amendment or amendments shall be published by order of the Governor, in at least two newspapers, in each County, where so many may be published, and where not more than one may be published, then in that newspaper, and in three newspapers published in the City of Baltimore, once a week for four weeks immediately preceding the next ensuing general election, at which the proposed amendment or amendments shall be submitted, in a form to be prescribed by the General Assembly, to the qualified voters of the State for adoption or rejection. The votes cast for and against said proposed amendment or amendments, severally, shall be returned to the Governor, in the manner prescribed in other cases, and if it shall appear to the Governor that a majority of the votes cast at said election on said amendment or amendments, severally, were cast in favor thereof, the Governor shall, by his proclamation, declare the said amendment or amendments having received said majority of votes, to have been adopted by the people of Maryland as part of the Constitution thereof, and thenceforth said amendment or amendments shall be part of the said Constitution. When two or more amendments shall be submitted in manner aforesaid, to the voters of this State at the same election, they shall be so submitted as that each amendment shall be voted on separately.	**Section 9.01. Amendments.** An amendment to this Constitution may be proposed either by the affirmative vote of three-fifths of all the members of each house of the General Assembly or by the vote of a majority of all the members of a constitutional convention called by the General Assembly. In either case, the proposed amendment shall be submitted to the voters of the State at a special or general election as determined by the General Assembly or the Convention, whichever proposes the amendment. Notice of the election shall be given as prescribed by law. Unless otherwise provided, the amendment shall become effective thirty days after approval by the vote of a majority of those voting thereon.
Sec. 2. It shall be the duty of the General Assembly to provide by Law for taking, at the general election to be held in the year nineteen hundred and seventy, and every twenty years thereafter, the sense of the People in regard to calling a Con-	**Section 9.02. Constitutional Convention.** The General Assembly may by law call a constitutional convention at any time or may at any time submit to the voters of the State the question of calling a constitutional convention. If the question of calling a convention shall not have been submitted to the voters of the State for a period of twenty years, then it shall be submitted at the next general election. A convention shall be held within one year after a majority of those voting on the question approve the calling of a convention. Within sixty days after such approval, the governor shall appoint a commission to prepare for the convention. At its next regular session following such approval, the General Assembly shall provide by law for the assembling of the convention, the election of delegates, the filling of vacancies in the position of delegate, and the appropriation of sufficient funds for the work of the convention. The convention shall adopt its own rules of procedure. Any proposal recommended by the convention for changing the constitution shall be submitted to the voters of the State for adoption, and shall be effective only if approved by the affirmative vote of a majority of those voting thereon.

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vention for altering this Constitution; and if a majority of voters at such election or elections shall vote for a Convention, the General Assembly, at its next session, shall provide by Law for the assembling of such convention, and for the election of Delegates thereto. Each County, and Legislative District of the City of Baltimore, shall have in such Convention a number of Delegates equal to its representation in both Houses at the time at which the Convention is called. But any Constitution, or change, or amendment of the existing Constitution, which may be adopted by such Convention, shall be submitted to the voters of this State, and shall have no effect unless the same shall have been adopted by a majority of the voters voting thereon.	
ARTICLE XV. MISCELLANEOUS.	
Section 1. Every person holding any office created by, or existing under the Constitution, or Laws of the State (except Justices of the Peace, Constables and Coroners), or holding any appointment under any Court of this State, whose pay, or compensation is derived from fees, or moneys coming into his hands for the discharge of his official duties, or, in any way, growing out of, or connected with his office, shall keep a book in which shall be entered every sum, or sums of money, received by him, or on his account, as a payment or compensation for his performance of official duties, a copy of which entries in said book, verified by the oath of the officer, by whom it is directed to be kept, shall be returned yearly to the Comptroller of the State for his inspection, and that of the General Assembly of the State, to which the Comptroller shall, at each regular session thereof, make a report showing what officers have complied with this Section; and each of the said officers, when the amount received by him for the year shall exceed the sum which he is by Law entitled to retain, as his salary, or compensation for the discharge of his duties, and for the expenses of his office, shall yearly pay over to the Treasurer of the State the amount of such excess, subject to such disposition thereof as the General Assembly may direct; if any of such officers shall fail to comply with the requisitions of this Section for the period of thirty days after the expiration of each and every year	

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of his office, such officer shall be deemed to have vacated his office, and the Governor shall declare the same vacant, and the vacancy therein shall be filled as in case of vacancy for any other cause, and such officer shall be subject to suit by the State for the amount that ought to be paid into the Treasury.	
Sec. 2. The several Courts existing in this State at the time of the adoption of this Constitution shall, until superseded, under its provisions, continue with like powers and jurisdiction, and in the exercise thereof, both at Law and in Equity, in all respects, as if this Constitution had not been adopted; and when said Courts shall be so superseded, all causes, then depending in said Courts, shall pass into the jurisdiction of the several Courts, by which they may be, respectively, superseded.	
Sec. 3. Vacant.	
Sec. 4. If at any election directed by this Constitution, any two or more candidates shall have the highest and an equal number of votes, a new election shall be ordered by the Governor, except in cases specially provided for by this Constitution.	See Section 4.05 (Second Sentence), p. 305.
Sec. 5. In the trial of all criminal cases, the Jury shall be the Judges of the Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction.	
Sec. 6. The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of five dollars, shall be inviolably preserved.	See Section 1.06, p. 294.
Sec. 7. All general elections in this State shall be held on the Tuesday next after the first Monday in the month of November, in the year in which they shall occur.	See Section 2.06 (First Sentence), p. 302.
Sec. 8. Vacant.	
Sec. 9. The Term of office of all Judges and other officers, for whose election provision is made by this Constitution, shall except in cases otherwise expressly provided herein, commence from the time of their Election; and all such officers shall qualify as soon after their election as practicable, and shall enter upon the duties of their respective offices immediately upon their	

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qualification; and the Term of office of the State Librarian and of the Commissioner of the Land Office shall commence from the time of their appointment.	
Sec. 10. Any officer elected or appointed in pursuance of the provisions of this Constitution, may qualify, either according to the existing provisions of Law, in relation to officers under the present Constitution, or before the Governor of the State, or before any Clerk of any Court of Record in any part of the State; but in case an officer shall qualify out of the County in which he resides, an official copy of his oath shall be filed and recorded in the Clerk's office of the Circuit Court of the County in which he may reside, or in the Clerk's office of the Superior Court of the City of Baltimore, if he shall reside therein. All words or phrases, used in creating public offices and positions under the Constitution and Laws of this State, which denote the masculine gender shall be construed to include the feminine gender, unless the contrary intention is specifically expressed.	
Sec. 11. No person who is a member of an organization that advocates the overthrow of the Government of the United States or of the State of Maryland through force or violence shall be eligible to hold any office, be it elective or appointive, or any other position of profit or trust in the Government of or in the administration of the business of this State or of any county, municipality or other political subdivision of this State.	
ARTICLE XVI. THE REFERENDUM.	
Section 1. (a) The people reserve to themselves power known as The Referendum, by petition to have submitted to the registered voters of the State, to approve or reject at the polls, any Act, or part of any Act of the General Assembly, if approved by the Governor, or, if passed by the General Assembly over the veto of the Governor;	**Section 2.08. Right of Referendum.**
(b) The provisions of this Article shall be self-executing; provided that additional legislation in furtherance thereof and not in conflict therewith may be enacted.	If, within sixty days from the date on which a bill becomes law, a petition is filed with the office of the governor to refer the law to a vote of the people, the law shall be submitted to a vote at the next general election. If rejected by a majority of those voting on the question, the law shall stand repealed thirty days thereafter. If the petition is filed before the date on which the law is to take effect, then, unless the law is one passed by the affirmative vote of three-fifths of all the members of each house of the General Assembly, it shall not take effect until thirty days after its approval by a majority
Sec. 2. No law enacted by the General Assembly shall take effect until the first day of June next after the session at which	

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it may be passed, unless it contain a Section declaring such law an emergency law and necessary for the immediate preservation of the public health or safety, and passed upon a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly; provided, however, that said period of suspension may be extended as provided in Section 3(b) hereof. If before said first day of June there shall have been filed with the Secretary of the State a petition to refer to a vote of the people any law or part of a law capable of referendum, as in this Article provided, the same shall be referred by the Secretary of State to such vote, and shall not become a law or take effect until thirty days after its approval by a majority of the electors voting thereon at the next ensuing election held throughout the State for Members of the House of Representatives of the United States. An emergency law shall remain in force notwithstanding such petition, but shall stand repealed thirty days after having been rejected by a majority of the qualified electors voting thereon; provided, however, that no measure creating or abolishing any office, or changing the salary, term or duty of any officer, or granting any franchise or special privilege, or creating any vested right or interest, shall be enacted as an emergency law. No law making any appropriation for maintaining the State Government, or for maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to rejection or repeal under this Section. The increase in any such appropriation for maintaining or aiding any public institution shall only take effect as in the case of other laws, and such increase or any part thereof specified in the petition, may be referred to a vote of the people upon petition.	of those voting on the question in the election. **Section 2.09. Referendum Petition.** A petition shall be sufficient to refer a law, or any part thereof, to a vote of the people if signed by a number of qualified voters equal to five per cent of the total number of votes cast for governor in the most recent gubernatorial election, provided that not more than one-half of such required number shall be voters residing in any one county. **Section 2.10. Referendum Restrictions.** No plan for legislative districting or apportionment or congressional districting, no law imposing a tax and no law making an appropriation for maintaining the state government or for aiding or maintaining any public institution shall be subject to referendum.
Sec. 3. (a) The referendum petition against an Act or part of an Act passed by the General Assembly, shall be sufficient if signed by three per centum of the qualified voters of the State of Maryland, calculated upon the whole number of votes cast therein for Governor at the last preceding Gubernatorial election, of whom not more than half shall be residents of Baltimore City, or of any one County; provided that any Public Local Law for any	See Sections 2.08-2.10, beginning at p. 399.

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one County or the City of Baltimore, shall be referred by the Secretary of State only to the people of said County or City of Baltimore, upon a referendum petition of ten per cent of the qualified voters of said County or City of Baltimore, as the case may be, calculated upon the whole number of votes cast therein respectively for Governor at the last preceding Gubernatorial election.	
(b) If more than one-half, but less than the full number of signatures required to complete any referendum petition against any law passed by the General Assembly, be filed with Secretary of State before the first day of June, the time for the law to take effect, and for filing the remainder of signatures to complete the petition shall be extended to the thirtieth day of the same month, with like effect.	
Sec. 4. A petition may consist of several papers, but each paper shall contain the full text of the Act or part of Act petitioned upon; and their shall be attached to each such paper an affidavit of the person procuring the signatures thereon that of the said person's own personal knowledge every signature thereon is genuine and *bona fide,* and that the signers are registered voters of the State of Maryland, and of the City of Baltimore, or County, as the case may be, as set opposite their names, and no other verification shall be required.	See Sections 2.08-2.10, beginning at p. 399.
Sec. 5. (a) The General Assembly shall provide for furnishing the voters of the State the text of all measures to be voted upon by the people; provided, that until otherwise provided by law the same shall be published in the manner prescribed by Article XIV of the Constitution for the publication of proposed Constitutional Amendments.	See Sections 2.08-2.10, beginning at p. 399.
(b) All laws referred under the provisions of this Article shall be submitted separately on the ballots to the voters of the people, but if containing more than two hundred words, the full text shall not be printed on the official ballots, but the Secretary of State shall prepare and submit a ballot title of each such measure in such form as to present the purpose of said measure concisely and intelligently. The ballot title may be distinct from the legislative title, but in any case the legislative title shall be sufficient. Upon each of the	

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ballots, following the ballot title or text, as the case may be, of each such measure, there shall be printed the words "For the referred law" and "Against the referred law," as the case may be. The votes cast for and against any such referred law shall be returned to the Governor in the manner prescribed with respect to proposed amendments to the Constitution under Article XIV of this Constitution, and the Governor shall proclaim the result of the election, and, if it shall appear that the majority of the votes cast on any such measure were cast in favor thereof, the Governor shall by his proclamation declare the same having received a majority of the votes to have been adopted by the people of Maryland as a part of the laws of the State, to take effect thirty days after such election, and in like manner and with like effect the Governor shall proclaim the result of the local election as to any Public Local Law which shall have been submitted to the voters of any County or of the City of Baltimore.	
Sec. 6. No law or Constitutional Amendment, licensing, regulating, prohibiting, or submitting to local option, the manufacture or sale of malt or spirituous liquors, shall be referred or repealed under any Act of the provisions of this Article.	See Sections 2.08-2.10, beginning at p. 399.
ARTICLE XVII. ***QUADRENNIAL ELECTIONS.***	
Section 1. All State officers elected by qualified voters (except judges of the Circuit Courts, judges of the Supreme Bench of Baltimore City, judges of the Court of Appeals and judges of any intermediate courts of appeal), and all county officers elected by qualified voters, shall hold office for terms of four years, and until their successors shall qualify.	For the term of the governor and lieutenant governor, see Section 4.05 (First Sentence), p. 304. For the terms of judges, see Section 5.21, p. 341.
Sec. 2. Elections by qualified voters for State and county officers shall be held on the Tuesday next after the first Monday of November, in the year nineteen hundred and twenty-six, and on the same day in every fourth year thereafter.	See Section 2.06 (First Sentence), p. 302.
Sec. 3. All State and county officers elected by the qualified voters shall hold office for terms of four years.	
Sec. 4. All officers to be appointed by the Governor shall hold office for the terms fixed by law. All officers appointed by County Commissioners shall hold office for	

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terms of four years, unless otherwise duly changed by law.	
Sec. 5. Vacant.	
Sec. 6. Vacant.	
Sec. 7. Vacant.	
Sec. 8. The terms of the Members of the Board of Supervisors of elections of Baltimore City and of the several counties shall commence on the first Monday of June next ensuing their appointment.	
Sec. 9. Vacant.	
Sec. 10. Vacant.	
Sec. 11. The purpose of this Article is to reduce the number of elections, by providing that all State and county elections shall be held only in every fourth year, and at the time now provided by law for holding congressional elections; and to bring the terms of appointive officers into harmony with the changes effected in the time of the beginning of the terms of elective officers; and the administrative and judicial officers of the State shall construe the provisions of this Article so as to effectuate that purpose. For the purpose of this Article only the word "officers" shall be construed to include those holding positions and other places of employment in the State and county governments whose terms are fixed by law, but it shall not include any appointments made by the Board of Public Works, nor appointments by the Governor for terms of three years.	
Sec. 12. Vacant.	
Sec. 13. In the event of any inconsistency between the provisions of this Article and any of the other provisions of the Constitution, the provisions of this Article shall prevail, and all other provisions shall be repealed or abrogated to the extent of such inconsistency.	
VOTE ON THE CONSTITUTION.	
For the purpose of ascertaining the sense of the people of this State, in regard to the adoption, or rejection of this Constitution, the Governor shall issue his Proclamation within five days after the adjournment of this Convention, directed to the Sheriffs of the City of Baltimore, and of the several Counties of this State, commanding them to give notice, in the manner now prescribed by Law in reference to the election of members of the House of Delegates,	Laws of 1967, Chapter 4, Sections 15 and 16, prescribe the procedure for submission to the voters for approval or rejection at a special referendum election on May 14, 1968, any new constitution, or amendments to the present Constitution, proposed by the Constitutional Convention of 1967.

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that an election for the adoption or rejection of this Constitution, will be held in the City of Baltimore, and in the several Counties of this State, on Wednesday, the Eighteenth day of September, in the year eighteen hundred and sixty-seven, at the usual places of holding elections for members of the House of Delegates in said City and Counties. At the said election the vote shall be by ballot, and upon each ballot, there shall be written or printed the words "For the Constitution," or "Against the Constitution," as the voter may elect; and the provisions of the Laws of this State, relating to the holding of general elections for members of the House of Delegates, shall, in all respects, apply to, and regulate the holding of the said election. It shall be the duty of the Judges of Election, in said City, and in the several Counties of the State, to receive, accurately count, and duly return the number of ballots, so cast for, or against the adoption of this Constitution, as well as any blank ballots which may be cast, to the several Clerks of the Circuit Courts of this State, and to the Clerk of the Superior Court of Baltimore City, in the manner now prescribed by Law, in reference to the election of members of the House of Delegates, and duplicates thereof directly to the Governor; and the several Clerks, aforesaid shall return to the Governor, within ten days after said election, the number of ballots cast for or against the Constitution, and the number of blank ballots; and the Governor, upon receiving the returns from the Judges of Election or the Clerks as aforesaid and ascertaining the aggregate vote throughout the State, shall, by this Proclamation, make known the same; and if a majority of the votes cast shall be for the adoption of this Constitution, it shall go into effect on Saturday, the Fifth day of October, eighteen hundred and sixty-seven.

Done in Convention, the seventeenth day of August, in the year of our Lord one thousand eight hundred and sixty-seven and of the Independence of the United States the ninety-second.

RICHARD B. CARMICHAEL,
President of the Convention.

Attest:

MILTON Y. KIDD,
Secretary.

VI

Draft of Convention Rules

PREFATORY STATEMENT

This chapter contains a set of rules for the Constitutional Convention which were drafted by the Commission's Committee on Convention Procedures and which the Commission recommended that the Convention adopt. Just as the Commission had strived to assure that it remain responsive to its instructions from the Governor by drawing selectively from precedents in devising its own procedures, so the Commission felt that in preparing these rules it should carefully analyze various precedents in order to make recommendations which would permit the Convention to carry out effectively its mandate from the people. Therefore, in compiling these rules, the Commission reviewed and studied the rules of the 1961-1962 Michigan, 1967 New York and 1964 Rhode Island Constitutional Conventions, the present rules of each house of the Maryland General Assembly, the rules of the House of Representatives of the United States, Jefferson's Manual, Mason's Manual of Legislative Procedure and Robert's Rules of Order. The Enabling Act provided that the Convention should follow Robert's Rules of Order until it adopted its own rules.

Although the Commission found all of these sources to be helpful, it found the rules of the 1961 Michigan Constitutional Convention to be the best framework upon which to formulate its recommendations for the 1967 Constitutional Convention of Maryland. Nevertheless, the Commission did not follow the rules of the Michigan Convention where those rules were not consonant with the nonpartisan nature of the Maryland Convention. Accordingly, the rules recommended by the Commission include no provision for party floor leaders.

Correspondingly, the rules adopted by the Convention at its organization meeting on July 11, 1967, provide for alphabetical seating of the delegates rather than seating by legislative district,—the plan used by the House of Delegates of the General Assembly,—or by party, —the plan used by the Senate of the General Assembly.

The Commission found that the rules of legislative bodies were not well adapted to a constitutional convention in certain particulars. Thus, the Commission felt that the procedures of the Convention, unlike the procedures in most legislatures, should provide a large scope for the operation of the Committee of the Whole in order to facilitate relatively informal discussion of the many

proposals which will come before the Convention.

The rules recommended by the Commission further differ from the rules of most legislative bodies by allowing a proposal to be brought before the Convention in less than final form. Although it is contemplated that many of these "idea" proposals—not couched in formal language—will be made by individual delegates and referred to the appropriate committee for discussion, the rules also permit the committee recommendations to be in "idea" form when they are submitted to the Convention for debate. The purpose of this procedure is to allow fundamental policy issues, such as whether a bicameral or unicameral legislature shall be established, to be resolved before the actual drafting of the provision is begun by the committee.

Like all rules, the rules recommended by the Commission to some extent represent the accommodation of different interests of acknowledged value, but in potential conflict. Thus, in structuring the committees the Commission was required to devise a plan which would assure that the primary committees, those committees formulating substantive recommendations, were sufficiently large to permit widespread representation and effective debate, but sufficiently small to assure efficient action. In order to strike the necessary balance, the Commission recommended that each delegate be appointed to one primary committee; but that each delegate be restricted to one such committee assignment. The consequence of this rule is that the primary committees will be composed of from fourteen to twenty persons, which the Commission felt was the optimum size range.

Another area in which the Commission was required to accommodate conflicting values was on the matter of scheduling the proposals which would come before the Convention. On the one hand, the Commission strongly felt that the Convention should remain in control of its own agenda. Accordingly, although elsewhere in the rules the Commission adopted provisions which give substantial power to the elected officers of the Convention, the Commission did not recommend that the agenda be under the control of the president. On the other hand, the Commission felt that the Convention should have the benefit of a well-planned agenda in order to facilitate orderly and efficient proceedings. Therefore, the Commission provided for a Committee on Calendar and Agenda, which has the responsibility of preparing daily a tentative schedule of the next day's Convention meeting which is to be distributed to all of the delegates. To prevent this committee from controlling the agenda, the Commission further provided that the first order of business of each session will be consideration of the agenda prepared by the committee. Consequently, if the delegates feel that a proposal which has not been scheduled by the committee should be debated, they can override the committee's recommendation.

The rules of the Convention should of course facilitate rather than obstruct its work. Accordingly, the Commission provided for a Rules Committee which would have the power to modify the rules should any problems arise which require alteration of the procedures. Hopefully, the task of this committee will not be great.

CHAPTER I. GENERAL PROVISIONS

Rule 1. **Quorum and Majority.**

A majority of all the delegates to the Convention shall constitute a quorum for the transaction of business, but a smaller number may adjourn the Convention from day to day and may also compel the attendance of absent delegates by the means approved by a majority, but not less than fifteen, of the delegates present. A majority of all the delegates may prescribe penalties for the non-attendance of delegates.

When a quorum is obtained, the affirmative vote of a majority of the delegates present and voting shall be sufficient for the adoption of any motion or resolution or the taking of any action, except in those cases where the affirmative vote of a greater number shall be required either by these rules or by Section 10 or Section 13 of Chapter 4 of the Acts of the General Assembly of 1967.

Rule 2. **Admission to Floor—Defined.**

No person, other than a delegate, officer or employee of the Convention, accredited news correspondent or person invited by the president, shall be admitted on the floor of the Convention immediately preceding the time set for any call to order and immediately following adjournment. Only delegates, officers and employees and such other persons as may be authorized by the president shall be admitted to the floor of the Convention during the session. The phrase "floor of the Convention" means the room or chamber where the Convention sits in session, excluding the space designated for visitors and for the press.

Rule 3. **Bar of the Convention—Defined.**

Any delegate, having answered roll call at the opening of any session, or having entered upon the floor of the Convention after roll call, shall thereafter remain within the bar of the Convention unless excused by the president or the Convention. The phrase "within the bar of the Convention" means the space occupied or used by the Convention or by any committee in conducting the business of the Convention.

CHAPTER II. OFFICERS AND EMPLOYEES

Rule 4. **Officers of the Convention.**

The officers of the Convention shall be an honorary president, a president, a first vice president, and a second vice president, all of whom shall be elected by the Convention by the vote of a majority of all the delegates. There shall also be a secretary, a chief clerk, a sergeant at arms, a parliamentarian, a historian, and such other employees as may be necessary from time to time, all of whom shall be selected in such manner as may be determined by resolution of the Convention adopted by a majority of all the delegates. The honorary president, president and vice presidents shall be delegates and shall receive no additional compensation for services performed as officers. All officers and employees of the Convention, other than the honorary president, the president and the vice presidents, shall be persons who are not delegates and their compensation shall be fixed in such manner as may be determined by resolution of the Convention.

THE PRESIDENT

Rule 5. **Duties of Presiding Officer.**

The president shall preside at sessions of the Convention and of the Committee of the Whole, and exercise the usual powers and perform the usual duties of a presiding officer. He shall preserve order and decorum and fairly assign floor rights. He may speak to points of order and, subject to an appeal to the Convention or to the Committee of the Whole, shall decide points of order.

Rule 6. **Appointment by the President.**

The president, after consultation with the vice presidents, shall appoint a chairman, a vice-chairman and the members of all committees. All appointments shall be announced to the Convention and entered upon the Journal.

Rule 7. **Administration of Convention.**

The president shall appoint, and assign duties to, all employees of the Convention and shall consult with the chairman and vice-chairman of each standing committee with respect to the staffing of such committee.

Rule 8. **Authority of President.**

The president shall be chief executive of the Convention and all other officers and employees shall be responsible to his general supervision.

Rule 9. **Naming of the President Pro Tem.**

The president may appoint any delegate to preside temporarily at any session of the Convention or of the Committee of the Whole, but not for longer than one day at a time without leave of the Convention.

Rule 10. **Voting.**

The president may vote in all elections, on all divisions called for by any delegate, and on all questions taken by ayes and nays, including appeals from his decisions, except that the president may not vote twice, once to cause a tie vote and then again to break it.

VICE PRESIDENTS

Rule 11. **Powers and Duties.**

If the president is temporarily absent or temporarily unable to preside, the first vice president, or, in the absence or inability of the first vice president to preside, the second vice president, shall exercise the powers and perform the duties of the president and shall preside over the Convention or the Committee of the Whole, unless the president shall have designated another delegate as president **pro tem** for that session or that day. If a vacancy occurs in the office of president, the first vice president shall temporarily exercise the powers of the office of president until the Convention elects a president to fill the office. If a vacancy occurs in the office of the first vice president, the second vice president shall succeed thereto. The Convention shall fill any vacancy in the office of second vice president.

SECRETARY

Rule 12. **Responsibilities of the Secretary.**

The secretary shall be the chief administrative officer of the Convention and shall be primarily responsible for its administration, under the direct authority of the president. The secretary, under the supervision and authority of the president, shall be responsible for the employment and assignment of personnel, the supervision of payroll, the registration of lobbyists or any special interest groups pursuant to any requirements imposed by rule or resolution of the Convention, and communications with the press. He shall be director of

the Convention's budget and shall supervise the acquisition and care of facilities, services and supplies needed by the Convention.

The secretary, with the president, shall certify to the secretary of state the proposals for a new constitution and the form thereof as approved by the Convention for submission to the electorate on May 14, 1968, in accordance with Section 15 of Chapter 4 of the Acts of the General Assembly of 1967.

CHIEF CLERK

Rule 13. **Roll Call.**

The chief clerk shall call the roll at the opening of each session of the Convention and the president shall announce whether or not a quorum is present. The president shall announce the names of the delegates absent with leave of the Convention, and the names of delegates absent without such leave, and the chief clerk shall enter the names of all absent delegates upon the Journal. If a voting machine is provided, vote by machine shall be taken whenever a roll call or a vote by ayes and nays is directed by or in accordance with these rules.

Rule 14. **Journal and Transcript.**

The chief clerk shall furnish to each delegate a printed journal of the proceedings of the Convention for the previous day which, when approved by the Convention, shall be the official journal of the Convention. The chief clerk shall also keep a verbatim record of the proceedings of sessions of the Convention and meetings of the Committee of the Whole.

Rule 15. **Order of Business.**

The chief clerk shall furnish to each delegate the daily calendar and agenda of the business of each session of the Convention provided for by Rule 57 and a copy of each proposal as soon as practicable.

SERGEANT AT ARMS

Rule 16. **Powers and Duties.**

The sergeant at arms shall be the chief police officer of the Convention and shall have authority, either personally or by his duly authorized assistants, to serve subpoenas and warrants issued by the Convention or by any duly authorized officer or committee of the Convention.

PARLIAMENTARIAN

Rule 17. **Duties.**

The parliamentarian shall be advisor and counsel to the presiding officer on all matters of parliamentary procedure; however, all parliamentary rulings shall be the responsibility of, and shall be made by, the presiding officer.

HISTORIAN

Rule 18. **Duties.**

The historian shall be responsible for collecting, compiling, documenting and preserving all proceedings of the Convention and its several committees. He shall also oversee the publication of any of the historical records and documents of the Convention.

EMPLOYEES

Rule 19. **Appointment.**

The Convention by resolution may designate employee positions and the descriptions thereof, and may provide the president with salary scales for the positions thus designated.

CHAPTER III. DELEGATES

Rule 20. **Conduct in Debate.**

When any delegate is about to speak in debate or to present any matter to the Convention, he shall rise from his seat, and address himself to "Mr. President"; he shall not speak until recognized and when recognized he shall confine himself to the question under consideration and avoid personalities.

Rule 21. **Delegates Called to Order.**

The president or any delegate may challenge any other delegate who, on speaking, violates the rules of the Convention. Upon such challenge, the president may order the speaker to sit down. The president's order to sit down, or the failure of the president to order the speaker to sit down, may be appealed.

Rule 22. **Times Delegates May Speak.**

No delegate may speak more than once on the same question without leave of a majority of those present and voting, unless he be the mover of the matter pending or chairman of the committee that reported it, in which case he shall be privileged to speak twice.

Rule 23. **Contest of Election.**

No protest or petition contesting the election or selection of any delegate shall be received or considered unless filed within ten days after the adoption of these rules or within ten days after the appointment of any delegate.

CHAPTER IV. COMMITTEES

Rule 24. **Establishment and Meetings.**

The standing committees of the Convention shall be:

1. Committee on Personal Rights and the Preamble
2. Committee on Suffrage and Elections
3. Committee on the Legislative Branch
4. Committee on the Executive Branch
5. Committee on the Judicial Branch
6. Committee on Local Government
7. Committee on State Finance and Taxation
8. Committee on General Provisions
9. Committee on Style, Drafting and Arrangement
10. Committee on Calendar and Agenda
11. Committee on Rules and Credentials

Each committee shall meet at the call of its chairman or by the written request of a majority of its members.

A recorded roll call vote on any matter before a committee shall be taken on demand of any member of the committee.

Each committee shall maintain an action journal of all its proceedings and a calendar, both of which shall be available to the delegates, news media and interested members of the public.

Additional committees may be established by resolution of the Convention.

Rule 25. **Oaths and Vacancies.**

The presiding officer of any committee may place under oath or affirmation any person who appears to testify on any matter pending before the committee.

In case of a vacancy or the prolonged absence of the chairman and vice-chair-

man, the president of the Convention shall appoint a chairman to act until the chairman or vice-chairman shall return.

Rule 26. **Sitting of Committees During Sessions of the Convention.**

No committee, except the Committee on Calendar and Agenda, shall sit during the sessions of the Convention or of the Committee of the Whole, without having first obtained special leave of the Convention by the affirmative vote of a majority of those present and voting.

Rule 27. **Power to Incur Expenses.**

No delegate or committee shall incur any expense chargeable to the Convention unless such expense is approved by the president or is authorized by resolution of the Convention. No motion or resolution calling for an expenditure of money shall be acted upon by the Convention without first being referred to an appropriate committee for consideration and recommendation.

Rule 28. **Subcommittees.**

A committee, by the affirmative vote of a majority of its members, may provide for the appointment by the committee chairman of subcommittees composed of delegates who are members of the committee. Reports of subcommittees shall be considered by the entire committee before the committee recommends any action thereon by the Convention.

Rule 29. **Notice of Reports.**

Before reporting on any proposal, a committee shall notify all delegates who have introduced proposals on the same subject matter of the time and place where they may meet with the committee to explain such proposals before the committee reports, and the notice required by this rule shall be given at least twenty-four hours before the committee reports.

Rule 30. **Report of Committees.**

The affirmative vote of a majority of the members of a committee shall be necessary to report a proposal out of committee. The report of a minority of at least twenty per cent of the members of any committee shall be received, printed in the same manner as the majority report, and treated as an amendment or substitute offered to or for the report of the committee if offered as such on the floor. All proposals reported by a committee to the Convention shall be referred to the Committee of the Whole.

Rule 31. **Committee Meetings and Hearings.**

All committee meetings shall be open to the public unless otherwise authorized by the Convention by the affirmative vote of a majority of all the delegates. Committees may hold public hearings at the seat of the Convention and may be authorized by the Convention to hold public hearings at any other place in the State. Committees may take testimony under oath or affirmation. A committee, by resolution of the Convention, may be given the power to subpoena documents and witnesses. A witness so subpoenaed shall have the right to be represented by counsel of his own choosing. A committee may grant the powers here authorized to any subcommittee. A committee, with the approval of the president, may direct that a verbatim record be kept of any portion of its proceedings.

Rule 32. **Consideration of Proposals without Committee Recommendation.**

After one session day's notice a committee, on motion passed by the affirmative vote of a majority of all the delegates, may be required to report, with or without a recommendation, any proposal referred to the committee.

CHAPTER V. COMMITTEE OF THE WHOLE

Rule 33. **General Orders of the Day.**

All proposals reported by any committee of the Convention shall be referred to the Committee of the Whole and kept in the file called "General Orders of the Day". No committee proposal shall be considered by the Committee of the Whole until the third day after it has been referred to the Committee of the Whole, unless the Convention, by the affirmative vote of a majority of the delegates present and voting, agrees to its earlier consideration.

Rule 34. **Consideration of Proposals.**

When the Convention reaches consideration of the General Orders of the Day, it shall then sit as the Committee of the Whole to consider such orders, or to consider a particular order designated by the Convention by the affirmative vote of a majority of those present and voting. No business shall be in order until all pending General Orders of the Day have been considered or passed over, or the Committee of the Whole has risen. Unless a particular proposal has been specially designated by the Convention for consideration out of turn, the Committee of the Whole shall consider, act upon, or pass over the General Orders of the Day in the order in which they were referred to the Committee.

Rule 35. **Reading; Debate; Amendment.**

In the Committee of the Whole, proposals shall, at the request of any delegate, be read before being debated or acted upon. All amendments shall be entered on separate paper and stated to the delegates by the presiding officer.

Rule 36. **Motion that Committee of the Whole Rise.**

A motion that the Committee of the Whole rise shall always be in order unless a member of the Committee is speaking or a vote is being taken, and such motion shall be decided without debate by the affirmative vote of a majority of those present and voting.

Rule 37. **Reconsideration.**

A motion to reconsider shall be in order in the Committee of the Whole and may be adopted before the Committee rises by the affirmative vote of a majority of those present and voting.

Rule 38. **Application of Convention Rules.**

The rules of the Convention shall be observed in the Committee of the Whole so far as they may be applicable except that: the Committee of the Whole cannot adjourn the Convention; the previous question shall not be ordered; the vote of a majority of the Committee shall govern its action; the Committee cannot refer matters to any other committee; and a motion to postpone indefinitely or for a Call of the Convention shall not be in order. A delegate may speak more than once in the Committee of the Whole. A transcript of the proceedings in the Committee of the Whole shall be maintained.

CHAPTER VI. TRANSACTION OF BUSINESS

Rule 39. **Order of Business.**

The order of business of the Convention shall be as follows:

1. Call to order and preliminary matters.
2. Invocation.

3. Roll call.
4. Report of Committee on Calendar and Agenda.
5. Reports of other standing committees.
6. Reports of select committees.
7. Communications from state officers.
8. Introduction and first reading and reference of proposals.
9. Second and final reading of proposals.
10. Motions and resolutions.
11. Unfinished business.
12. Special orders of the day.
13. General orders of the day.

PETITIONS

Rule 40. **Printing in Journal.**

No memorial, remonstrance, or petition shall be read or be printed in full in the Journal unless ordered read or printed by the affirmative vote of a majority of those present and voting.

MOTIONS AND RESOLUTIONS

Rule 41. **Stating Motions.**

When a motion is made, it shall be stated to the Convention by the president; or, if in writing, it shall be handed to the chief clerk and read aloud to the Convention before being debated.

Every resolution, other than a proposal, shall be submitted in quintuplicate, shall be read by title, and shall be referred to the appropriate committee. If the rules are suspended to permit immediate consideration of a resolution, the resolution shall be read in full to the Convention before it is considered.

Rule 42. **Reduced to Writing.**

Every motion shall be reduced to writing if the president or any delegate shall request it, and shall be entered upon the Journal, together with the name of the delegate making it, unless the motion is withdrawn by the maker or is ruled out of order by the president.

Rule 43. **Withdrawal of Motions.**

After a motion has been stated by the president or read by the chief clerk, it shall be deemed to be in the possession of the Convention, but it may be withdrawn by the member at any time before being amended or put to vote.

Rule 44. **Privileged Motions.**

When a question is under debate, no motion shall be received but—

1. To amend the calendar and agenda.
2. To fix the time to which to adjourn.
3. To adjourn.
4. To take a recess.
5. To reconsider.
6. To call for the Orders of the Day.
7. To lay on the table.
8. For a Call of the Convention.
9. To limit debate.
10. To move the previous question.
11. To postpone to a day certain.
12. To commit.
13. To amend.
14. To postpone indefinitely.

The motions listed in this rule shall take precedence in the order in which they stand arranged. All of them shall be decided by the affirmative vote of a majority of those present and voting, except that any motion to postpone indefinitely shall be decided by the affirmative vote of a majority of all the delegates to the Convention. When a recess is taken while a question is pend-

ing, consideration of such question shall be resumed when the Convention reassembles, unless it determines otherwise. No motion to postpone to a day certain, or to commit, having been decided by the Convention, shall again be in order on the same day or at the same stage of the question. Whenever a proposal is being considered and a motion is then made, either to postpone indefinitely or to commit, amendments to the pending proposal shall first be in order before any vote is taken on any such motion.

Rule 45. **Motions not Debatable.**

A motion to adjourn shall always be in order except when a motion to fix the time to which to adjourn, or a motion to amend the calendar and agenda, is pending. A motion to adjourn, a motion to lay on the table, a motion for a recess pending the consideration of other business and all matters relating to questions of order, shall be decided without debate.

Rule 46. **Order of Putting Questions.**

All questions shall be put in the order in which they are moved, except in the case of privileged motions.

Rule 47. **Amendment must be Germane.**

No motion or proposition relating to a subject different from that under consideration shall be admitted under color of an amendment or substitute.

Rule 48. **Division of Question.**

Any delegate may call for a division of the question, which shall be divided if it includes propositions which are so distinct in substance that when one is removed or deferred, a substantive proposition remains for the decision of the Convention. A motion to strike out and insert shall not be subject to division within the meaning of this rule.

MOTIONS CALLING FOR THE PREVIOUS QUESTION

Rule 49. **Method of Ordering.**

The method of ordering the previous question shall be as follows: Any delegate may move the previous question and, unless otherwise stated, the motion shall apply to the pending question only. When such motion is seconded by at least ten delegates, the presiding officer shall put the question, "Shall the main question now be put?" This shall be ordered only by a majority of the delegates present and voting. After the seconding of a motion for the previous question and prior to the ordering of the same, a Call of the Convention may be moved and ordered, but after ordering the previous question nothing shall be in order prior to the decision of the pending question or questions, except demands for the ayes and nays, points of order, appeals from the decision of the Chair, and a motion to adjourn or to take a recess, all of which shall be decided without debate. The effect of ordering the previous question shall be to put an end to all debate and bring the Convention to a direct vote upon the pending question or questions in their order down to and including the main question; provided, however, that when the previous question shall be ordered, amendments then on the chief clerk's desk shall be acted upon. When a motion to reconsider has been taken under the previous question and decided in the affirmative, the fact that the previous question had been ordered shall have no operation or effect with respect to the question for which reconsideration has been ordered. If the Convention refuses to order the previous question, it shall resume consideration of the pending subject as though no motion for the previous question had been made.

Rule 50. **Motion for Reconsideration.**

Any delegate may move for a reconsideration of any question at the same or next succeeding session of the Convention, or the Committee on Style, Drafting and Arrangement may move for reconsideration on any subsequent day if one session day's notice of its intention to do so is given in writing to the chief clerk and entered upon the Journal. A motion to reconsider shall take precedence over all other questions, except a motion to amend the calendar and agenda, a motion to fix the time to which to adjourn, a motion to adjourn and a motion to recess. A motion to reconsider shall not be renewed on the same day.

MOTION FOR CALLS OF THE CONVENTION

Rule 51. **Ordering Calls of the Convention.**

Calls of the Convention may be ordered upon motion by the affirmative vote of a majority of the delegates present and voting, but the total vote in favor of such Call shall not be less than fifteen.

Rule 52. **Procedure.**

After a Call of the Convention is ordered the doors shall be closed and the delegates shall not be permitted to leave the floor of the Convention without permission of the president or the Convention. The sergeant at arms shall notify all delegates within the bar of the Convention of the Call. The roll of the Convention shall be called by the chief clerk and the absentees noted. The sergeant at arms may, upon motion, be dispatched after the absentees. In such case, a list of the absentees shall be furnished by the chief clerk to the sergeant at arms, who shall bring such absentees to the floor of the Convention with all possible speed. In case the sergeant at arms shall require assistance in addition to the regularly appointed assistant sergeants at arms of the Convention, the president, upon motion, may deputize as a special assistant sergeant at arms any person properly qualified. The Convention may proceed to business under a Call of the Convention pending the arrival of any absentees.

PROPOSALS

Rule 53. **Introduction.**

Any suggestion, proposition or draft intended to become a part of any revised constitution, or amendment thereto or schedule to be attached thereto shall be called a proposal. A proposal introduced by a delegate shall be designated a delegate proposal and a proposal submitted by a committee shall be designated a committee proposal. A delegate proposal shall be endorsed by the delegate or delegates introducing it and a committee proposal shall be endorsed by the chairman of the committee submitting it. Five copies of every proposal shall be delivered to the chief clerk who shall cause the same to be suitably numbered, printed and distributed to delegates as promptly as possible.

Rule 54. **Order of Consideration.**

The prescribed order in which proposals introduced in the Convention are to be taken up or acted upon shall be as follows:

1. Introduction, first reading by title, reference to a committee by the president, and ordered printed and distributed unless otherwise ordered by a majority of the delegates present.
2. Report of the committee and placing on the General Orders.
3. Consideration by the Committee of the Whole in order of their reference.

4. Report by the Committee of the Whole and reference to the Committee on Drafting, Style and Arrangement.
5. Report of the Committee on Drafting, Style and Arrangement.
6. Second reading, final passage of each proposal.
7. Re-reference to the Committee on Drafting, Style and Arrangement for incorporation in final draft.
8. Report by the Committee on Drafting, Style and Arrangement of any complete revision of, or proposed amendment to, the Constitution.
9. Tentative adoption of any complete revision of, or proposed amendment to, the Constitution.
10. Third reading and final passage of any complete revision of, or proposed amendment to, the Constitution.

Rule 55. **Majority Vote on Proposals.**

On the final passage of every proposal, section, article and of any complete revision of or amendment to the Constitution, the vote shall be taken by ayes and nays and entered on the Journal and no proposal, section, article, or any such amendment or complete revision, shall be declared finally passed unless a majority of all the delegates to the Convention shall have voted in favor of the passage of the same.

Rule 56. **Calendar.**

The Committee on Calendar and Agenda shall prepare a calendar and order of business for each session of the Convention. The calendar shall be furnished to the chief clerk, who shall distribute it to the delegates at least six hours before the time set for the next session of the Convention, unless the president waives the time requirement prescribed in this rule as necessary to the orderly or expeditious conduct of the business of the Convention. The Convention, at any time or from time to time during a session, may, by the affirmative vote of a majority of those present and voting, adopt, reject or modify the daily calendar and agenda presented to it.

SPECIAL ORDERS

Rule 57. **Unfinished Special Orders.**

Any subject matter which has been a made a special order for a particular day, but which is not reached on that day, shall then come up for consideration under the order of "Unfinished Business" at the next succeeding session of the Convention.

Rule 58. **Limitation on Debate and Control of Dilatory Procedure.**

The Convention by the affirmative vote of a majority of all the delegates to the Convention may limit the time of debate on any matter before the Convention and may designate a method of allocating among delegates the period allowed for debate.

CHAPTER VII. MISCELLANEOUS

READING AND ENDORSEMENT OF PAPERS

Rule 59. **Reading.**

When the reading of a paper is called for and an objection is raised to such reading, the Convention by a majority vote of delegates present and voting shall determine without debate whether or not the paper shall be read.

Rule 60. **Presentation and Endorsement of Petitions.**

Petitions received by an officer of the Convention or by any delegate may be

initialed by the recipient, and handed directly to the chairman or clerk of the committee which has the subject matter of the petition under consideration. The chairman of the committee, on behalf of the Convention, shall give appropriate notice of the receipt of the petition.

Rule 61. **Calls of Convention—Ayes and Nays.**

Upon Calls of the Convention, and in taking the ayes and nays upon any question, the names of the delegates shall be called alphabetically unless a voting machine is provided in which case it shall be used.

Rule 62. **Putting the Question.**

The president shall put all questions substantially in this form: "As many as are in favor of (as the question may be) say 'aye' "; and after the affirmative vote is expressed, "as many as are opposed say 'no'." If the president is in doubt as to the vote, he may order a division of the Convention.

A division of the Convention may be had upon the demand of ten delegates. When a division of the Convention is ordered, the voting machine shall be used, if provided, and the president shall declare the result. On a tie vote the question shall be determined as lost.

Rule 63. **Recognition during Roll Call.**

After a question has been stated by the president, and the call of the roll has been started by the chief clerk, the president shall not recognize a delegate for any purpose except upon points of order, until after the announcement of the vote by the chief clerk. The chief clerk shall enter upon the Journal the names of those voting "aye" and the names of those voting "no".

Rule 64. **Roll Call.**

At the roll call to be taken at the opening of each session and upon Calls of the Convention, the names of the members shall be called by the chief clerk or the voting machine shall be used, if provided, and the absentees noted, after which the names of the absentees shall be called.

Rule 65. **Amendment or Suspension of Rules.**

These rules may be amended by the affirmative vote of a majority of all the delegates, after the proposed amendment has been submitted in writing, has been considered by the Committee on Rules and Credentials, and has been in the possession of the delegates not less than two session days prior to its consideration. A rule may be suspended by the affirmative vote of two-thirds of the delegates present or a majority of all the delegates to the Convention, whichever constitutes the lesser number.

APPEALS

Rule 66. **Form of Question.**

On all appeals from decisions of the Chair, the question shall be "Shall the appeal be sustained?" A favorable vote of a majority of the delegates present and voting shall sustain the appeal. The presiding officer may cast his vote on an appeal from his decision, and he shall have the right to explain his decision.

Rule 67. **Tabling Appeals.**

An appeal may be laid on the table but shall not, as a consequence, thereby either remove or carry with it the subject matter pending before the Convention at the time the appeal was taken.

Rule 68. **Practice.**

In all cases not covered by these rules, or by any subsequent amendments to them, the controlling parliamentary authority shall be **Robert's Rules of Order Revised** (1956 Edition).

METHOD OF VOTING

Rule 69. **Voting by the Electrical Roll Call System.**

When taking the ayes and nays on any question to be voted upon, the electrical roll call system may be used, and when so used shall have the same force and effect as a roll call taken as otherwise provided in these rules.

When the Convention is ready to vote upon any question requiring a roll call, and the vote is to be taken by the electrical roll call system, the presiding officer shall announce: "The question is on the passage of (designating the matter to be voted upon). All in favor of such question shall vote 'aye', all opposed shall vote 'nay'. The Convention will now proceed to vote."

After affording the delegates sufficient time in which to vote, the presiding officer shall announce: "Have all voted?" and after a short pause he shall then say: "Does any delegate desire to change his vote?" and after another short pause he shall say: "The chief clerk shall proceed to record the vote."

The chief clerk shall immediately start the vote recording equipment, and when completely recorded, the president shall announce the result of the Convention. The chief clerk shall enter upon the Journal the result in the manner provided by the rules of the Convention.

Any delegate shall be privileged to vote or change his vote after the vote recording equipment has started to operate, and prior to the time the chief clerk has recorded the vote.

No delegate shall vote for another delegate, nor shall any person not a delegate cast a vote for any delegate. Any delegate who shall vote or attempt to vote for another delegate may be punished in such manner as the Convention may determine. If a person not a delegate shall vote or attempt to vote for any delegate, he shall be barred from the floor of the Convention for the remainder of the session and may be further punished in such manner as the Convention may determine proper.

CHAPTER VIII. LOBBYISTS

Rule 70. **Registration and Regulation.**

The Convention, by resolution adopted by a majority of all the delegates, shall have authority to issue rules or regulations with respect to the registration and appearance before it, or before any of its authorized committees or subcommittees, of any person engaged or hired, for a fee, salary or other compensation, to promote, advocate, influence or oppose any matter pending before the Convention, or which might come before it or any of its committees or subcommittees. Such rules and regulations may include requirements that such persons shall register with the secretary and file such report of expenditures as may be required by such rules and regulations.

VII

Appendix

STATEMENT BY GOVERNOR J. MILLARD TAWES ON THE APPOINTMENT OF THE CONSTITUTIONAL CONVENTION COMMISSION WEDNESDAY, JUNE 16,1965

I have today appointed a Constitutional Convention Commission. This Commission has been instructed "to conduct an inquiry into the necessity for, and extent and nature of, any amendment, modification or revision of the Constitution of Maryland, with particular respect to whether a Constitutional Convention should be held, the procedures for calling such a Convention, the basis for representation at the Convention and the procedures for the election of the Delegates thereto."

The present Constitution of Maryland, adopted in 1867, has been amended more than one hundred times, and many lawyers, judges, legislators and students of political science have expressed the opinion to me that it is too lengthy and too detailed to serve satisfactorily as the basic law of our State.

I have been advised by Attorney General Thomas B. Finan that the General Assembly may call a Constitutional Convention at any time prior to the 1970 date now set out as the time for taking "the sense of the people" on this matter.

The Commission is empowered to adopt rules of procedure for the conduct of its inquiry and will be expected to review the most successful governmental practices in the other states of the Union and to study the most modern examples of State governmental machinery.

The Commission shall submit its findings, recommendations and specific proposals regarding amendment, modification or revision of the Constitution and the holding of a Constitutional Convention to me and to the General Assembly of Maryland prior to its 1967 Session.

After consultation with Attorney General Finan, I have been advised that his office is prepared to assist and cooperate with the Commission in furtherance of its objectives. I have asked all Departments and Agencies of the State Government, and Dr. Carl Everstine of the Department of Legislative Reference, to render whatever aid the Commission should desire.

The following distinguished persons have accepted appointment to the Com-

mission: E. Dale Adkins, Jr., former State Senator and Judge of the Circuit Court of Wicomico County; William Prescott Allen, newspaper publisher in Montgomery County; Dr. Harry Bard, political scientist and President of Baltimore Junior College; Calhoun Bond, attorney and member of the State Welfare Board; Dr. Franklin L. Burdette, Professor of Government and Politics, and Director of Bureau of Governmental Research at the University of Maryland; Richard W. Case, Baltimore attorney and tax expert; Hal C. B. Clagett, Prince George's County attorney; Ernest N. Cory, Jr., attorney and banker; Charles Della, President, Maryland-D. C. AFL-CIO Labor Council; H. Vernon Eney, past President of the Maryland State Bar Association; Mrs. Leah S. Freedlander, Baltimore educator; James O'Conor Gentry, former Assistant Attorney General; Stanford Hoff, former member of the State Senate and former member of the Public Service Commission; Dr. Martin D. Jenkins, President of Morgan State College; William Preston Lane, former Governor and former Attorney General of Maryland; Miss Elsbeth Levy, Baltimore attorney; Robert J. Martineau, Assistant Attorney General; William J. McWilliams, Anne Arundel County attorney and former Judge of the Circuit Court of Anne Arundel County; Edward T. Miller, former Congressman from the 1st District of Maryland; Clarence W. Miles, Baltimore attorney and Eastern Shore civic leader; Charles Mindel, Baltimore attorney and former Vice President of the Baltimore Bar Association; George L. Russell, Jr., Baltimore attorney and civic leader; E. Phillip Sayre, Montgomery County investment counselor; Alfred L. Scanlan, Attorney for the Fair Representation Committee; L. Mercer Smith, Vice President of the Chesapeake and Potomac Telephone Company; Dr. Furman L. Templeton, Director, Baltimore Urban League; William C. Walsh, former Attorney General and former Judge of the Maryland Court of Appeals.

I shall announce the appointment of Commission Chairman within a short time.

MEETINGS OF THE CONSTITUTIONAL CONVENTION COMMISSION

Date	*Place*
July 21, 1965	State Office Building Baltimore, Maryland
August 9, 1965	State Office Building Baltimore, Maryland
September 20, 1965	State Office Building Baltimore, Maryland
October 18, 1965	State Office Building Baltimore, Maryland
November 22, 1965	State Office Building Baltimore, Maryland
December 20, 1965	University of Maryland School of Law Baltimore, Maryland
January 17, 1966	University of Maryland School of Law Baltimore, Maryland
February 21, 1966	University of Maryland School of Law Baltimore, Maryland
March 21, 1966	University of Maryland School of Law Baltimore, Maryland
April 18, 1966	University of Maryland School of Law Baltimore, Maryland
May 16, 1966	University of Maryland School of Law Baltimore, Maryland
June 20, 1966	University of Maryland School of Law Baltimore, Maryland
July 17 and 18, 1966	Tidewater Inn Easton, Maryland
August 21 and 22, 1966	Adult Education Center University of Maryland College Park, Maryland
September 18 to 20, 1966	Adult Education Center University of Maryland College Park, Maryland
October 14 to 16, 1966	Holiday Inn Downtown Baltimore, Maryland
October 24 and 25, 1966	Donaldson Brown Center University of Maryland Port Deposit, Maryland

November 21, 1966	University of Maryland School of Law Baltimore, Maryland
December 3, 1966	University of Maryland School of Law Baltimore, Maryland
December 19, 1966	University of Maryland School of Law Baltimore, Maryland
January 16, 1967	University of Maryland School of Law Baltimore, Maryland
March 4, 1967	University of Maryland School of Law Baltimore, Maryland
March 20, 1967	University of Maryland School of Law Baltimore, Maryland
May 1, 1967	University of Maryland School of Law Baltimore, Maryland
June 14, 1967	University of Maryland School of Law Baltimore, Maryland

MEETINGS OF THE COMMITTEES OF THE CONSTITUTIONAL CONVENTION COMMISSION

COMMITTEE ON ELECTIVE FRANCHISE AND DECLARATION OF RIGHTS

Date	*Date*
October 18, 1965	May 31, 1966
January 25, 1966	June 11, 1966
February 12, 1966	June 21, 1966
March 12, 1966	August 3, 1966
March 26, 1966	August 11, 1966
April 30, 1966	September 9, 1966
May 12, 1966	

COMMITTEE ON THE LEGISLATIVE DEPARTMENT

Date	*Date*
September 13, 1965	April 18, 1966
October 4, 1965	May 16, 1966
November 15, 1965	May 17, 1966
December 20, 1965	June 2, 1966
January 17, 1966	July 6, 1966
February 4, 1966	August 2, 1966
February 9, 1966	September 14, 1966
February 21, 1966	September 27, 1966
March 9, 1966	March 4, 1967
March 21, 1966	

COMMITTEE ON THE EXECUTIVE DEPARTMENT

Date	*Date*
October 18, 1965	June 10, 1966
January 14, 1966	June 29, 1966
February 24, 1966	August 26, 1966
March 11, 1966	August 31, 1966
April 7, 1966	October 5, 1966
May 12, 1966	

COMMITTEE ON THE JUDICIARY DEPARTMENT

Date	*Date*
November 8, 1965	June 30, 1966
January 22, 1966	July 8, 1966
February 4, 1966	July 12, 1966
February 18, 1966	July 21, 1966
February 26, 1966	July 28, 1966
April 5, 1966	August 11, 1966
April 12, 1966	September 1, 1966
May 5, 1966	September 6, 1966
June 8, 1966	October 18, 1966
June 16, 1966	November 29, 1966
June 23, 1966	

COMMITTEE ON STATE FINANCE AND TAXATION

Date	*Date*
December 1, 1965	July 13, 1966
December 29, 1965	July 25, 1966
March 31, 1966	July 29, 1966
May 3, 1966	August 15, 1966
June 9, 1966	September 15, 1966
June 13, 1966	October 19, 1966
July 5, 1966	November 17, 1966

COMMITTEE ON POLITICAL SUBDIVISIONS AND LOCAL LEGISLATION

Date	Date
December 20, 1965	June 24, 1966
January 17, 1966	July 22, 1966
January 28, 1966	July 27, 1966
February 21, 1966	August 4, 1966
February 25, 1966	August 10, 1966
March 21, 1966	October 4, 1966
March 25, 1966	October 10, 1966
April 18, 1966	October 18, 1966
April 29, 1966	October 20, 1966
May 16, 1966	November 9, 1966
May 27, 1966	

COMMITTEE ON MISCELLANEOUS PROVISIONS

Date	Date
November 22, 1965	June 15, 1966
December 6, 1965	June 22, 1966
January 4, 1966	June 30, 1966
February 7, 1966	July 6, 1966
February 14, 1966	July 29, 1966
March 4, 1966	August 1, 1966
March 10, 1966	August 10, 1966
March 28, 1966	September 28, 1966
April 11, 1966	October 4, 1966
April 25, 1966	October 21, 1966
May 11, 1966	November 16, 1966
June 1, 1966	December 1, 1966
June 7, 1966	December 13, 1966

COMMITTEE ON STYLE

Date	Date
October 18, 1965	March 11, 1967
March 1, 1967	

COMMITTEE ON CONVENTION PROCEDURES

Date	Date
August 23, 1965	March 21, 1966
September 20, 1965	April 18, 1966
October 18, 1965	May 16, 1966
November 15, 1965	November 21, 1966
December 20, 1965	December 5, 1966
January 17, 1966	January 16, 1967
February 21, 1966	

ADDRESS BEFORE THE SENATE COMMITTEE ON AMENDMENTS TO THE CONSTITUTION AND THE HOUSE COMMITTEE ON WAYS AND MEANS BY MR. PHILIP B. PERLMAN ON THE REQUIREMENT THAT THE GENERAL ASSEMBLY CALL A CONSTITUTIONAL CONVENTION MARCH 19, 1931

At the general election held in Maryland in the month of November, 1930, 506,894 votes were cast for all the candidates for the office of Governor, the highest number of votes cast for any office or on any proposition on the ballot. At the same election 202,052 votes were cast on the question as to whether a constitutional convention, to alter or revise the Constitution of Maryland, should be called, 108,351 votes being in favor of a convention and 93,701 against. Every county in the State returned a majority against the convention, the total county majority against being 25,551. The City of Baltimore, however, favored the convention by a majority of 40,201, sufficient to overcome the county vote by 14,650 votes.

The vote on the constitutional convention was taken in compliance with the mandate contained in the Constitution requiring that "the sense of the people" on the question of calling the convention be ascertained every twenty years. This provision was incorporated in the Constitution of 1867. The first vote was taken in 1887, the second in 1907, both resulting in majorities against a convention. The third vote was to have been in 1927, but was postponed by the Amendment on Quadrennial Elections, to the general election of 1930.

The fact that the total number of votes in favor of the convention is less than a majority of the voters who participated in the general election has created doubt as to whether a convention has been approved by the majority required by the Constitution. There were, judging from the gubernatorial vote, at least 506,894 voters at the general election. A majority of this number is 253,448, but the total vote for the convention was 108,351, or 145,097 less than a majority of the voters who voted at the general election on all candidates and propositions.

Which majority controls? The majority of the voters actually voting on the particular question, or the majority of the voters on all questions at the general election of 1930? Ordinarily, we accept as final the result of the vote on each candidate and each measure separately. But the language of the Constitution, in this instance, is not free from ambiguity. Article XIV of the Constitution of 1867 is titled "Amendments to the Constitution." This article contains two sections, the first authorizing the General Assembly to propose amendments to the Constitution by way of a separate bill for each amendment, passed by three-fifths of all of the members elected to each of the two houses. It is provided that each bill proposing an amendment shall be published once a week for three months preceding the next ensuing general election, at which the amendment is to be submitted to the qualified voters of the State for adoption or rejection. And the Constitution says: "the votes cast for and against said proposed amendment or amendments, severally, shall be returned to the Governor, in the manner prescribed in other cases, and if it shall appear to the Governor

that a majority of the votes cast at said election *on said amendment or amendments,* severally, were cast in favor thereof," that then the amendment or amendments shall be part of the Constitution. It will be noticed that while the vote on an amendment to the Constitution is to be taken at a general election—an election at which other measures and the names of candidates for offices appear on the ballot—the vote to be considered is the vote cast on each proposed amendment.

Section 2 of Article XIV reads differently. It is made the duty of the General Assembly to take the sense of the people at the general election in the year 1887 and every twenty years thereafter in regard to calling a convention for altering the Constitution. And then the Section provides: "and if a majority of voters at such election or elections shall vote for a Convention," the General Assembly, at its next session shall provide by law for the assembling of a convention. Inasmuch as the Governor and State Senators were given four year terms (Article II, Sec. 2; Article III, Sec. 8) it was contemplated that each twenty-year vote on the Convention, beginning in 1887, would be cast at a general election.

But the provision as to the result makes the test "a majority of voters at such election," a marked difference from the language of Section 1, where the majority was specifically confined to the vote on each amendment. The difference becomes all the more apparent when the further provisions of Section 2 are studied. "But any Constitution, or change, or amendment of the existing Constitution which may be adopted by such convention, shall be submitted to the voters of this State, and shall have no effect unless the same shall have been adopted by a majority of the voters voting thereon." This vote is not required to be taken at a general election, and, therefore, may be taken at a special election. The majority specified is expressly limited to the majority of those voting thereon. The situation is, therefore, that Article XIV, in its two sections, provides for three polls, two of which must be decided by a majority of the voters voting on the particular proposition, and the other—the question of a constitutional convention—is left to a decision of a majority of voters at such (general) election or elections. Unless it is held that the failure to employ an express limitation as to the majority needed for a convention, as was done in regard to the other two votes, is meaningless and of no significance whatever, great weight must be accorded the view that the difference in language can only mean a difference in the requirement. It must be conceded that the rules of construction applied to the courts lead inevitably to the inference that the failure to limit the majority to the voters voting on the constitutional convention in the very same article in which the majority was so limited as to two other propositions was intentional and deliberate. If this inference is justified, then, of course, before a convention can be called under the twenty-year provision, there must be a favorable vote by a majority of all the voters voting at the general election. But there are other serious considerations.

In many of the States where the courts have been called on to decide similar questions, the language construed stood alone, and was not coupled up, as in the Maryland Constitution, with other requirements expressly limited. But even in such cases, as will be seen, though not entirely in harmony, there is a great deal of authority for the

contention that a majority of all the voters participating in the election is necessary.

The law, generally, has been stated as follows:

> "The question as to what constitutes the requisite majority arises chiefly under constitutional and statutory provisions authorizing the submission to the electors of a measure or proposition and providing that the proposition or measure must receive a certain specified majority in order to be carried or adopted. . . . It may be stated generally that much depends on the language of the constitutional or statutory provision under which the particular election is held, and that in the same jurisdiction the court may reach different results in the construction of different constitutional or statutory provisions. One construction is that the requisite majority of the vote actually cast is sufficient irrespective of the number of persons entitled to vote, and another is that an affirmative assent must be given by the requisite majority of those entitled to vote. The authorities also diverge in their construction of the constitutional and statutory provisions where the proposition is submitted at a general election. One construction is that the proposition is carried if it receives the specified majority of the votes actually cast on the proposition. Another construction is that, in order to carry, the proposition must receive the required majority of the votes of the persons who participate in the election and vote for any candidate or on any proposition, regardless of whether or not they vote on the particular proposition."[1]

Most of the cases in point arise from the vote as to the adoption of a constitutional amendment. No attention need be given here to those cases involving constitutional provisions which limited the majority to that of voters "voting on" the amendment, or other propositions, since the problem now before you relates solely to such language as seems to contain no such limitation.[2]

In Alabama, under the Constitution of 1875, the adoption of amendments was contingent upon a favorable vote by "a majority of all the qualified electors of the State who voted at said (general) election, etc." This language was construed to require the affirmative vote of a majority of those who voted at the election in general. The Court said that a failure to vote is a negative vote.[3]

A new Constitution was adopted in 1901, and the majority required now refers to the vote on the amendments. But it was the Constitution that was changed, not the rule of law.[4]

In Arkansas, the constitutional requirement for amendments read: "and if a majority of the electors voting at such elections adopt such amendments." The Federal and State Courts of Arkansas decided that this language means a majority of the electors voting

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[1] 20 C.J. *Elections* § 266, at 206.

[2] 12 C.J. *Constitutional Law* § 32, at 694; Annot., 22 L.R.A. (n.s.) 478; 6 R.C.L. § 22, at 31.

[3] May v. Birmingham, 123 Ala. 306, 26 So. 537 (1898).

[4] Harris v. Walker, 199 Ala. 51, 74 So. 40 (1917).

at the election, and not a majority of those voting on the amendment.[5]

But on January 12, 1911, the people of Arkansas adopted an amendment to the Constitution which, *inter alia,* provided that any measure referred to the people shall take effect when it is approved by a majority of the votes cast thereon. This provisions was held to have no application to constitutional amendments in *Hildreth v. Taylor,* 117 Ark. 465 (1915).

But this decision was overruled in *Brickhouse v. Hill,* 268 S. W. 865 (1925), two judges dissenting, where it was held that the new rule applied to constitutional amendments proposed by petition; and it was overruled again in *Combs v. Grey,* 281 S. W. 918 (1926), where it was held to apply to amendments submitted to the people by the Legislature (1926).

Here again the Constitution was changed, but not the interpretation of the language.

In California, the State Constitution provides that cities may become organized under general laws whenever a majority of the electors voting at a general election shall so determine.

The Court held:

> "These words clearly do not indicate that only a majority of the electors voting upon the proposition is necessary, but would seem to imply that a majority of all those voting at a general election is required."[6]

In Idaho the court had before it a problem in many respects identical with that under the Maryland Constitution. The Constitution of Idaho in Section 1 of Article XX required amendments to be submitted at a general election, and provided for adoption "if a majority of the electors shall ratify." But Section 3 of the same article provided for the submission to the electors at a general election the question as to whether a constitutional convention shall be held. It required the favorable vote of a "majority of all the electors voting at said election." The Court said:

> "We know of no rule of construction, nor has our attention been called to any, that would warrant us in arbitrarily saying that the language used in the two sections was intended to mean the same thing. On the contrary, the reason seems to us to be the other way. *We can understand why the makers of the constitution should apply a different and more stringent rule in the adoption of a call for a constitutional convention from what they would in the matter of a mere amendment."*[7]

In Illinois, the provision for amendments under the Constitution of 1870 required submission "to the electors of this State . . . at the next election of members of the General Assembly . . . and if a majority of the electors voting at said election shall vote for the proposed amendments" they shall become parts of the Constitution. A proposed amendment received 656,298 votes. There were but 295,782 votes against adoption. The Court took the view, however, that the only question to be decided was whether the test for adoption was a majority of the total number of electors voting at the election, or a majority of the electors voting for mem-

[5] Knight v. Shelton, 134 Fed. 423 (C.C.D. Ark. 1905); Rice v. Palmer, 78 Ark. 432 (1906); St. L. S.W. Ry. v. Kavanaugh, 78 Ark. 468 (1906).

[6] People v. Berkeley, 102 Cal. 298 (1929).

[7] Green v. State Board of Canvassers, 5 Idaho 130 (1896).

bers of the General Assembly. The majority of those voting on the amendment had no bearing on the question.[8]

In Indiana it has been held that phrases similar to the one in the Maryland Constitution require a majority of all voting in the election.[9]

> "'A majority of the electors of the State' is as comprehensive as 'a majority of all the electors of the State.' The one form of expression may be more intensive than the other, but it is not more inclusive."[10]

The *Denny* case involved the vote on a constitutional amendment, which was to fail three times althrough all three times it carried a majority of the votes cast on that question. After the third vote, the question was again taken to the highest court of Indiana, which affirmed its rulings in the previous cases.[11]

In Minnesota a case arose under a constitutional provision to enable the voters of a county to decide by ballot whether to remove the county seat. It was required to be adopted by a majority of the electors at a general election. The Court held this to mean a majority of all electors voting at the general election.[12]

In Mississippi, the constitutional requirement on amendments referred to "a majority of the qualified electors voting." Construing this language, the Court said:

> "The adoption of such an amendment requires a majority of all the qualified electors voting for any purpose whatever. This construction preserves the policy the State manifested by these provisions in three constitutions by universal usage before and since the (Civil) war, and conserves the great principle which imperatively demands that the great organic law of the State, its constitution, supreme and paramount over every other interest, shall never be altered or changed except upon the maturest judgment, and by a majority sufficient to warrant the conviction that the change has met the approval of intelligent freemen."[13]

In Missouri a case arose under a constitutional provision that amendments to the charter of St. Louis require approval of three-fifths of the qualified voters voting "thereat" at a general or special election. A vote of approval by three-fifths of those voting on the amendments was held insufficient.[14]

In Nebraska the Constitution required amendments to receive "a majority of the electors voting at such election" (for senators and representatives). The Court said:

> "It is necessary that the favorable votes be in excess of one-half of the highest aggregate number of votes cast at said election, whether such highest number be for the selection of an officer or

[8] People v. Stevenson 281 Ill. 17 (1917). See also People v. Wiant, 48 Ill. 263 (1868).

[9] State v. Swift, 69 Ind. 505 (1880).

[10] *In re* Denny, 156 Ind. 104 (1900).

[11] *In re* Boswell, 179 Ind. 292 (1913). See also Simmons v. Byrd, 192 Ind. 274 (1922).

[12] Everett v. Smith, 22 Minn. 53 (1875); Bayard v. Klinge, 16 Minn. 249 (1871); Taylor v. Taylor, 10 Minn. 107 (1865).

[13] State v. Powell, 77 Miss. 543 (1900). This construction of the Constitution statute was held to be correct in State v. Cato, 131 Miss. 719 (1923).

[14] State v. St. Louis, 73 Mo. 435 (1881).

upon the adoption of a proposition."[15]

In North Dakota, the Court, while expressing doubt upon the subject, held the phrase "a majority of all the legal votes cast at such general election," to mean a majority of the votes cast upon the particular proposition. The majority opinion expressed these views:

> "As an original question, the writer of this opinion confesses to a considerable degree of doubt as to whether or not paragraph 2 of Section 202 of the Constitution could be properly construed to require only a majority of the votes cast upon a given initiated proposition, and, were the question presented now for the first time, it would seem to him that the language employed with reference to the number of votes is indicative of a legislative intention to differentiate in this respect between amendments initiated by petition and amendments proposed by the Legislative Assembly, under the first paragraph of the section, where it is explicitly provided that amendments of the latter sort are ratified by a majority of the electors voting thereon."

The Court said, however, that in view of the fact that it had previously construed substantially identical language it was not at liberty to examine the question as an original one. If the Legislature used the phrase in the light of judicial definition already placed on the expression by the Court, the Court should be very reluctant to redefine the expression so as to deprive it of the meaning previously given.[16]

In Ohio, the Constitution required amendments, submitted at the election for senators and representatives, to be approved by "a majority of the electors, voting at such election."

The Court said:

> " 'Such,' as here used in a pronominal adjective, and necessarily defines an 'election' previously mentioned."

The Court distinguished *Gillespie v. Palmer,* 20 Wis. 544 (1866), where the phrase used was "a majority of all the votes cast at such election." The Court pointed out:

> "While *electors* may not be the exact synonym of *voters,* it is in no sense synonymous with *votes.* So that it is not in point."[17]

It was also held in Ohio, as in Mississippi, that the failure to vote means a negative vote.[18]

In Oklahoma, where the requirement was a "majority of all the electors," there was a total vote at an election of 252,922. On the particular proposition involved in litigation, the vote was 117,441 in favor and 75,772 against, a majority in favor of 41,669. But because there was a failure to obtain a majority of the total vote the Court held that the measure had failed.[19]

In Texas the situation appears to be somewhat removed from the application of any general rule. The section on constitutional amendments refers to a majority of votes cast, but also requires a return to be made of the legal votes cast for and against the amendments. The Court, in holding a majority of

[15] Tecumseh Nat'l Bank v. Saunders, 51 Neb. 801, *denying rehearing,* 50 Neb. 521 (1897).

[16] State *ex. rel.* Byerley v. State Board of Canvassers, 172 N.W. 80 (N.D. 1919) (dissenting opinion).

[17] State v. Foraker, 46 Ohio St. 677 (1889).

[18] State v. Laylin, 69 Ohio St. 1 (1903).

[19] *In re* Initiative Petition No. 2, 26 Okla. 548 (1910).

votes on an amendment sufficient, said there was "no decision cited of such a question under a Constitution worded like ours."[20]

In Wisconsin the question as to a requisite majority was litigated in an action over a constitutional provision requiring any act extending suffrage to be submitted at a general election, and to be approved by a "majority of all the votes cast at such election." The Court pointed to another provision in the constitution under which constitutional amendments were ratified by a majority of the "voters voting thereon," and then construed the suffrage provision the same way, saying that any other construction would require a larger number of votes to extend the suffrage one way than in another.[21]

This case, making as it does a distinction between the use of the word "votes" and the word "voters," has been criticised and its authority questioned by a number of the courts, notably those of Ohio and Indiana. In fact, the Chief Judge of Wisconsin repudiated the case in an opinion in which he said that he was apprehensive that the case then being decided would be classed with *Gillespie v. Palmer* and other "which have long been made a reproach to the Court, as judgments proceeding upon policy rather than principle."[22]

In Wyoming, where the Constitution provides that a proposed amendment shall be submitted at a general election, and become part of the Constitution if "a majority of the electors" ratify it, a majority of those voting upon that question alone is insufficient.[23]

It would seem to be clear, from a review of the cases, that, with but few exceptions, the difficulty in reconciling the decisions lies in the differing language of the state constitutions rather than in any inability to find a generally accepted rule of law. But, notwithstanding, it is declared in one of the great authorities on constitutional law that the cases are in hopeless conflict.[24]

The cases involving the construction of constitutional provisions are distinguished from those requiring an interpretation of an act of the legislature or a charter of a municipal corporation.[25]

Inasmuch as the General Assembly of Maryland faces a constitutional question, and there happens to be a number of decisions on constitutional phraseology, no special purpose would be served by attempting to analyze the other class of cases. Suffice it to say that these authorities are conflicting. For instance, in Oregon a statute requiring a favorable vote on a certain proposition at a general election by "the majority of all the votes cast" was construed to apply to the votes cast on that question alone.[26]

It is interesting to note that the Court, as in Wisconsin, found a difference between the use of the word "votes" and the word "voters." In Michigan, however, the requirement, appearing in the Charter of Grand Rapids, for a majority of votes cast at any regular or at a special election, was construed to

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[20] Itasca School District v. McElroy, 103 Tex. 64 (1909).

[21] Gillespie v. Palmer, 20 Wis. 544 (1866).

[22] Bound v. Railroad Co., 45 Wis. 543 (1878).

[23] State v. Brooks, 17 Wyo. 344 (1908).

[24] 2 COOLEY, CONSTITUTIONAL LIMITATIONS 1349-50 (8th ed. 1927).

[25] State v. Swift, 69 Ind. 505 (1880); State v. Grace, 20 Ore. 154, 25 Pac. 382 (1890).

[26] State v. Grace, *supra* note 25.

mean a majority of all the votes whether on the particular proposition or not.[27]

It has been suggested that if the Maryland provision for a vote on the question of a constitutional convention is construed to require a majority of all the votes cast, or of all the voters at the election on all questions, one result would be to throw doubt upon the validity of bond issues by the City of Baltimore. But other factors must be considered, despite the similarity in phraseology. Article XI, Sec. 7, of the Constitution, prohibits the City of Baltimore from creating any debt unless authorized by an act of the General Assembly, and by an ordinance of the Mayor and City Council submitted to the voters at such time and place as may be fixed by the ordinance, and approved by a majority of the votes cast at such time and place. There is no requirement for a vote at a general election, and hence the City is free to hold the vote at any election, special or general. As to this circumstance, it is said:

> "It has been held that, where it is contemplated by a statute that a proposition may be submitted at either a general or special election, the fact that, for convenience, it is submitted at the former, does not alter its character at a special election, and therefore a majority only of the votes cast on the special question, although less than those cast for officials is sufficient."[28]

In addition, Sec. 7 of Article XI, uses the word "votes," instead of "voters," as in Article XIV, and under authorities previously referred to, the narrower interpretation is the one to be accepted.

In Maryland, the Court of Appeals has construed an act of the legislature containing a local law for Washington County and requiring a "majority of the voters of said county" to determine at a general election whether it should become effective. The Court decided that this language means a majority of those voting on the measure, saying:

> "Those absenting themselves and those who being present abstain from voting are considered as acquiescing in the result declared by a majority of those actually voting, even though, in point of fact, but a minority of those entitled to vote really do vote."[29]

In another case, the Maryland Court of Appeals had before it the controversy over the election of a Market Master by the City Council of Annapolis. One of the members present failed to vote, and the candidate who claimed the office did not receive a majority of those present. The Court affirmed its ruling in the case of *Oswald v. Walker,* and also stated that "this principle is supported by the overwhelming weight of authority in this county and England."[30]

There is ample ground, therefore, for the argument that the Court of Appeals of this State has adopted a rule of construction under which a majority of those voting on a particular proposition, such as a constitutional convention, must prevail.

There are, however, as has already been seen, marked differences between

[27] Stebbins v. Judge of Superior Court, 108 Mich. 693 (1896). See also Annot., 45 L.R.A. (n.s.) 714.

[28] Annot., 22 L.R.A. (n.s.) 483 (under caption, "When special question may be submitted at either general or special election"). *But see* Stebbins v. Judge of Superior Court, *supra* note 27.

[29] Walker v. Oswald, 68 Md. 146 (1887).

[30] Murdock v. Strange, 99 Md. 89 (1904).

the cases already adjudicated in Maryland and one that would result from the convention vote prescribed by Sec. 2 of Article XIV of the Constitution. That article has a history. It was written into the Constitution of 1867 by one of the ablest bodies ever to assemble in this State to consider public affairs. The article is the result of the study of the methods used to amend and revise the Constitution, beginning with the original instrument created in 1776, the year of the Declaration of Independence. Maryland has had four Constitutions, those of 1776, 1851, 1864 and 1867. The Constitution of 1776 provided, in Article 59, that neither the form of Government nor the Bill of Rights should be altered, changed or abolished unless by a bill passed by the General Assembly in two successive sessions. And Article 42 of the Bill of Rights declared against any change by the Legislature except in the manner as the Convention of 1776 prescribed and directed. Under these provisions there did not seem to be any way to amend or revise the Constitution except through the agency of the Legislature. There was no provision for a constitutional convention at any time in the future.

The Constitutional Convention of 1851 was proposed by Chapter 346 of the Acts of 1849, passed Feb. 21, 1851. This act provided for three elections, one on the question of the convention, one to select delegates, and one to adopt or reject the new Constitution;[31] and by its terms it limited the vote to that cast on the separate propositions. There was much discussion at the time the convention assembled, in the older part of the building in which we are gathered today, as to whether the convention was legally called, in view of the limitations in the Constitution of 1776 as to the manner of change. Some of those who took part in the Maryland Convention of 1851 were familiar with the situation in Massachusetts, where the famous convention of 1820, attended by such eminent Americans as John Adams and Daniel Webster, had adopted a provision for amendment similar to that used in Maryland, and, like the Maryland Constitution, had made no provision for any future constitutional convention. In fact, as Mr. Webster stated, "It occurred to the committee that with the experience which we had had of the constitution there was little probability that, after the amendments which should now be adopted, there would ever be any occasion for great changes. No revision of its general principles would be necessary, and the alterations which should be called for by a change of circumstances, would be limited and specific. It was therefore the opinion of the committee that no provision for a revision of the whole constitution was expedient, and the only question was in what manner it should be provided that particular amendments might be obtained."[32]

In 1833, the Justices of Massachusetts, in answer to a question, handed down an opinion which seemed to close the door to any changes except in the manner prescribed, but in 1853, the people of the State of Massachusetts called a new constitutional convention, as had the people of Maryland in 1851.

It should perhaps be noticed that the people of Maryland have never felt bound by any limitations or prohibitions in its written Constitution as to the time

[31] 3 SCHARF, HISTORY OF MARYLAND 241 (1879).

[32] PROCEEDINGS OF MASSACHUSETTS CONVENTION OF 1820, at 413.

when constitutional conventions should be held. The debates of the Convention of 1851 show that the delegates sought to prevent any amendment of particular sections or articles from time to time, and so they provided that the Constitution could only be altered by conventions called for that purpose. It was provided in Article XI of the Constitution of 1851 that there should be a vote every ten years on the question of a convention, which was to be called if favored by "the majority of the votes cast" at a general election. The Bill of Rights of 1851, in Article 43, repeated the prohibition against change except in the manner prescribed by the Constitution itself, but, by Chapter 5 of the Acts of 1864, disregarding the ten-year provisions of the existing Constitution, the Legislature submitted the question of a Constitutional Convention at a special election. The Convention of 1864, called during the Civil War, had as its main object the writing into the organic law of the State provisions to disqualify all those who assisted or sympathized with the Confederacy from thereafter voting in any election or holding public office in Maryland. The new instrument was designed to perpetuate power in the hands of the minority who then, with the aid of Federal troops, controlled the State Government. It was a time, as that famous orator, Henry W. Grady, said, when the Federal drum beat rolled closer to the ballot box than ought ever again to be permitted in a free Government. The Convention, in providing for a vote on the new constitution, undertook to prescribe the qualifications of the voters in the very document that had not yet been approved. Notwithstanding these efforts to limit the voting, the voters in Maryland returned a majority against adoption, but this was overcome by the soldiers' vote, provided for in the constitution not yet adopted, and the total vote showed a majority in favor of but 375 votes.

Court action against this method of restricting the voting was unsuccessful.[33]

These matters are referred to because it has been suggested that the act of the legislature of 1864 constitutes a legislative interpretation of Article XI of the Constitution of 1851 that the "majority of votes cast" means the majority of those voting thereon. It is clear, however, that the Legislature of 1864 did not act under the Constitution of 1851, but rather in disregard of its provisions. And if that is true of the Act of 1864, it is also true of Chapter 326 of the Acts of 1867, providing for a new convention to undo the work of the convention held three years previously.

But there is important material in the debates of the Constitutional Convention of 1851 on the question as to the meaning of the phrase "majority of votes" appearing in Article XI. Mr. Sollers, of Calvert County, chairman of the Committee on Amendments to the Constitution, reported for himself alone a provision substantially the same as that appearing in the Constitution of 1776. Mr. Fitzpatrick, of Allegany County, reported for a majority of the committee the provision which was, with a few changes, finally adopted. Mr. Brent, of Baltimore City, offered a plan under which there would be a vote every ten years, and the ballots on the convention would be separately returned and counted, the result depending on a majority of said votes. Mr. Phelps, of Dorchester County, during the ensuing debates, made this significant statement regarding the Brent plan:

[33] Miles v. Bradford, 22 Md. 171 (1864).

> "In examining the different Constitutions of the several States of the Union, it will be found that whenever it is provided the people at the ballot box shall have the right to call a convention, it requires the vote of the *majority of all the people* in the State, as compared with some general election. But, Mr. President, if this amendment prevail, a bare plurality vote, of perhaps a small minority of the people, may every ten years call a convention and re-enact the scenes which we have been witnessing in these halls for the last six months. The experience of the past should have some influence upon the future, and it becomes our duty, so to construct the Constitution of this State, that the rights of the majority should not be overthrown by the action of the minority. . . ."[34]

Mr. Phelps called attention to the fact that a minority of the people, a majority of a total 20,000 votes, had summoned the convention, whereas it was known that the State had 60,000 voters. After the Brent's substitute had been rejected, Mr. Randall, of Anne Arundel, tried to amend Mr. Fitzpatrick's report by adding to it a provision specifically requiring that "the majority of votes" be equal in number to at least a majority of the votes of the State, as ascertained by the last preceding Presidential election. Mr. Randall said he

> ". . . did not understand that it was pretended by any member of this convention that less than a majority of the votes of the State, by expression or implication, should change the Constitution. . . . .
>
> "It did seem to him that it would be carrying out an established principle of the Government, that no less than a majority should vote for a convention to change the Constitution to which the whole people had for years submitted as the Government of their choice. . . ."[35]

Mr. Tuck, of Prince George's, recalled the effort made at the Legislature of 1849-50 to require the vote on the question of the convention to equal the majority of the votes cast at the previous Presidential election. He said he would have voted for such a provision in the Act of 1849 if he had been a member of the legislature, because the election was a special election, and he had feared not many would participate. But Mr. Tuck would not vote for the Randall motion because he thought a full vote would come out at general elections.

> "He (Mr. Tuck) would suppose that this amendment (Mr. Randall's) passed, and that 49,000 votes were taken at an election for Governor or President, and only 47,000 voted on the question of calling a convention, of which 24,000 were in favor of a convention. It could not be held, because, by the standard proposed, the voters in favor of the call must number at least 24,500. There would be loud complaints against such a result. . . . Here would be strong evidence of the people being in favor of the convention; yet another trial could not be had for ten years. He thought it better to leave the question to be decided at a general election, by a majority of the poll then cast, which would be sufficiently large."[36]

[34] 2 DEBATES OF CONVENTION OF 1851, at 364.

[35] 2 *id.* at 377.

[36] *Ibid.*

Mr. Howard, of Baltimore City, agreed with Mr. Tuck in opposition to Mr. Randall's amendment. He pointed out that it was compelling those in favor of the convention to go to the polls. It would throw upon the affirmative the necessity of giving their votes, or they would be lost, while those in the negative might stay away, *and their votes would not be lost.*

Mr. Randall admitted that it was his intention that the vote of the man who remained away from the polls, because he did not wish a change in the Constitution, should be counted. Let the Constitution remain as it was, until a majority of the people were favorable to a change.

Mr. Randall argued at some length to this effect, but, after he had concluded, his amendment was defeated, 42 to 21.

Mr. Davis, of Montgomery, then asked "whether the vote just announced, in effect, was not *a denial of the rule that the majority should govern?*[37]

When the next convention, that of 1864, was called, however, it was in response to a special act which ignored the provisions requiring the vote to be taken at ten-year intervals, following the Federal census.

The Convention of 1864 provided three methods of amending the Constitution: The first, by amendments proposed by the General Assembly and submitted to a vote of the people. Adoption followed a favorable majority of the qualified votes on each amendment separately. The second method was by an Act of the General Assembly submitting the question of a convention to the people at a general election. This required favorable action by "a majority of all the electors voting at said election." The third method was by a vote on the question of a convention to be held, without action by the General Assembly, at the general election every twenty years, beginning in 1882. This also required favorable action by a majority of all the electors voting at such election. Any new constitution, however, would take effect if approved by a majority of electors voting thereon. These provisions are contained in Sections 1, 2 and 3 of Article XI of the Constitution of 1864. The difference in phraseology as to the majorities required first appeared in 1864, and were retained, as has been shown, in the present Constitution of 1867. The Debates of 1864 throw no light on the reasons for the particular language used, or on the interpretation of that language by those who framed it. It should be noted that the Constitution of 1864 also retained the provision in the Declaration of Rights prohibiting the Legislature from passing a law to change or abolish the Constitution, except in the manner prescribed therein.

The Constitution of 1851 uses the word "votes"; 1864, "all the electors," and 1867, "a majority of voters." If any legal significance is to be attached to these words, such as given in Wisconsin and Oregon, then the Constitution of 1867 bases the test of the requisite majority on the whole number of voters at the election.

The Constitution of 1867 dropped the method of amending contained in Section 2 of Article XI of 1864, and so, at present we may amend the Constitution by acts of the General Assembly submitting amendments to the people, or we may call a convention by the vote directed to be held every twenty years. These methods are set forth in the Con-

[37] 2 *id.* at 378.

stitution. But there is still another way to constitutional revision sanctioned by precedent in this State, because in Maryland the provisions in the Constitution limiting the methods of calling constitutional conventions have never been considered binding.

Down through the years comes to us the voice of that great Maryland lawyer, Reverdy Johnson, who defended the legality of the Convention of 1851, called when the Constitution contained no authority for such a convention. And these are his views:

> "No man denies that the American principle is well settled, that all governments originate with the people, and may by like authority be abolished or modified; and it is not within the power of the people, even for themselves, to surrender this right, much less to surrender it for those who are to succeed them. A provision, therefore, in the Constitution of any one of the United States, limiting the right of the people to abolish or modify it, would be simply void. And it was upon this ground alone that our Constitution of '76 was superseded by that of '51."

Referring again to the American principle that the people have a right to change their government, he said: "In its nature it is revoluntionary, but, notwithstanding that, it is a legal principle."[38]

There are recognized authorities, however, criticising these views.[39]

But the criticism does not seem to apply to the present situation because the Convention of 1867 removed from the Declaration of Rights the article which, although never followed in periods of crises, expressly prohibited the legislature from passing an act to amend, alter or abolish the Constitution except in the manner therein prescribed.

See the documents in the suit filed in the Superior Court of Baltimore City on March 30, 1867 by Alexander Rogers and others for an injunction to prevent the holding of the election on the question of the Constitutional Convention of 1867.[40]

The Declaration of Rights adopted in 1867 declared, in Article I, that the people "have, at all times, the inalienable right to alter, reform or abolish their form of Government in such manner as they may deem expedient."

The following debate took place:

> "Mr. Alvey moved to amend Article I by inserting after the word 'expedient,' 'provided it be done according to prescribed forms of law.'
>
> "Mr. Alvey advocated his amendment as one the propriety of which could not be questioned. It could not be contended that the people had a right to change their government in defiance of law, and cited the decision of the Supreme Court in the celebrated *Dorr case,* in Rhode Island, where it was held that the majority of the people had no right to change their organic government without taking due course of law.
>
> "Mr. Seyster moved as a substitute to insert after the word 'expedient,' 'according to the mode prescribed in the constitution.'
>
> "Mr. Seyster believed in the right

[38] Letter From Reverdy Johnson to William D. Bowie *et al.*, Oct. 7, 1864.

[39] JAMESON, CONSTITUTIONAL CONVENTIONS 574F, at 617-18 (4th ed. 1887).

[40] 1 COOLEY, *op. cit. supra* note 24, at 84-85; 12 C.J. *Constitutional Law* § 19, at 683-84.

of this generation to bind succeeding generations in the manner in which the organic law should be changed by the people. He had no idea of leaving it in the hands of this or that political party to call a convention to form a constitution every three or four years.

"Mr. Jones said this Convention was now assembled under a construction of the Constitution that it was in the power of a majority of the people to change their organic law. It was better not to attempt to restrict this power of the people. The principle and test should be that it could be done by any plan which met the assent of the existing government. As to the fears of the gentleman from Washington (Mr. Seyster) of political parties attempting to frame constitutions, there could be no danger of the existing government of this State being overthrown if the government at Washington was faithful to its consitutional obligations. If the threat of certain parties to form a constitution and elect State officers had been carried into effect, they could not meet with any success at Washington, as the *Dorr* case, which had been cited, settled a precedent which could not be overlooked. A bill was before the last legislature to provide pains and penalties for such attempts, but it had not been reached, for want of time; but there were sufficient safeguards now, and this was well known. He hoped the article under discussion would not be changed. He wished it always to be in the power of the people to change their constitution by the assent of a majority of the existing legislature, but was in hopes that such a constitution would now be framed as would endure beyond this generation.

"Mr. Ritchie said the proposition of the gentleman from Washington County was very plausible, but if appended to Article I it would entirely destroy what vitality there was left in it. That article had been so changed and tampered with by successive conventions, from its original meaning, that it was obscure, and any further alteration would render it almost unintelligible. The objection to the proposition of the gentleman was, that it added limitations to an inalienable right.

"Mr. McKaig said this question had been settled in Maryland many years ago. In 1836, in the time of the Nineteen, a convention was called and a constitution adopted in utter violation of the existing constitution and laws, and no one had questioned it then, or, that he had heard of, up to the present time. The right of the people to alter their organic law could not be gainsayed, and he hoped the article would remain as reported by the committee.

"The question was then taken on the amendment of Mr. Seyster, when it was disagreed to.

"The amendment of Mr. Alvey was then disagreed to."[41]

It is interesting to recall that the Convention of 1867 met in this building,

[41] PERLMAN, DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1867, at 98-99. The Mr. Alvey mentioned in the debates was Richard Henry Alvey, of Washington County, afterwards Chief Judge of the Court of Appeals of Maryland, and the Mr. Ritchie was Albert Ritchie of Baltimore, afterwards a Judge of the Supreme Bench of Baltimore City, and father of Albert C. Ritchie, the present Governor of Maryland.

at the other end of the corridor outside the door of this chamber, to strike off the fetters that had been forged during the Civil War. The presiding officer of that Convention, Judge Richard B. Carmichael, of Queen Anne's County, had been dragged from the bench while presiding in court, knocked unconscious and placed under arrest. Maryland escaped a government by carpet-baggers and former slaves, but at the time the Convention of 1867 was held, the Radicals were assuming control of Congress and were enacting the legislation designed to hold the former Confederate States in subjection, and under the control of incompetents and illiterates, for at least a decade. Andrew Johnson, President of the United States, was coming to the end of his bitter and unsuccessful efforts to enforce the humane policies of Abraham Lincoln. Robbery, murder and pillage were the order of the day in most of the Southern States. By invitation of the Convention, President Johnson came to Annapolis, visited this State House, and addressed the delegates. It was a welcome interlude for him in the contest with his enemies. Here in Maryland he was among friends, watching him, praying for him and hoping against hope that he still would rescue the South from the morass into which it was being pushed by the dominant group in Congress. When he spoke here, President Johnson was but a few short months away from his impeachment trial, and it is with pride that we recall that one of his champions and advisers in that proceeding which almost succeeded was the same Reverdy Johnson, a member of the Maryland bar and a Senator of the United States.

Keeping that picture in mind, it may be taken for granted that the delegates of 1867, while anxious to preserve the right, at any time and in any way to revise the Constitution, yet were fearful of the action by a minority of the people. There is, it must be conceded, difficulty in reconciling a construction of the Constitution of 1867 which would require a majority of all the voters participating in the election, with the theory that the legislature, without waiting for a twenty-year period to elapse, can, at any time submit the question of a constitutional convention to the people, at either a general or special election, and make the decision contingent upon a majority of those voting on that single proposition. It may be that the Convention intended to bring about that exact situation, because it is mandatory for the legislature to provide the twenty-year vote, while the question could not be submitted at any other time unless the legislature, in its discretion, saw fit to do so.

It is a rather remarkable circumstance that at the very same election last November at which the constitutional convention was approved by a majority of those voting on the proposition, the voters ratified by substantially the same vote a constitutional amendment to authorize deputies in the Treasury Department to sign checks. Every county in the State voted against the amendment; the county majority for rejection was overcome by the favorable vote in Baltimore City. These votes indicate a county antipathy toward all measures on the ballots, and the predisposition of the City voter to vote favorably. A comparison of these votes gives color to the statement that there is no general sentiment in the State for a convention, but such an argument is based on policy and not on law.

There are pending before you Senate Bill No. 160 and House Bill No. 264, providing for the election of delegates to a constitutional convention. If the

Legislature acts favorably, you will be declaring that the vote in November, 1930, gave the requisite majority, and if no bill is passed you will have adopted an interpretation certain to be quoted should this question arise under some future vote. In compliance with your most flattering invitation, I have endeavored to submit to you the relevant facts and law. The question is now in your hands for solution, and I shall be glad if I have assisted the committees of the Senate and House to give it the consideration its importance deserves.

So ordered.

JOINT RESOLUTION NO. 31

INTRODUCED BY DELEGATE HESS.

DEFEATED.

House Joint Resolution requesting the Governor of Maryland to appoint, on or after July 1, 1965, a special commission known as the "Constitutional Convention Commission," and outlining its duties and functions.

WHEREAS, The Constitution of Maryland is, in form, substantially as adopted in 1867, and

WHEREAS, The said Constitution has, since it was adopted, been amended in excess of one hundred times, and

WHEREAS, The sense of the people on the calling of a Constitutional Convention need not be taken until 1970, and

WHEREAS, The Attorney General of Maryland has ruled that the General Assembly may call a Constitutional Convention at any time prior to 1970, and

WHEREAS, The General Assembly deems it appropriate and necessary that a complete study of the present Constitution be made and the necessity of and procedures for calling such a Convention be examined in detail by a special commission appointed for such purpose prior to the calling of a Constitutional Convention, now, therefore, be it

Resolved by the General Assembly of Maryland, That the Governor be and he is hereby requested to appoint, on or after July 1, 1965, a special commission known as the "Constitutional Convention Commission," consisting of twenty-one members, one of whom shall be designated by the Governor as Chairman, and be it further

Resolved, That the function of the Commission shall be to conduct an inquiry into the necessity for and extent and nature of any amendment, modification or revision of the Constitution of Maryland, with particular respect to whether a Constitutional Convention should be held, the procedures for calling such a Convention, the representation thereat and procedures for election of Delegates thereto, and be it further

Resolved, That the Commission shall submit its findings, recommendations and specific proposals regarding amendment, modification or revision of the Constitution and the holding of a Constitutional Convention to the Governor and to the General Assembly prior to its 1967 Session, and be it further

Resolved, That the Governor be and is hereby requested to place in his Supplemental Budget a sum not to exceed $50,000.00 for purposes of defraying such professional and clerical expenses as may be required by the Commission pursuant to this Resolution, and be it further

Resolved, That the Governor be and is hereby requested to call upon all Departments and Agencies of the State Government to render such aid, assistance and cooperation to the Commission as may be possible and appropriate in furtherance of the work of the Commission, and be it further

Resolved, That the "Constitutional Convention Commission" be powered to adopt rules of procedure for the conduct of its inquiry and functions in connection therewith, and be it further

Resolved, That a copy of this Resolution be forwarded to Governor J. Millard Tawes, the Secretary of State of Maryland, the Director of the Department of Legislative Reference and the Attorney General of Maryland.

OPINION OF ATTORNEY GENERAL THOMAS B. FINAN ON THE CONSTITUTIONALITY OF THE GENERAL ASSEMBLY CALLING A CONSTITUTIONAL CONVENTION PRIOR TO THE REFERENDUM SCHEDULED TO BE HELD IN 1970

FEBRUARY 9, 1965

The Honorable J. Millard Tawes
Governor of Maryland
State House
Annapolis, Maryland

Dear Governor Tawes:

You have requested our opinion on whether the General Assembly can legally call a Constitutional Convention prior to the vote thereon to be taken at the General Election in 1970 in conformity with Section 2 of Article XIV of the Maryland Constitution and if so what steps it must follow in calling such a convention.

Section 2 of Article XIV provides as follows:

> "It shall be the duty of the General Assembly to provide by Law for taking, at the general election to be held in the year nineteen hundred and seventy, and every twenty years thereafter, the sense of the People in regard to calling a Convention for altering this Constitution; and if a majority of voters at such election or elections shall vote for a Convention, the General Assembly, at its next session, shall provide by Law for the assembling of such convention, and for the election of Delegates thereto. Each County, and Legislative District of the City of Baltimore, shall have in such Convention a number of Delegates equal to its representation in both Houses at the time at which the Convention is called. But any Constitution, or change, or amendment of the existing Constitution, which may be adopted by such Convention, shall be submitted to the voters of this State, and shall have no effect unless the same shall have been adopted by a majority of the voters voting thereon."

This section as originally incorporated in the Constitution of 1867 provided for the taking of the sense of the people in 1887 and every 20 years thereafter. The sense of the people was taken in 1887 and 1907 with a majority of the people voting against the calling of a Constitutional Convention. In 1922 Article XVII of the Constitution was adopted which provided among other things that the vote required by Section 2 of Article XIV be taken in 1930 and every 20 years thereafter. This vote was in 1930 and in 1950 and on both occasions a majority of the persons voting on the question voted in favor of calling a Constitutional Convention but in neither case was this majority a majority of those voting at the election.

THE LEGISLATURE AND A VOTE OF THE PEOPLE

There was a substantial amount of debate both after the 1930 and 1950 elections as to whether the vote necessary to require the General Assembly to call a Constitutional Convention pursuant to Section 2 of Article XIV was a majority of those voting on the question or a majority of those voting at the election. In 1931 the General Assembly refused to call a Constitutional Convention after being advised in a rather lengthy opinion by Mr. Philip Perlman, later Solicitor General of the United

States, that Section 2 of Article XIV required a majority of all those voting at the election. The opinion of Mr. Perlman is printed in the 1931 Senate Journal beginning at page 517. The vote in 1950 was even greater in support of the calling of a Constitutional Convention but for various reasons since that time the General Assembly has not called for a convention.

Neither this office nor any court has ruled upon the question of the vote required by Section 2 of Article XIV which would impose upon the General Assembly a duty to call a Constitutional Convention. Since in our view the General Assembly has the power to call a Constitutional Convention independent of Section 2 of Article XIV, we do not find it necessary to answer this question at this time.

PRIOR PRACTICE IN MARYLAND AND OTHER STATES

Although constitutional conventions have not been common in recent years, prior to 1900 they were held with regularity and consequently a substantial body of law was developed concerning them. Most of the history and the law concerning constitutional conventions has been compiled in Jameson, *Constitutional Conventions* (4th Ed. 1887). Although it has been criticized in Dodd, *The Revision and Amendment of State Constitutions* (1910), and Hoar, *Constitutional Conventions* (1917), it is the work most often cited in court decisions relating to conventions.

Maryland has had four constitutional conventions—in 1776, 1851, 1864, and 1867. The first in 1776 grew out of the Committees of Observation. The 1851 Convention was a result of Chapter 346 of the Acts of 1849 which called for the taking of the sense of the people as to a convention and for an election of delegates in 1850 if a majority of the legal voters were in favor of the convention. The 1864 convention originated in Chapter 5 of the Acts of 1864 which provided for a simultaneous vote on whether or not to have a convention and for delegates to the convention, the convention to be called if a majority of the voters voting at a special election were in favor of the convention. Chapter 327 of the Acts of 1867 set up a special election on the question of a constitutional convention and a simultaneous election of delegates to the convention, the outcome being the 1867 Convention.

None of the four Maryland Constitutional Conventions would appear to have been called in accordance with existing legal requirements. The 1776 convention was necessarily held without the approval of the duly constituted colonial government and found its legal justification in the principles set forth in the Declaration of Independence. The constitution which it prepared was never submitted to the vote of the people but was taken to be effective when adopted by the convention. See Niles, *Maryland Constitutional Law* 9 (1915). The convention of 1851 was not authorized by the 1776 Constitution. Article LIX of the 1776 Constitution provided that it could be altered, changed, or abolished only upon the vote of two successive sessions of the General Assembly. There was no provision for the calling of a convention. Chapter 346 of the Acts of 1849 was not adopted in conformity with this provision and Perlman, *supra,* states that there was some discussion at the beginning of the 1851 convention as to its legality but this did not appear to affect the convention proceedings.

That convention did provide in Article XI of the 1851 Constitution for the

taking of a vote after each 10 year Federal census on the question of calling a Constitutional Convention, which vote was to be taken at the General Election for delegates to the General Assembly. If the vote was in favor of the convention, the Legislature was then to provide for the election of delegates to the convention. No provision was made for amending the Constitution by the General Assembly. Chapter 5 of the Acts of 1864 did not, however, conform to the requirements of the 1851 Constitution. The vote was not, of course, taken immediately after the 1860 Federal census. Further, it provided for a single special election at which both the question of calling a constitutional convention and the election of delegates to the convention were voted upon by the people.

The Constitution adopted by the 1864 convention provided in Article XI for three ways of amending the Constitution. Section 1 provided for the passage of amendments by the General Assembly and submission to the people for their vote thereon. Section 2 provided that whenever ⅔ of the members of each house of the General Assembly thought a convention was necessary, a vote of the people on the question of calling a convention would be taken at the next general election, and if a majority of all those voting at such election favored it, then the General Assembly would thereafter provide for a convention and the election of delegates thereto. Section 3 required that every twenty years the sense of the people be taken at a general election on the calling of a convention and if a majority voting at such election were in favor of it, the General Assembly would then provide for the calling of a convention and election of delegates to it. Chapter 327 of the Acts of 1867 did not follow any of the provisions of Article XI of the 1864 Constitution. It called for a special election on the question of calling a constitutional convention, a simultaneous election of delegates to the convention, and also established a different representation at the convention than that provided for in the Constitution of 1864. The Act did not specify that to be effective it must be approved by ⅔ of each house.

The above recital completely supports Perlman's statement that "the people of Maryland have never felt bound by any limitations or prohibitions in its written Constitution as to the time when constitutional conventions should be held." 1931 Senate Journal, p. 529.

The history of other states would seem to be similar to that of Maryland. See Jameson, *Constitutional Conventions,* Chapter 1; Hoar, *Constitutional Conventions,* Chapter 4; *Wells v. Baines,* 75 Pa. 39 (1873); *Ellingham v. Dye,* 178 Ind. 336, 99 N.E. 1 (1912); and *Bennett v. Jackson,* 186 Ind. 533, 116 N.E. 921 (1917). The principle must be taken to be well established in Maryland and elsewhere that constitutional conventions called independent of constitutional requirements but pursuant to the authority of a state legislature are legal.

THE CONSTITUTION PERMITS A CONVENTION TO BE CALLED AT THIS TIME

Applying this principle to Section 2 of Article XIV, it would appear that a constitutional convention called by the General Assembly other than pursuant to Section 2 of Article XIV would not be illegal even if Section 2 of Article XIV be construed to be the only way which the Constitution authorizes a convention to be called. It should be noted, however, that in our view Section 2 of Article XIV does not attempt to

prohibit the General Assembly from calling a constitutional convention other than pursuant to a vote taken each twenty years under that section. The language of Section 2 itself does not prohibit any convention called other than pursuant to its terms. It merely requires that a vote on the calling of a convention must be taken every twenty years and that if a majority of all those voting at the election vote in favor of calling a convention, the Legislature *must* call the convention and provide for the election of delegates to it. This is to be distinguished from the mandatory provisions of Section 1 of Article XIV relating to the adoption of individual amendments to the Constitution.

The debates of the 1867 Convention do not relate the reason why the provision in the 1864 Constitution which permitted a convention to be called at any time upon certain conditions was deleted from the 1867 Constitution. The circumstances surrounding the calling of the convention, however, give some indication for this. As is set forth above, the 1867 Constitution was not called in conformity with any provision of the 1864 Constitution. In fact a suit was filed to prohibit the election on the question of calling the convention and election of delegates thereto, but the Court of Appeals held that it had no jurisdiction over the matter. See Perlman, *Debates of Maryland Constitutional Convention of 1867* 9-27. In view of these circumstances, it would appear that the delegates to the 1867 convention were of the opinion that any attempt to put restrictions on the calling of a constitutional convention was fruitless, but that as a protection Section 2 of Article XIV was included to require the calling of a convention if a sufficient number of people desired it. Indiana has held that a similar requirement in its Constitution did not prohibit the Legislature from submitting the question at more frequent intervals and its 1850 Constitution resulted from a convention called independent of the former Constitution. *Bennett v. Jackson, supra.*

There are several other indications in the 1867 Constitution which show that the convention was of the opinion that the Legislature could provide at any time for the calling of a constitutional convention. Article 1 of the Declaration of Rights provides that the people "have, at all times, the inalienable right to alter, reform or abolish their form of government in such manner as they may deem expedient." This first statement of the Declaration of Rights would be meaningless if it were held that a constitutional convention, which would be the principal way in which the people would alter, reform, or abolish their form of government, could be held only once every twenty years and then only if a majority of all those people voting at a general election voted in favor of holding a convention. It is also significant, we believe, that the convention left out of the Constitution a provision that the Constitution could not be altered, changed, or abolished except as provided in the Constitution. Such a provision had been in each of the three prior Maryland Constitutions. The most reasonable interpretation of the above is that the 1867 convention was dedicated to the principle that the people had at any time the right, by a legally constituted convention, to revise or abolish the Constitution, and that this right could not be limited by any constitutional provision. See Perlman, 1931 *Senate Journal* 533, quoting from Reverdy Johnson.

THE LEGISLATURE MAY CALL THE CONVENTION ON ITS OWN INITIATIVE

The next question which is presented is whether the General Assembly can call a constitutional convention and the election of delegates thereto without first submitting the question of having a convention to a vote of the people. The substantial weight of authority is that a legislature has the inherent right to call a constitutional convention without first taking the sense of the people, although in most instances the sense of the people is first taken. *Wells v. Baines,* supra; Hoar, *Constitutional Conventions,* p. 65; *Bessemer v. Birmingham Electric,* 252 Ala. 171, 40 S.2d 193, 197 (1949); *Ellingham v. Dye,* 178 Ind. 336, 99 N.E. 1, 18 (1962); *In Re Opinion to Governor,* 55 R.I. 56, 178 Atl. 433 (1935); *State v. Dahl,* 6 N.D. 81, 68 N.W. 418 (1896); *State v. American Sugar Refining Co.,* 137 La. 407, 68 So. 742 (1915); and Joseph Sherbow, *Daily Record,* November 15, 1950. Judge Hall Hammond, then Attorney General, in 1951 took the unofficial opinion that the Legislature could call a convention even though the 1950 vote did not compel the calling of a convention in accordance with Section 2 of Article XIV.

The only significant authority to the contrary is *Bennett v. Jackson, supra,* but that case involved the calling by the Legislature of a constitutional convention only two years after a majority of the people had voted against the calling of a convention. The most recent vote in Maryland, in 1950, was in favor of the calling of a convention. The court's opinion was in part based upon its holding that the Indiana Legislature had only such powers as were granted to it by the Constitution on which question Maryland takes the opposite view, that is, that the Legislature has plenary powers except as it may be limited by the Constitution. The Court of Appeals has stated this principle often and most recently in *Richard Furniture v. Board,* 233 Md. 249 (1964) and *Maryland Committee v. Tawes,* 228 Md. 412 (1962). The *Bennett* case was reviewed and strongly criticized in the Rhode Island case referred to above, and we believe with good reason.

CONCLUSION

For these reasons, we are of the opinion that the General Assembly can call a constitutional convention prior to 1970 and may, but need not, submit the question to a vote of the people at a special election or at the next General Election. If a vote is called for on this question, the election of delegates to the convention can be held at the same time or at a separate election. If a convention is called, the requirement in Section 2 of Article XIV of the present Constitution that a vote be held in 1970 on the calling of another convention can, of course, be changed so that the next vote on a constitutional convention need not be held until 20 years after the adoption of a new Constitution.

Although we have stated above that Section 2 of Article XIV is not binding upon the Legislature in calling a constitutional convention, we do feel that delegates to a convention should be apportioned on the basis set forth in that section, that is, that each county has the same number of delegates to the convention as it has representatives in the General Assembly at the time that the convention is called. If apportionment of the State Senate is still at issue at that time, this should not cause any concern as to the legality of the convention since the convention is not a law-making body itself but only a group

which will draft the Constitution which must be submitted to the people for their approval. Although the question of the apportionment of a group which draws up a constitution which must be approved by the people has never been ruled upon specifically by any court, the case of *Fortson v. Dorsey,* 33 Law Week 4143, decided January 18, 1965, by the United States Supreme Court, indicates that this situation presents no Federal constitutional problem. In that case the Supreme Court upheld a reapportionment amendment to the Georgia Constitution which had been drawn up by the Georgia Legislature which had been held to be unconstitutionally apportioned. Although there is no discussion of this point in the opinion, during the argument before the Supreme Court, at which representatives of this office were present, a substantial amount of discussion was had on the question of whether a group which draws up an amendment to or a revision of a state constitution must be properly apportioned. The individual members of the Court indicated rather clearly that they did not feel that the Equal Protection Clause required any particular apportionment of such a group.

Very truly yours,

THOMAS B. FINAN
Attorney General

ROBERT J. MARTINEAU
Assistant Attorney General

STATEMENT BY GOVERNOR J. MILLARD TAWES ON THE SIGNING OF HOUSE BILL 44 AND SENATE BILL 594 FRIDAY, MAY 6, 1966

Today, I take great pleasure in signing into law two companion measures. The first is House Bill 44 which calls for a special election to be held at the same time as the next primary election on September 13, 1966, to take "the sense of the people" on whether a Constitutional Convention should be called between September 1, 1967, and September 1, 1968. The second is Senate Bill 594 which designates September 12, 1967, as the date for the convening of such a Convention if a majority of the people voting at the special election next September vote in favor of a Constitutional Convention. This bill also establishes the composition of such a Convention at 142 delegates.

The present Constitution of Maryland, adopted in 1867, has been amended more than one hundred times, and many lawyers, judges, legislators and students of political science have expressed to me the opinion that it is too lengthy and too detailed to serve satisfactorily as the basic law of our State.

Accordingly, on June 16, 1965, I appointed a Constitutional Convention Commission and, among other things, "instructed it to conduct an inquiry into the necessity for . . . a revision of the Constitution of Maryland, with particular respect to whether a Constitutional Convention should be held." This Commission very promptly reported to me and to the citizens of Maryland that a complete revision of the Constitution of Maryland was urgently needed and that a complete revision could best be accomplished by means of a Constitutional Convention.

The Commission also recommended to the Legislature that it not wait for the next election provided for in the existing Constitution to take the sense of the people on calling a Constitutional Convention, which would not occur until 1970, but that the question be presented to the people at the earliest possible opportunity.

The Commission worked very closely with my office and with the leaders of the Legislature during the recent session with the result that these two bills, both of which are in accord with the recommendations of the Commission, passed both Houses of the Legislature, almost unanimously. The Commission, in recommending that the Constitutional Convention be composed of 142 delegates, recommended also that these delegates be apportioned in the same manner as the membership of the House of Delegates will be apportioned in the next Legislature. This recommendation the Legislature has embodied in Senate Bill 594.

For the first time in nearly one hundred years, therefore, the Legislature of Maryland has acted to call a Constitutional Convention, provided it is approved by the people. The great majority of those voting in the elections held in 1930 and 1950 voted in favor of a Constitutional Convention but the Legislature

failed to call a Convention in 1931 and again in 1951, and all efforts of previous administrations in the past twenty years to persuade the Legislature to call a Constitutional Convention have been unavailing.

I have strongly favored a Constitutional Convention for many years and during my administration have worked very hard to persuade the Legislature to call a Convention. It is, therefore, with a real sense of achievement that I have signed these two bills today, thereby assuring the people of the State of Maryland that if they want a Constitutional Convention and so indicate their desire at the election next September, that Convention will convene in Annapolis at twelve noon on Defenders' Day in 1967, almost one hundred years to the day from the time that the last Constitutional Convention in Maryland adjourned.

The Commission which I appointed, under the able leadership of its Chairman, H. Vernon Eney, Esq., is continuing its inquiry into the revision needed in the Constitution of Maryland. This Commission is studying the most modern examples of state governmental machinery in an effort to solve problems which must be solved if the American dual form of government is to survive and if the State of Maryland and other states are to remain as viable and dynamic institutions of government.

The pressures of urbanization and industrialization resulting from the scientific progress of the space age and from the exploding population, particularly in the Boston to Washington megalopolis which cuts such a wide swath through the entire State of Maryland, require a careful re-examination of the system of political subdivisions existing under the present Constitution, and this is one of the many tasks being undertaken by the Commission. It will submit its findings, recommendations and specific proposals on these and other necessary revisions of the Constitution to me and to the General Assembly of Maryland prior to its 1967 session.

I therefore take great pride in the fact that we have moved closer toward calling a Constitutional Convention to modernize the Maryland State Constitution, and I regard this as one of the principal achievements of my administration. I urge all citizens to support the calling of a Constitutional Convention by voting in the special election on September 13, 1966.

I am convinced that an overwhelming majority of the citizens and voters of Maryland favor the calling of a Constitutional Convention, but we must say so at the polls. It is, therefore, necessary that the citizens and voters of Maryland be made aware of the importance of this election. To that end I hope shortly to announce the formation of a Citizens Committee to undertake the task of informing the electorate so that they will go to the polls and vote on this most important issue.

CHAPTER 501 OF THE ACTS OF THE GENERAL ASSEMBLY OF 1966

HOUSE BILL NO. 44.

INTRODUCED BY THE SPEAKER.

APPROVED MAY 6, 1966.

AN ACT to provide for taking at a special election to be held at the same time as the primary election in the year Nineteen Hundred and Sixty-Six, the sense of the voters of this State on the call of a Convention to frame a new Constitution of Maryland, which Convention would be convened within twelve months of that election.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That at a special election to be held on the second Tuesday after the first Monday in September, in the year Nineteen Hundred and Sixty-Six, at the same time as the primary election and at the same places where elections are by law held for the election of delegates to the General Assembly, there shall be submitted to the legal and qualified voters of this State the question of whether there shall be called a Convention not earlier than September 1, 1967 and not later than September 1, 1968 to frame a new Constitution for Maryland. There shall be placed upon the ballots or upon the voting machine labels to be used at that election in the manner prescribed by the general election laws of this State the words "For a Constitutional Convention" and "Against a Constitutional Convention" so that the voter may clearly indicate in the manner prescribed in the general election laws whether he is for or against the calling of a Convention to frame a new Constitution; and the vote on this question shall be received, counted, and canvassed in the manner prescribed by the general election laws. The Canvassing Boards of the several counties and for the City of Baltimore shall certify the vote on this question to the Governor, the Secretary of State, and the State Treasurer; and the Board of State Canvassers shall, at the time of their meeting to make a statement of the vote cast for the candidates voted upon at the primary election, also make a statement of the vote cast on the question of calling a Constitutional Convention, and shall transmit the same to the Governor; and the Governor shall, after receiving this statement, issue a proclamation reporting the sense of the people of this State on the call of a Convention to frame a new Constitution and shall transmit a copy of the proclamation to the General Assembly.

SEC. 2. *And be it further enacted,* That notice that the question of calling a Constitutional Convention will be submitted to the voters shall be given in the same manner and for the same time as required by Section 12 of Article 33 of the Annotated Code of Maryland (1957 Edition, as amended). All other State and local officials shall do all those things which are appropriate in regard to the holding of this special election and that are required under the general election laws.

SEC. 3. *And be it further enacted,* That this Act is hereby declared to be

an emergency measure and necessary for the immediate preservation of public health and safety and, having been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, this Act shall take effect from the date of its passage.

CHAPTER 500 OF THE ACTS OF THE GENERAL ASSEMBLY OF 1966

SENATE BILL NO. 594.

INTRODUCED BY SENATOR MALKUS.

APPROVED MAY 6, 1966.

AN ACT to provide for the calling of a Convention to frame a new Constitution of Maryland under certain circumstances and to provide for the number and apportionment of delegates thereto.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That in the event a majority of those voting at the special election to be held on the second Tuesday after the first Monday in September in the year 1966 vote for a Constitutional Convention, such Convention shall be assembled and shall convene at twelve noon on Tuesday the twelfth day of September in the year 1967 at such place and shall continue in session for such length of time as may hereafter be prescribed by law.

SEC. 2. *And be it further enacted,* That in the event a Convention is assembled pursuant to the provisions of this Act, each county and each of the legislative districts of Baltimore City shall have in such Convention the same number of delegates as Chapter 2 of the Acts of the General Assembly of the Special Session of October 11, 1965, provides shall be elected to the House of Delegates at the General Election in 1966 from such county and legislative district.

SEC. 3. *And be it further enacted,* That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of public health and safety and, having been passed by yea and nay votes supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, this Act shall take effect from the date of its passage.

SENATE BILL 609

DIED IN HOUSE JUDICIARY COMMITTEE MARCH 25, 1966.

INTRODUCED BY SENATOR MALKUS.

AN ACT to propose an amendment to the Constitution of Maryland by the addition of a new Section 12 in Article XV, title "Miscellaneous," to follow immediately after Section 11 thereof, providing that notwithstanding certain provisions of the Constitution of Maryland members of the General Assembly, otherwise qualified, and any other person holding any other office under the Constitution or laws of this State, otherwise qualified, shall be eligible to serve as a delegate to or a member of a constitutional convention or other group to revise or consider changes in the Constitution and submitting this amendment to the qualified voters of the State for adoption or rejection.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* (three-fifths of all the members of each of the two houses concurring), That the following section be and the same is hereby proposed as a new Section 12 to be added to Article XV of the Constitution of Maryland, title "Miscellaneous," to follow immediately after Section 11 thereof, the same, if adopted by the legal and qualified voters of the State, as herewith provided, to become a part of the Constitution of Maryland and to read as follows:

12.

Notwithstanding the provisions of Article 35 of the Declaration of Rights and of Sections 17 and 35 of Article III of this Constitution, any member of the General Assembly, otherwise qualified, and any other person holding any other office under the Constitution or laws of this State, otherwise qualified, shall be eligible to serve as a delegate to or member of a constitutional convention or other group to revise or consider changes in the Constitution of Maryland.

SEC. 2. *And be it further enacted,* That the aforegoing section hereby proposed as an amendment to the Constitution of Maryland, at the next general election to be held in this State in November, 1966, shall be submitted to the legal and qualified voters thereof for their adoption or rejection in pursuance of directions contained in Article 14 of the Constitution of this State, and at the said general election, the vote on the said proposed amendments to the Constitution shall be by ballot, and upon each ballot there shall be printed the words "For the Constitutional Amendments" and "Against the Constitutional Amendments" as now provided by law, and, immediately, after said election, all returns shall be made to the Governor of the vote for and against said proposed amendments, as directed by said Article 14 of the Constitution, and further proceedings had in accordance with said Article 14.

HOUSE JOINT RESOLUTION NO. 4

APPROVED MARCH 23, 1966.

House Joint Resolution establishing a Special Legislative Joint Committee to cooperate with the Constitutional Convention Commission.

The General Assembly of Maryland is directing the President of the Senate and the Speaker of the House of Delegates to appoint a Special Legislative Joint Committee to cooperate with the Constitutional Convention Commission.

The Constitutional Convention Commission was appointed by the Governor in June, 1965, to conduct an inquiry into the necessity for, and extent and nature of, any amendment, modification, or revision of the Constitution of Maryland.

The work of the Governor's Commission is directed toward preparing for an eventual Constitutional Convention. This work will include a detailed study of the existing Constitution and the preparation of working papers for the Convention. Long preliminary work is necessary and desirable before the Constitutional Convention begins work in drafting a new Constitution for this State.

For this purpose, it is desirable that a Special Legislative Joint Committee be

appointed to cooperate with the Executive Commission which has been appointed to take primary responsibility for the study of revising the Constitution of Maryland. This will give assurance that when proposals are submitted to the Constitutional Convention they will have been drafted with knowledge of the General Assembly's views and experience; now, therefore, be it

Resolved by the General Assembly of Maryland, That the President of the Senate and the Speaker of the House of Delegates are directed to appoint a Special Legislative Joint Committee to cooperate with the Constitutional Convention Commission; and be it further

Resolved, That the President of the Senate appoint five members of the Senate of Maryland and the Speaker of the House of Delegates appoint five members of the House as members of the Special Legislative Joint Committee, and that from time to time the President and the Speaker select a chairman and a vice-chairman for the Committee; and be it further

Resolved, That the President of the Senate and the Speaker of the House of Delegates, in addition to the other membership from the Senate and House of Delegates, shall serve as exofficio members of this Special Legislative Joint Committee; and be it further

Resolved, That the Special Legislative Joint Committee is directed to cooperate with the Constitutional Convention Commission appointed by the Governor.

SENATE RESOLUTION NO. 50

INTRODUCED BY SENATOR MACH.

APPROVED MARCH 14, 1966.

Senate Resolution directing that each of the members of the General Assembly of Maryland be notified by the Constitutional Convention Commission of the public meeting and hearings of the Commission and of its various committees.

WHEREAS, The Constitutional Convention Commission, its committees and subcommittees, from time to time, hold public meetings and hearings without adequate notice to the many residents of the State and their representatives in State and local government; and

WHEREAS, It is of the utmost importance to each of Maryland's citizens to have a voice in the government under which they live and to which they elect their representatives; and

WHEREAS, In the past, certain meetings and hearings have been scheduled by the Commission and its committees without adequate notification to the State Senators and Delegates, a number of whom would have attended had they been notified; and

WHEREAS, It is important, in this increasingly complex society in which we live, to preserve the rights and voice of the people via their elected legislative representatives; and

WHEREAS, In order to effectuate this basic constitutional right of Maryland's citizenry with some degree of certainty, it is necessary that each member of its General Assembly of Maryland be notified in advance of the public meetings and hearings scheduled to be held by the various committees and subcommittees of

the Constitutional Convention Commission. In this manner the State Senators and Delegates will be able to voice their opinions and those of their constituents on the matters in which they justly have a vital interest; now, therefore, be it

Resolved by the Senate of Maryland, That each member of the General Assembly of Maryland be given adequate notice in writing of the time and place of the public meetings and hearings to be conducted by the Constitutional Convention Commission and its various committees and subcommittees; and be it further

Resolved, That copies of this Resolution be sent to Mr. H. Vernon Eney, Chairman, and to the members of the Constitutional Committee.

STATEMENT BY GOVERNOR J. MILLARD TAWES ON THE APPOINTMENT OF THE CITIZENS' COMMITTEE ON THE CONSTITUTIONAL CONVENTION REFERENDUM THURSDAY, JUNE 16, 1966

Just one year ago today I appointed a Constitutional Convention Commission and requested it to study the Constitution of Maryland to determine whether there was a necessity for its revision and whether a constitutional convention should be held. The Commission very promptly reported that a complete revision of the one hundred year old and oft-amended Constitution was urgently needed and that it could best be accomplished by means of a constitutional convention.

Since then the Commission, under the Chairmanship of H. Vernon Eney, Esquire, and with John C. Brooks, Esquire as its Executive Director, has been hard at work studying the structure of our state government under the existing Constitution as well as the best examples of other state governments in order to prepare recommendations for the modernization of our own Constitution. The Commission and its various committees have had many meetings, have held many public hearings and are presently engaged in the very arduous task of preparing a draft Constitution and an extensive report in connection therewith for the consideration of a constitutional convention and ultimately for submission to the citizens of Maryland.

On the recommendation of the Commission, the legislature passed a bill providing for a referendum on the question of calling a constitutional convention, which referendum will be submitted at a special election to be held at the same time as the Primary Election on September 13, 1966.

I am sure that the great majority of the citizens and voters of Maryland are in favor of calling a constitutional convention, but it is imperative that they say so in the referendum on September 13.

The Constitution of Maryland is, after all, truly the voice of the people. It is our basic law and one which will be fashioned and molded to express the people's wishes and desires. For these reasons, a constitutional convention should enter upon the task of preparing this document with the realization that it has a mandate to do so from the whole body of citizens and voters, and not merely a handful who take the trouble to go to the polls. Accordingly, it is of the utmost importance, not only that the calling of the constitutional convention be approved by a majority of those voting in the special election, but that a very high percentage of the qualified voters of Maryland go to the polls on Primary Day and vote in the special election on this question.

It is therefore necessary that the citizens and voters of Maryland be made fully aware of the importance of their participation in this special election. To that end, I have appointed a Citizens' Committee on the Constitutional Convention Referendum which, in addition to being representative of every geographical subdivision of the State, also includes representatives of numerous civic and political organizations and groups which are and should be interested in this question. I have appointed the Honorable John B. Gray, Jr., as

Chairman of the Committee and Professor Clinton I. Winslow as Vice Chairman. A list of the other members is attached.

Judge Gray needs no introduction to the people of the State of Maryland. He has served the citizens of this State long and honorably in many capacities beginning with his service as Assistant Attorney General many years ago and culminating in his service for twenty-three years, first as an associate and later as Chief Judge of the Seventh Judicial Circuit of the State of Maryland. For thirteen years he acted as Chairman of the Rules Committee of the Court of Appeals of Maryland, which Committee revised almost all the procedural law applicable in our courts. In asking him to act as Chairman of this Citizens' Committee, I am once again calling on him to utilize his breadth of knowledge, his experience and his abilities in the service of the State, and I am indeed very happy that he has consented to do so.

Dr. Winslow also is a man who has achieved great distinction. As is well known, he is Professor Emeritus of Political Science at Goucher College where he taught for nearly forty years and where he was Chairman of the Political Science Department. In addition, however, he is recognized as an outstanding authority on state legislatures and legislative committees, and some of his books on this subject are regarded as classics in the field. He, however, has not been an ivory towered college professor but has always taken a keen interest in and has actively participated in civic and governmental affairs, having served on numerous public commissions and committees, most recently as a member of the Mayor's Committee for Redistricting of Baltimore. He is one of the very valued consultants to the Constitutional Convention Commission and as such has participated extensively in the work of that Commission. In addition, he has recently written a series of newspaper articles dealing with the need for constitutional revision in Maryland. He will, I am sure, be of tremendous service to the State as Vice Chairman of the Citizens' Committee.

Judge Gray and Professor Winslow are here with me today as I make this announcement, as are also Mr. Eney, the Chairman of the Constitutional Convention Commission, and Mr. Brooks, its Executive Director.

The last Constitutional Convention was held in Maryland in 1867. Since then, the Constitution has been amended more than one hundred times and sixteen additional amendments will be on the ballot at the general election in November, 1966. I have long advocated a constitutional convention to revise our present much-amended Constitution and the need for revision can hardly be doubted in view of the fact that the legislature has deemed it necessary to submit sixteen additional amendments to the people for consideration at one election. It is therefore gratifying to me that the legislature has provided for a constitutional convention to be held in 1967 if the people approve at the referendum on September 13, and I regard this as one of the principal achievements of my administration.

I have kept in close touch with the work of the Constitutional Convention Commission through Mr. Eney and Mr. Brooks, and I believe that the work being done by the Commission is of tremendous importance to the people of the State of Maryland. I, therefore, urge every voter in the State to make

it his business to vote at the special election on September 13, and I have informed Judge Gray and Professor Winslow that the Citizens' Committee which they will head will have not only my full cooperation and assistance, but also that of every department and agency of the State.

ADDRESS BY GOVERNOR J. MILLARD TAWES BEFORE CONSTITUTIONAL CONVENTION REFERENDUM WORKSHOP TOWSON, MD.

JULY 19, 1966

Judge Gray, Attorney General Finan, Mr. Eney, members of the Constitutional Convention Commission and of the Citizens Committee on the Constitutional Convention Referendum, ladies and gentlemen:

It is exceedingly gratifying to me to see this display of interest in a question of great importance to the people of Maryland—the calling of a convention to revise our State Constitution. As all of you know here, I am sure, this is a matter in which I have a great personal interest, and I am grateful to all of you for the effort you have made and are making to accomplish our purpose. The General Assembly at its session earlier this year passed legislation providing for a referendum on the question of calling a constitutional convention. This question will be decided by the voters of our State when they go to the polls in the Primary Election next September 13.

The purpose of this "workshop", which has been called the "opening gun in the campaign to get out the vote" on this referendum, is to discuss the progress made up to now in making the arrangements for the Convention next year and to talk about the need for such a constitutional revision and its importance to the people of Maryland. We have here today a splendid array of intelligence, widsom and experience, and with this as a foundation there is every reason for us to feel optimistic about our chances of success. But we must not let down our guard—we must not fall victim to apathy. Our goal is not just voter approval of the question on referendum; we want to see a tremendous turnout at the polls to indicate overwhelming endorsement of the proposition.

In a special message to the General Assembly this year, I spoke of three steps which I considered to be essential in preparing the government of our State for tasks of the future. The Legislature, I pointed out, had undergone a reapportionment of the membership of its two houses—a development of far-reaching consequences for the State and its government. The second step was the matter I was proposing to the General Assembly at the time—an updating and modernization of the administrative organization of State government which carries out public policy and administers a vast range of public services. This movement for a reorganization of the executive branch has been started and is well underway. The third step I cited as essential to the preparation of the State government to carry on its obligation in a changed, and ever-changing, society is the work we are engaged in here today—the plan to achieve a complete revision of the basic law of our State.

In another speech I made after the session had ended, I spoke of what I considered to be my legacy to the people of Maryland, and I mentioned again these three steps. This is what I said about a new constitution:

"Before any appreciable progress can be made in the modernization of the government, steps must be taken to replace the present cluttered and time-worn State Constitution with an up-to-date one."

Next year—1967—the Constitution under which we are now operating will be 100 years old. As had been said so often, it has been amended more than a hundred times since it was adopted. Some idea of how clumsy and ineffective it is as a document of basic law can be gained from the fact the sixteen additional amendments to the Constitution will be on the ballot in the General Election next November. This is appalling. Discounting the "Bill of Rights" amendments, which historically are a part of the original document, this represents more amendments than have been made to our Federal Constitution since it was ratified in 1789.

In view of all this, I was deeply pleased that the General Assembly approved a Constitutional Convention for 1967, subject to the September 13 referendum. I regard this act as one of the outstanding achievements of this administration. I urge every voter in the State of Maryland to go to the polls on Primary Election day and cast a vote for the Constitutional Convention.

I congratulate those of you who have gathered here today to begin this important mission, and I pledge my cooperation and assistance, and the cooperation and assistance of every department and agency of the State, in the task which you have so admirably assumed.

It is my hope that the voters of Maryland on September 13 will give those who will serve in the Constitutional Convention next year a resounding mandate to fashion a body of basic law that will serve the best interests of Marylanders of our generation and of many generations to come.

REPORT OF CITIZENS' COMMITTEE

LETTER OF TRANSMITTAL

December 28, 1966

Honorable J. Millard Tawes
Governor
State of Maryland
State House
Annapolis, Maryland

Dear Governor Tawes:

You will recall that on June 16th you appointed a Citizens' Committee to promote the constitutional referendum at the Special Election on September 13th. I am now reporting to you that in the all too short time available to us, we conducted a vigorous campaign in support of the referendum

While the voter participation in the Special Election left something to be desired, there was a very gratifying majority in favor of the convention—approximately five to one.

With the help of gifts from various private sources we have been able to bring our budget in substantial balance as you will find from the Treasurer's report which is attached. I am also attaching a copy of our memo designed to make of record the activities of our Committee especially with reference to any subsequent effort along similar lines.

Very truly yours,

John B. Gray, Jr.

CHAIRMAN

TREASURER'S REPORT

December 28, 1966

Honorable John B. Gray, Jr.
Chairman
Citizens' Committee on the Constitutional Convention Ref.
University of Maryland School of Law
Baltimore, Maryland 21201

Dear Judge Gray:

I am submitting herewith the following final details in connection with the receipts and disbursements of funds of the Citizens' Committee:

TOTAL RECEIPTS FROM MISCELLANEOUS PRIVATE SOURCES	$10,011.48

DISBURSEMENTS:

Julian Stein (Public Relations)	$4,101.48	
Public Relations Secretary (Mrs. Rubenstein)	508.21	
Executive Secretary (Mrs. Johns)	1,200.00	
Telephone	152.77	
Printing	3,516.50	
Judge Gray (travel and personal expenses)	412.44	
Dr. Winslow (travel and personal expenses)	52.30	
Postage and misc.	65.78	
		10,009.48
BALANCE		$ 2.00

Sincerely yours,

Samuel Hopkins
TREASURER

MEMORANDUM

Re: Organization and operation of

CITIZENS' COMMITTEE ON THE CONSTITUTIONAL CONVENTION REFERENDUM COMMITTEE

Upon the recommendation of the Constitutional Convention Commission, the Governor appointed a Committee to promote voter interest in the Constitutional Referendum to be voted on in the special election on September 13, 1966. The announcement of the Committee was made by Governor Tawes at a press conference on June 16, 1966.

The membership of the Committee, representing all geographical sections of the State and many of the activities of its people, consisted of the following:

Honorable John B. Gray, Jr.
Dr. Clinton Ivan Winslow
Caesar L. Aiello, Esq.
Walter E. Black, Jr., Esq.
Mr. Robert O. Bonnell
Mr. William Boucher, III
Marvin Braiterman, Esq.
Honorable Frederick W. Brune
Mr. Lionel Burgess
David W. Byron, Esq.
Miss Ella M. Carter
Honorable Godfrey Child
Bennett Crain, Jr., Esq.
J. Wilmer Cronin, Esq.
Mrs. Philip Darling
Honorable Edward S. Delaplaine
Brig. General James P. S. Devereux
George Cockran Doub, Esq.
Charles O. Fisher, Esq.
Mr. A. Sidney Gadd, Jr.
Francis X. Gallagher, Esq.
Mr. David L. Glenn
Harry Troth Gross, Esq.
Mr. Richard D. Hammond
Mr. Young D. Hance
John R. Hargrove, Esq.
Calvin Harrington, Jr., Esq.
T. Hughlett Henry, Jr., Esq.
Mrs. Ab Hermann
Mr. Jerold C. Hoffberger

Samuel Hopkins, Esq.
Lewis R. Jones, Esq.
Mr. J. Thomas Kibler
Mrs. Howard Koss
Dr. Albin O. Kuhn
Mrs. Gwendolyn Lee
William L. Marbury, Esq.
Mr. Robert J. Miller
F. DeSales Mudd, Esq.
Mr. Carl Murphy
Mrs. Macie F. Nolker
Mrs. M. F. Maury Osborne
Maj. General William C. Purnell
Mr. William S. Ratchford, II
Mr. Milson C. Raver
Mr. James W. Rouse
Mrs. Doris P. Scott
Mr. Truman T. Semans
Honorable Joseph Sherbow
Mr. Joseph Showalter
Mrs. Mano Swartz
Mr. E. Wellington Tawes
Mr. Norman Taylor
Honorable Rex A. Taylor
Mr. Daniel R. Thompson
H. Hamilton Whiteford, Esq.
Robert E. Wigginton, Esq.
Mr. George S. Wills
William L. Wilson, Esq.

The Governor appointed John B. Gray, Jr. as Chairman of the Committee and Dr. Clinton I. Winslow as Vice-Chairman.

At a conference of those chiefly concerned with getting the Committee organized, the Chairman announced the appointment of Mrs. Margaret Johns as Executive Secretary of the Committee. This proved to be a fortunate choice as Mrs. Johns' skills and prior experience in related fields made her work with the Committee a valuable contribution to its objectives.

At a subsequent meeting, Mr. Samuel Hopkins was elected Treasurer.

The initial meeting of the members of the Committee was held on June 28th. At that meeting the objectives of the Committee were outlined by the Chairman, by Mr. H. Vernon Eney, Chairman of the Constitutional Convention Commission and by others. The Committee authorized the appointment of an Executive Committee with authority to act in intervals between Committee meetings. There was substantial discussion and many helpful suggestions from the floor.

After consultations with many persons thought to be familiar with the public relations field, the Committee retained the services of Mr. Julian Stein of Washington, D. C. at a fee of $4,000 plus some telephone expenses and also authorized the employment of Mrs. Frances Rubenstein at a fee of $400 which was later increased to $500 in view of additional work toward the end of the campaign. Mr. Stein called a meeting of public relations representatives working in the Baltimore area with the view of getting suggestions from them and cooperation from their respective principals. This group was organized as an Advisory Board with whom Mr. Stein could consult.

COOPERATIVE EFFORT WITH THE UNIVERSITY OF MARYLAND

The Law School of the University made available two well located offices in its building at 500 West Baltimore Street. The University obtained an allocation from the Department of Health, Education and Welfare of approximately $60,000 to develop an educational program for the people of Maryland in connection with constitutional revision. This program was undertaken under the joint auspices of the Extension Service of the University of Maryland, the Con-

stitutional Convention Commission and the Citizens' Committee on the Constitutional Convention Referendum.

Most of the administration of this program was under the direction of Dr. Paxton Marshall. It consisted of several phases: A work-shop program was developed for presentation throughout the State. The speakers were furnished by the three cooperating agencies and at each workshop they dealt with various areas of the Constitution, suggested various problem changes therein and presented the need for revision.

Of this series of workshops, three were held in Baltimore City; two in Baltimore County; two in Montgomery County; one in Prince George's County and regional meetings in each of the following: Allegany, Anne Arundel, Cecil, Charles, Frederick, Talbot and Wicomico.

The attendance at the various workshops varied from 150 persons to 50, with an average of perhaps 75 persons. At these workshops those attending were given the literature available, informed of the type of literature in preparation and encouraged to distribute same in their various areas and induce others to do likewise.

The Extension Service also developed a slide presentation designed to present the problems of the Maryland Constitution before audiences in an entertaining and attractive manner. This consisted of a series of slides to be shown by projector, accompanied by music and by a speaker outlining the historical development of and weaknesses in the present Constitution. Copies of this "show" were made available through the Extension Service in each county and were shown on many occasions throughout the State.

The Extension Service is also engaged in developing a moving picture designed for television showing. This was not completed in time for the Committee's program, but will be used in keeping the problem before the people of the State during the election of delegates to the Convention and during the campaign for ratification of the new Constitution.

LITERATURE

The Extension Service developed three leaflets, two of which were written by Dr. Clinton I. Winslow and one by Mr. William S. Ratchford, II, Executive Secretary of the Maryland Association of County Commissioners. The Extension Service also developed a nine-page mimeographed series of questions and answers as well as a mimeographed sheet of general information. These proved popular devices for distribution at workshops and other meetings.

In addition to the above literature, the Committee had printed and distributed approximately 600,000 orange and black flyers, as well as a series of posters.

Much of the literature was distributed to persons who requested copies thereof whether at meetings or through the mail for use by themselves for distribution or for others to distribute. The orange and black flyer was designed to be an eye-catcher and to bring to the person concerned the message of the Constitutional Referendum. These flyers were distributed in large volume to headquarters of various candidates for election, the League of Women Voters, the Junior Association of Commerce and Labor Unions.

These flyers were also supplied to Northern Acceptance Corporation (NAC Charge Plan) and Charge-It of Baltimore of whom both agreed to mail

them out with their monthly statements to customers during the period preceding the primary election. They distributed approximately 120,000 flyers in this manner.

The League of Women Voters and the Junior Association of Commerce distributed these flyers on election day at the various polls throughout Baltimore City and many parts of the State.

There were also 1,000 flyers hand-distributed at Bethlehem Steel Corporation and 500 to parochial school children.

Labor Unions distributed these flyers in a door-to-door campaign (approximately 40,000) and the United Auto Workers and COPE (political education for labor unions) included our flyers in their mailings prior to primary day.

Mrs. Fisher, President of the Baltimore City Parent-Teacher Association also distributed flyers among the local Presidents of her association.

The Hecht Company designed and mailed to all their customers a flyer encouraging the vote on the referendum.

The Chesapeake & Potomac Telephone Company also designed an attractive flyer of their own and distributed it to all their customers throughout the State informing them of the impending opportunity each had to voice his opinion in this Special Election. The Catholic, Methodist, Episcopalian, Lutheran, Baptist, and Jewish church groups were approached and urged to distribute our literature. The response was gratifying.

RADIO AND TELEVISION

It was recognized from the beginning that radio and television would be among the more valuable media for publicizing the Special Election. However, funds in prospect would not tolerate the purchase of either radio or television time and efforts were made to procure notice of the referendum as a public service. Releases were sent to the various stations as well as script for spot announcements. It has been impractical to record the extent to which this type of publicity was used. However, we do know that an interview was broadcast by some of the Western Maryland stations; Dr. Winslow appeared on "One Man's Opinion," one program was cancelled due to the "political" aspects involved. Judge Gray, Dr. Winslow, Judge Sherbow and Mr. Eney also made radio and television appearances.

THE PRESS

The daily papers in both Washington and Baltimore published various news accounts having to do with the referendum, all of which were valuable. These were followed by editorials advocating support for the referendum at the election. News releases were sent to local papers throughout the State and there was much sympathetic treatment of the news stories in the weekly press and a substantial amount of editorial comment.

MISCELLANEOUS

A substantial effort was made to reach the managers of various political campaigns with the request that in all sample ballots there be included a vote *for* the constitutional referendum. While we got enthusiastic response from many of the candidates it was found that in many cases the sample ballots had been printed already before the candidates or other groups were reached. There was a limited demand for speakers before various

groups and several speaking engagements were kept.

All civic and service organizations in the City were approached and urged to request either speakers or literature for distribution to members. While several speaking engagements were kept it was found that time did not permit us to fully exploit this potential.

The Retail Merchants Association of Baltimore City approved the use of a slogan in connection with ads of their members and several of the larger stores included in their ads a line urging all citizens to vote in the Special Election.

Several large organizations using the Pitney-Bowes postage meters acquired special devices for use in mailings urging all persons to vote on the referendum in the Special Election. One of the more valuable projects had to do with announcements both over loud speaker at the ball park and radio and television coverage of the Oriole baseball games. This valuable contribution was through the courtesy of Mr. Jerry C. Hoffberger, a member of our Committee.

Various associations and organizations included in their house publications a story on the Constitutional Referendum and urged support therefor.

When the work of the Committee was originally laid out it was thought that a budget of approximately $10,000 could be financed through gifts from various foundations. While $2,000 was received from their source, it was soon found that the Committee's efforts were regarded to be in the political field and might jeopardize the tax free status of donor foundations. It was then decided to appeal to the lawyers throughout the State and to the financial community in Baltimore City for support. Three leading members of the Bar in Baltimore City undertook to canvass the law firms in the City and the response was almost 100%. A member of the Bar from each of the counties in the State was invited to canvass members of the Bar in his county. Most of the persons approached responded in the affirmative and many of them promptly reported a successful canvass. There is attached hereto a report of the Treasurer showing the receipts and disbursements of the Committee's funds.

OTHER SUGGESTIONS

The Committee intended to establish a Speakers Bureau and to offer the services of speakers throughout the State. However, we found that time would not permit the organization of an adequate Bureau nor to solicit invitations to speak. While speakers were furnished where requested there was no organized attempt to develop this field.

At the conference of public relations counsel we were offered the use of a booth at the Timonium Fair. This would have been a valuable outlet for our publicity and for the distribution of our literature, but because of error in planning this did not materialize. Nonetheless, The Finan headquarters at the Fair did distribute some of our flyers along with their own.

It was also suggested that it would be well to advertise on Labor Day at Ocean City by a plane, blimp or similar device towing a banner or slogan urging the vote on the referendum. Efforts were made to contact an agency at Ocean City engaged in this sort of thing but when no response was received we found it impractical to send someone to Worcester County to work out the necessary details.

COMMENTS

The chief criticism that developed during our efforts was the pressure under which members and staff had to work. Much more effective results could have been obtained had more time been available. This is particularly noticeable in the field of getting the ear of all candidates and political organizations interested in the September 13th election.

Some of the members of our Committee were most helpful and effective in working at the local level both with the press and among the voters. It was difficult to get others interested in this phase of our work.

TIMING

There was delay in getting the literature developed by the Extension Service at the University of Maryland and while the pressure of time is understandable the fact is that much of this literature received by us was too late for effective distribution. To promote effectively a campaign of this nature would require a period of not less than six months to develop and execute.

There is attached hereto a tabulation of the vote in the various political areas of the State. It will be noticed from this tabulation that while the vote in the Constitutional Referendum was less than 50% of the vote cast in the primary election it was thought to have been a fair participation in view of the length of the primary ballot and the rather obscure position to which the Special Election was relegated. The proposition *for* a Constitutional Convention carried by a gratifying majority of from *12 to 1* in Montgomery County to a state wide average of *5 to 1*.

RETURNS FOR STATEWIDE REFERENDUM
SEPTEMBER 13, 1966

QUESTION NO. 1
SHOULD A CONVENTION BE HELD BETWEEN SEPTEMBER 1, 1967 AND SEPTEMBER 1, 1968 TO DRAFT A NEW CONSTITUTION FOR MARYLAND?

Counties & Baltimore City	For A Constitutional Convention	Against A Constitutional Convention
Allegany	2,200	766
Anne Arundel	8,802	1,804
Baltimore	29,186	8,257
Calvert	1,434	435
Caroline	948	232
Carroll	2,005	621
Cecil	3,551	1,197
Charles	1,063	368
Dorchester	1,022	305
Frederick	2,883	678
Garrett	559	286
Harford	8,076	1,788
Howard	2,849	487
Kent	1,455	627
Montgomery	35,315	3,385
Prince George's	18,922	3,309
Queen Anne's	1,987	583
St. Mary's	2,114	471
Somerset	593	125
Talbot	2,657	682
Washington	3,337	918
Wicomico	2,644	493
Worcester	1,243	244
	134,845	280,061
Baltimore City	25,435	3,619
GRAND TOTAL	160,280	31,680

REPRINT OF REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION ON CONSTITUTIONAL CONVENTION ENABLING ACT

January 16, 1967

To His Excellency Spiro T. Agnew, *Governor of Maryland:*

To the Honorable, The General Assembly of Maryland:

The Constitutional Convention Commission of Maryland submits herewith its report with respect to an enabling act to make provisions for the election of delegates to, and the holding of, a convention to frame a new constitution for the State of Maryland pursuant to Chapter 500 of the Acts of the General Assembly of 1966, and a separate act to fix the amount to be paid to the delegates to the Constitutional Convention as compensation and reimbursement of expenses. This is the first formal written report of this Commission.

The definitive and comprehensive report of the Commission to the Governor and the General Assembly containing its recommendations to the Constitutional Convention, including a draft constitution containing both recommended provisions and alternate provisions for the consideration of the Convention, is in the course of preparation and should be printed and available for distribution in the near future. That report will include an extensive commentary with respect to each recommended and each alternate provision of the draft constitution and also, to the extent possible, a digest or summary of the principal arguments for and against each provision.

The Commission hopes to supplement its comprehensive report with the publication at a later date of transcripts of the hearings which it has held and the research materials which it has assembled. In all probability, the publication of this supplemental document will not be completed until spring.

We respectfully urge that the bills recommended in the report submitted herewith be introduced in both houses of the General Assembly immediately and that the necessary committee hearings thereon be held as promptly as possible. We think it is of vital importance that the General Assembly take final action with respect to these bills at the earliest possible date.

Respectfully submitted,

The Constitutional Convention
Commission of Maryland

H. Vernon Eney
Chairman

John C. Brooks
Executive Director

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I

Report on Enabling Acts For The Constitutional Convention

This Commission was appointed by Governor Tawes on June 16, 1965, "to conduct an inquiry into the necessity for, and extent and nature of, any amendment, modification or revisions of the Constitution of Maryland, with particular respect to whether a constitutional convention should be held, the procedures for calling such a convention, the basis for representation at the convention and the procedures for the election of the Delegates thereto." The Commission was directed "to submit its findings, recommendations and specific proposals regarding amendment, modification, or revision of the Constitution and the holding of a constitutional convention" to the Governor and to the General Assembly of Maryland.

Very early in its studies the Commission concluded that complete revision of the existing Constitution was imperative. Thereafter, on August 20, 1965, the Commission adopted a resolution that in the opinion of the Commission "the complete revision of the Constitution of Maryland which this Commission has heretofore declared to be urgently desirable and necessary can best be accomplished by means of a constitutional convention." These conclusions were immediately reported to the Governor and later to the General Assembly. Subsequently, at the 1966 Session of the General Assembly the Commission recommended the enactment of two bills, one providing for a referendum to take the sense of the voters as to whether a constitutional convention should be held, and the other calling a constitutional convention in the event the referendum vote was favorable.

Pursuant to these recommendations of the Commission, Chapters 500 and 501 of the Acts of the General Assembly of 1966 were enacted.

Chapter 501 provided for a special election to be held on September 13, 1966, to take the sense of the voters as to whether there should be called "a Convention not earlier than September 1, 1967, and not later than September 1, 1968, to frame a new Constitution for Maryland." Chapter 500 provided that in the event a majority of those voting at the special election on September 13, 1966, voted for a constitutional convention, "such Convention shall be assembled and shall convene at twelve noon on Tuesday, the twelfth day of September in the year 1967 at such place and shall continue in session for such length of time as may hereafter be prescribed by law."

The special referendum election was held on September 13, 1966, pursuant to Chapter 501 of the Acts of 1966. At

the election the vote was 160,280 for a constitutional convention and 31,680 against.

Chapter 500 of the Acts of 1966 further provided that if a convention were assembled pursuant thereto, "each county and each of the legislative districts of Baltimore City shall have in such convention the same number of delegates as Chapter 2 of the Acts of the General Assembly of the Special Session of October 11, 1965, provides shall be elected to the House of Delegates at the General Election in 1966 from such county and legislative district." This means that the total number of delegates to the Constitutional Convention is fixed at 142.

It now remains for the legislature to enact the enabling legislation to provide for the nomination and election of delegates to the Convention and to make other necessary arrangements to enable the Convention to assemble and carry out its function and purpose. It will also be necessary for the General Assembly to appropriate the funds necessary for the Convention.

In anticipation of this latter need, the Commission's Chairman and the Executive Director have conferred with Governor Tawes and Governor-elect Agnew, and understand that, pursuant to the Commission's recommendations, there will be introduced in the General Assembly a bill providing a deficiency appropriation of $750,000 in the current fiscal year to defray the costs of the special election for the election of delegates to the Constitutional Convention, and that the budget to be submitted to the General Assembly for the next fiscal year will provide the sum of $2,000,000 to defray the expenses of the Convention and the costs of the special election to be held in 1968 to adopt or reject any constitution which may be proposed by the Convention.

From the time of its initial organization the Commission has had a Committee on Convention Procedures. This committee for more than a year has been studying the problems involved in assembling a constitutional convention, the holding of elections for delegates, and the holding of a special election to either adopt or reject any constitution proposed by the Convention. This committee has made six reports to the Commission which have been debated at length. This report and the two acts accompanying it contain the recommendations of the Commission with respect to these matters.

Briefly summarized, the recommendations of the Constitutional Convention Commission are these:

1. The Convention should meet in the House of Delegates chamber in the State House in Annapolis.

2. The Convention should assemble in plenary session on September 12, 1967, but the Governor should be authorized to issue a proclamation assembling the Convention prior thereto, preferably in June or July, 1967, for the limited purpose of organizing the Convention, electing its officers and adopting rules of procedure, thereby making certain that when it assembles in plenary session on Defender's Day, the Convention would be ready to proceed with its work without delay.

3. The qualifications of a delegate to the Convention should be that he be twenty-one years of age and a citizen of the State of Maryland who has resided in the State for at least three years preceding his election and in the county or

district from which he seeks election for at least one year prior thereto. This means that the qualifications will be the same as for a member of the House of Delegates, except that members of Congress, persons holding civil or military office under the United States, and ministers would not be specifically disqualified.

4. A special election should be held on June 6, 1967, or earlier if the Convention Enabling Act is enacted early in the legislative session, at which election there should be elected from each county and legislative district the same number of delegates as such county or legislative district now has delegates in the House of Delegates. This means that in Baltimore City and in Anne Arundel, Baltimore, Montgomery and Prince George's counties the delegates would be elected by districts; in all other counties the delegates would be elected countywide.

5. There should be no primary election or other means of nomination, such as petition or convention, for the nomination of candidates for the office of delegate. Any person possessing the necessary qualifications would be entitled to file a certificate of candidacy upon paying the filing fee of $25.

6. Certificates of candidacy should be filed on or prior to May 1, 1967, and be subject to withdrawal at any time on or prior to May 15, 1967.

7. The names of candidates for election as delegates to the Convention should be arranged on the ballot or on the voting machine in the order in which the names are drawn by lot by the chairmen of the various boards of supervisors of election.

8. If a vacancy occurs in the office of delegate prior to the first meeting of the Convention, the vacancy should be filled by the Governor; but if the vacancy occurs thereafter, it should be filled by the Convention. In either event, the person selected to fill the vacancy should possess the same qualifications as would have been required of him to be elected as a delegate.

9. The Convention should be authorized to select and employ such employees as it deems necessary for the conduct of its business, to fix their compensation and to make such other expenditures as it deems proper to carry out its function, but its total expenditures should be limited to the amount appropriated by law.

10. The Convention should be required to keep a journal of its proceedings and a transcript of its debates and provide for their publication.

11. A majority of the whole number of delegates should constitute a quorum for the transaction of business, but no proposed new constitution should be finally approved for submission to the voters of the State until approved by the affirmative vote of a majority of the whole number of delegates elected to the Convention.

12. If a new constitution is proposed by the Convention, it should be submitted to the qualified voters of the State for adoption or rejection at a special referendum election to be held on May 14, 1968.

13. The Convention should continue as long as necessary, but not later than December 12, 1967, unless its session is extended to not later than January 12, 1968, by a majority of the whole number of delegates elected.

14. The State should contribute the sum of $750,000 toward the cost of each of the two special elections. This

amount should be allocated among the counties and the City of Baltimore in proportion to their expenditures for the general election in November, 1966.

The work of this Commission in the eighteen months of its existence has demonstrated quite clearly the need for very extensive study on the part of delegates to the Constitutional Convention. The Commission will make available to the delegates its report and all of the other study data which it has assembled. These will be quite extensive.

It is partly for this reason that the Commission has recommended that the Governor be authorized to call the Convention into session earlier than September, 1967, for the limited purpose of organizing, electing its officers and adopting rules of procedure. At this meeting, the delegates would be handed various materials which they could use for study. However, it seems evident that even with several months of summer before them to study such materials, the delegates will be inadequately prepared unless they can be more fully informed of the constitutional issues involved. The Commission would suggest, therefore, that shortly before the Convention is first assembled for the purpose of organizing, electing its officers and adopting rules of procedure, the delegates be invited to participate in an orientation session. The Commission will be glad to arrange a series of seminars, drawing both from its own staff and consultants and from various state officials.

If the recommendations of the Commission are adopted by the legislature, the timetable for the Convention and the events connected with it will be as follows:

Between January and March, 1967	—enactment of enabling legislation
Between January and March to May 1, 1967	—filing of certificates of candidacy
May 1 to May 15, 1967	—withdrawal of certificates of candidacy
June 6, 1967	—special election for election of delegates to Convention
Between June 6 and July 4, 1967	—orientation session
July, 1967	—organization session of Convention
July and August, 1967	—study by delegates and appointment of committees by president of Convention
September 12, 1967	—opening of plenary session
September 12 to December 12, 1967	—formal session of Convention which could be extended to January 12, 1968
December 12, 1967 or January 12, 1968 to May 14, 1968	—explanation and discussion of proposed new constitution
May 14, 1968	—special election to adopt or reject the constitution proposed by the Convention

In all probability, the Convention would recommend that most of the provisions of any new constitution proposed by it take effect on July 1, 1968. It is quite clear, however, that some recommendations could not take effect that soon. For instance, the Convention would, in all probability, recommend that officials elected in November, 1966, continue to serve until the expiration of their terms, which would be in November, 1970, and that judges in office at the time the new constitution is adopted continue in office. There would also of necessity be other situations where time would be needed to work out transitional details. It is therefore likely that parts of the proposed new constitution would not take effect until several years after it had been adopted. Accordingly, although it might be anticipated that most of the provisions of any new constitution would take effect on July 1, 1968, the effective date of some provisions would be later than that, perhaps as late as January, 1971.

Following is the complete text of the two bills recommended by the Commission and also a section-by-section analysis of each of them.

II

Enabling Acts

Part 1

AN EMERGENCY BILL ENTITLED

AN ACT to make provisions with respect to the election of delegates to, and the holding of, a convention to frame a new constitution for the State of Maryland pursuant to Chapter 500 of the Acts of the General Assembly of 1966 and prescribing the time, place, and manner of nominating and electing delegates and filling vacancies, the qualifications of delegates, the manner of determining the arrangement of the names of candidates on ballots and voting machines, the time, place, and duration of the sessions of the convention, the employment of employees, the keeping and publication of a journal and transcript of debates, the designation of a quorum and of the number of votes required to approve a new constitution, the method of certifying and submitting to the voters of this State any new constitution proposed by the convention together with any schedules attached thereto, providing for a special election to adopt or reject such proposed constitution and schedules and for a proclamation by the Governor of the results of such election, and providing for the allocation among the counties and the City of Baltimore of the monies appropriated by the State to pay the costs of the two special elections.

WHEREAS, by Chapter 501 of the Acts of the General Assembly of 1966 it was provided that a special election be held on the second Tuesday after the first Monday in September, 1966, to take the sense of the voters of this State on the call of a convention not earlier than September 1, 1967, nor later than September 1, 1968, to frame a new constitution for Maryland; and

WHEREAS, that special election was held on September 13, 1966, and pursuant to that Act the Governor has issued his proclamation reporting that a majority of those voting at the special election voted in favor of the call of a constitutional convention and a copy of the Governor's proclamation has been transmitted to the General Assembly; and

WHEREAS, by Chapter 500 of the Acts of the General Assembly of 1966 it was provided that in the event there was a favorable vote on the referendum to hold a constitutional convention, a constitutional convention should be assembled and should convene at twelve o'clock noon on Tuesday, September 12, 1967, at such place and should continue in session for such length of time as might thereafter be prescribed by law, and that Act further provided for the number of delegates to be elected to the

convention from each of the counties and from Baltimore City, now therefore

Be it enacted by the General Assembly of Maryland, THAT THE FOLLOWING PROVISIONS WITH RESPECT TO THE ELECTION OF DELEGATES TO, AND THE HOLDING OF, A CONVENTION TO FRAME A NEW CONSTITUTION FOR THE STATE OF MARYLAND BE, AND THE SAME ARE, HEREBY ADOPTED.

Section 1. Any person shall be eligible to be a delegate to the Constitutional Convention who, at the time of his election as a delegate, is at least twenty-one years of age, is a citizen of the State of Maryland, has resided in the State for at least three years next preceding his election, and has resided in the county or the legislative district or subdistrict of the county or of the City of Baltimore from which he seeks election for at least one year next preceding his election.

Section 2. A special election shall be held on Tuesday, June 6, 1967, for the election of the delegates to the Convention, at which there shall be elected from each county, legislative district or subdistrict thereof for the election of members of the House of Delegates, or legislative district of Baltimore City the following numbers of delegates:

Allegany County	Four
Anne Arundel County	
Delegate subdistrict No. 1	Three
Delegate subdistrict No. 2	Three
Delegate subdistrict No. 3 (part lying wholly within Anne Arundel County)	Three
Baltimore City	
First Legislative District	Six
Second Legislative District	Eight
Third Legislative District	Eight
Fourth Legislative District	Seven
Fifth Legislative District	Seven
Sixth Legislative District	Seven
Baltimore County	
Delegate subdistrict No. 1	Three
Delegate subdistrict No. 2	Three
Delegate subdistrict No. 3	Three
Delegate subdistrict No. 4	Three
Delegate subdistrict No. 5	Four
Delegate subdistrict No. 6	Three
Delegate subdistrict No. 7	Three
Calvert County	One
Caroline County	One
Carroll County	Two
Cecil County	Two
Charles County	Two
Dorchester County	One
Frederick County	Three

Garrett County	One
Harford County	Four
Howard County	Two
Kent County	One
Montgomery County	
Delegate subdistrict No. 1	Seven
Delegate subdistrict No. 2	Seven
Delegate subdistrict No. 3	Two
Prince George's County	
Legislative District No. 1	Three
Legislative District No. 2	Seven
Legislative District No. 3	Six
Queen Anne's County	One
St. Mary's County	Two
Somerset County	One
Talbot County	One
Washington County	Four
Wicomico County	Two
Worcester County	One

Section 3. Each candidate for election as a delegate shall pay a filing fee of twenty-five dollars ($25) and the boards of supervisors of elections in the counties and in Baltimore City shall accept the filing of eligible persons as candidates for election during regular office hours during the period from the effective date of this Act to and including May 1, 1967. The boards shall accept the withdrawal of candidacies for election and shall refund the filing fee of twenty-five dollars ($25) during regular office hours up to and including May 15, 1967. No certificate of candidacy for election shall be accepted for filing unless the candidate named therein shall have made the affidavit required by Section 15 of Article 85A of the Annotated Code of Maryland (1957 Edition). The board of supervisors of elections in each county and in the City of Baltimore shall keep its office open for a period of not less than ten hours on May 1, 1967, and on each of not less than two days in the week preceding May 1, 1967, and on May 15, 1967, and on each of not less than two days in the week preceding May 15, 1967. Public notice of the hours and days on which its office is open shall be given by each board of supervisors of elections. Such notice shall be published at least once in each week between the effective date of this Act and May 15, 1967.

Section 4. At least once in each of the two weeks following May 15, 1967, the board of supervisors of elections in each county and in Baltimore City shall give public notice of the names of all candidates for election as delegates from that county or from Baltimore City and of the legislative district or subdistrict from which they respectively seek election. Such notice shall be published in at least two newspapers of general circulation in the county or in Baltimore City, or in one newspaper in any county in which there is only one newspaper of general circulation.

Section 5. At the office of the supervisors of elections in each county and in Baltimore City at two o'clock P.M. East-

ern Daylight Saving Time on Tuesday, May 16, 1967, the names of all candidates for election as delegates from that county, the legislative districts or subdistricts thereof, or from the legislative districts of Baltimore City shall be publicly drawn by lot by the chairman of such board of supervisors of elections or some other person designated by him. The names of the candidates shall be printed on the paper ballots or on the ballot labels for voting machines without any party designation or other description whatsoever, and shall be arranged on the ballots or voting machines in the order in which the names have been drawn by lot.

Section 6. The number of candidates in each county or district equal to the number of delegates to be elected from such county or district who receive the greatest number of votes in their respective districts shall be the delegates to the Convention. As soon as the polls are closed, the votes cast in the election shall be counted, canvassed and returned by the judges and clerks of election as in other elections. Within ten days after the election the Secretary of State shall convene a meeting of the Board of State Canvassers, which Board shall from the certified copies of the statements made by the boards of city and county canvassers make a statement of the number of votes cast in such election for each candidate named in the statements. The Board shall thereupon determine and declare which candidates have been elected. The Governor shall, as provided by law, issue commissions to those persons who are elected. The Convention shall be the final judge of the qualifications of its members and the validity of their election.

Section 7. If a vacancy occurs in the office of delegate to the Convention prior to the first meeting of the Convention, the vacancy shall be filled by the Governor, but if the vacancy occurs after the first meeting of the Convention, the vacancy shall be filled by the Convention. In either event, the person selected to fill the vacancy shall, as of the date of the special election for delegates to the Convention, have the qualifications prescribed by Section 1.

Section 8. Before any person elected or appointed as a delegate to the Convention shall enter upon his duties, he shall take and subscribe the oath or affirmation prescribed by Section 6 of Article I of the Constitution of Maryland.

Section 9. The Governor by proclamation shall issue a call for the delegates elected to assemble in the chambers of the House of Delegates at the State House in the City of Annapolis on a date within sixty days after their election and at an hour as shall be fixed in his proclamation, for the sole purpose of organizing the Convention, electing its officers and adopting rules of procedure. The president of the Senate of Maryland shall attend upon the initial meeting of the Convention at the appointed hour, shall have the roll of the elected delegates called and shall act as temporary chairman of the Convention until it has elected a president. Until the Convention has adopted rules of procedure, *Robert's Rules of Order* shall govern the procedure of the Convention.

Section 10. The elected delegates shall assemble in plenary session in the chamber of the House of Delegates in the State House in the City of Annapolis at twelve o'clock noon Eastern Daylight Saving Time on Tuesday, September 12, 1967, and continue in session for as long as necessary, but not later than December 12, 1967, unless the

Convention by a vote of the majority of the whole number of delegates extends the session of the Convention to a date not later than January 12, 1968. At least ten days prior to September 12, 1967, the Governor by proclamation shall issue a call for the delegates to assemble on that date.

Section 11. The Convention may select and employ such employees as it may deem necessary to the efficient conduct of its business, each of whom shall receive such compensation as may be fixed by the Convention. The Convention may make such other expenditures as it deems proper to carry out its work, but shall not authorize total expenditures in excess of the amount appropriated by law for its expenses.

Section 12. The Convention shall keep a journal of its proceedings and a transcript of its debates and shall provide for the publication thereof. It may also provide for the publication of any of its other documents and reports.

Section 13. A majority of the whole number of delegates to the Convention shall constitute a quorum for the transaction of business, but any smaller number may adjourn from day to day. No proposed new constitution shall be finally approved by the Convention for submission to the voters of this State as provided for in Section 14 of this Act except by the affirmative vote of a majority of the whole number of delegates to the Convention.

Section 14. If a new constitution is proposed by the Convention, the same shall forthwith be certified by the president and secretary of the Convention and by them be transmitted to the Secretary of State who shall thereupon certify the same to the board of supervisors of elections of each county and of Baltimore City. The proposed constitution shall be submitted to the qualified voters of the State for adoption or rejection at a special referendum election to be held on May 14, 1968.

Section 15. The votes cast for and against the constitution proposed by the Convention shall be returned to the Governor in the manner prescribed by Article XIV of the existing Constitution with respect to votes on amendments thereof. If a majority of the votes cast at the special referendum election are cast in favor of the constitution proposed by the Convention, the Governor shall by his proclamation declare the proposed constitution to have been adopted by the people of Maryland. The new constitution shall take effect as provided therein, or as provided in a schedule of transitional provisions attached thereto.

Section 16. The Convention may also prepare a schedule of legislation to complement the proposed constitution, which schedule shall be attached to and certified with the proposed constitution. If the proposed constitution is adopted, the schedule shall be deemed to have been adopted also and shall take effect as provided therein. The schedule shall not be a part of the constitution, but shall have the effect of a public general law and may thereafter be amended or repealed by law.

Section 17. Such funds as may be appropriated by law to pay the cost of the special elections provided for in this Act for the election of delegates to the Convention and for the adoption or rejection of a constitution which may be proposed by the Convention shall be allocated among the counties and the City of Baltimore in the ratio that the total expenditures of the respective

boards of supervisors of elections of the counties and the City of Baltimore, with respect to the general election of November, 1966, bears to the aggregate total expenditures of the boards of supervisors of elections of all counties and of the City of Baltimore with respect to the same general election. The determination of the respective shares of each county and of the City of Baltimore shall be made by the comptroller, and, on the basis of such determination, the respective shares shall be disbursed to the counties and to the City of Baltimore. Any expenditures of a county or of the City of Baltimore for such special elections in excess of the share of the state appropriation therefor allocated as herein provided shall be paid by such county or by the City of Baltimore.

Section 18. Except as otherwise provided in this Act, or as may be inconsistent therewith, the laws of this State relating to elections for members of the House of Delegates shall govern and apply to the election of the delegates to the Convention and those relating to referendum elections shall govern and apply to the special referendum election on the adoption or rejection of the constitution proposed by the Convention. All state and local officials shall do all those things which are appropriate to the holding of each of the special elections provided for in this Act and which are required under the general election laws.

And be it further enacted, THAT THIS ACT IS HEREBY DECLARED TO BE AN EMERGENCY MEASURE AND NECESSARY FOR THE IMMEDIATE PRESERVATION OF THE PUBLIC HEALTH AND SAFETY, AND HAVING BEEN PASSED BY YEA AND NAY VOTES, SUPPORTED BY THREE-FIFTHS OF ALL THE MEMBERS ELECTED TO EACH OF THE TWO HOUSES OF THE GENERAL ASSEMBLY, THIS ACT SHALL TAKE EFFECT FROM THE DATE OF ITS PASSAGE.

Part 2

A BILL

ENTITLED

AN ACT to provide for a per diem payment to cover compensation and reimbursement of expenses to delegates to the Constitutional Convention called pursuant to Chapter 500 of the Acts of the General Assembly of 1966.

Section 1. *Be it enacted by the General Assembly of Maryland,* That each delegate to the Constitutional Convention convened pursuant to Chapter 500 of the Acts of the General Assembly of 1966 shall receive a per diem payment of $50 to cover compensation and reimbursement of expenses for each day's actual attendance upon the sessions of the Convention or meetings of authorized committees or subcommittees thereof occurring on or after September 12, 1967, but shall not receive any payment to cover either compensation or reimbursement of expenses in attending sessions of the Convention or meetings of committees or subcommittees thereof prior to said date. In no event shall the total of all per diem payments to a delegate exceed the sum of $4,500.

Section 2. *And, Be it further enacted,* that this Act shall take effect on June 1, 1967.

III

Analysis of Convention Enabling Act

Section 1. *Any person shall be eligible to be a delegate to the Constitutional Convention who, at the time of his election as a delegate, is at least twenty-one years of age, is a citizen of the State of Maryland, has resided in the State for at least three years next preceding his election, and has resided in the county or the legislative district or subdistrict of the county or of the City of Baltimore from which he seeks election for at least one year next preceding his election.*

This section prescribes as the qualifications for a delegate to the Convention the same qualifications as are prescribed by Article III, Section 9 of the present Constitution for a member of the House of Delegates. It should be noted, however, that while the present Constitution disqualifies members of Congress, persons holding any civil or military office under the United States and ministers or preachers of the gospel or of any religious creed or denomination from serving as members of the House of Delegates, these disqualifications would not specifically apply to a candidate for delegate to the Constitutional Convention.

In earlier Maryland constitutional conventions delegates were required to possess qualifications which "shall be the same as now required for a seat in the House of Delegates . . . ." Ch. 346, § 4, *Laws of Maryland* (1849). See also ch. 5, § 1, *Laws of Maryland* (1864); and ch. 2, *Laws of Maryland* (1867). A number of bills introduced over the last sixteen years in the General Assembly for the purpose of calling a constitutional convention also prescribed the same qualifications for delegates to the convention. See, *e.g.*, § 2, H.B. 30, January 4, 1951; § 2, H.B. 55, February 4, 1960; and § 2, H.B. 51, January 7, 1961. The Commission believes that the Maryland precedents on this particular question should be followed, with the exceptions noted. The Commission cannot discern any compelling reasons for barring members of Congress, federal employees, members of the armed forces, or clergymen from serving as delegates to the Constitutional Convention.

Section 2. *A special election shall be held on Tuesday, June 13, 1967, for the election of the delegates to the Convention, at which there shall be elected from each county, legislative district or subdistrict thereof for the election of members of the House of Delegates, or legislative district of Baltimore City the following numbers of delegates:*

[For table of delegate apportionment see page 68.]

Fair representation of the people of Maryland in the Convention was a sub-

ject of primary importance to the Commission. The Commission was mindful of the elemental fact that "historically and legally, the Convention is the direct voice of the people in matters affecting general constitutional overhaul." GRAVES, STATE CONSTITUTIONAL REVISION 32 (1960).

However, it did not prove an easy matter to resolve. The Commission discussed at length the questions of the number of delegates to the Convention and of the basis of representation.

The Commission considered the provisions of Article XIV, Section 2 of the present Constitution to the effect that a convention assembled pursuant to that Article should consist of a number of delegates equal to the total representation in both the House of Delegates and the Senate at the time the convention is called. The Maryland Constitutional Convention of 1867 provided representation on a basis which corresponded with the representation that each county and the City of Baltimore then had in the General Assembly. Ch. 327, § 1, *Laws of Maryland* (1867). The Commission also considered whether the "one man, one vote" rulings of the Supreme Court compelled the application of the same rules in selecting delegates to a constitutional convention. A detailed discussion of these questions is contained in the second report of the Commission's Committee on Convention Procedures.

The Commission concluded that the rulings of the Supreme Court did not require the application of the "one man, one vote" principle in selecting delegates to a constitutional convention. Nevertheless, the Commission had no difficulty in determining that as a matter of sound public policy, population should be the basic criterion for apportioning representation in the Convention. Not only "can a poorly apportioned convention lead to a constitution biased toward particular groups, but unfair apportionment [of the delegates] in itself can render the whole document suspect, regardless of its merits, and engender sufficient hostility among the people to threaten its acceptance." WHEELER, THE CONSTITUTIONAL CONVENTION 33 (National Municipal League, 1961).

The Alaska Constitutional Convention of 1955, which drafted a constitution that is regarded by many as one of the most modern of all state constitutions, is generally believed to have succeeded largely because the enabling act calling the convention made it "the most representative body ever assembled in Alaska."

While the Commission decided that population should be the controlling standard to be observed in fashioning the basis of representation in the Convention, the Commission also decided early in its deliberations that each of the twenty-four political subdivisions of the State should be guaranteed at least one delegate, regardless of its population.

With these principles to guide it, the Commission considered a possible apportionment basis that would provide for a number of delegates to the Convention equal to the number of legislators in both the Senate and House of Delegates of the General Assembly. As to this basis, the Commission reached the consensus that a convention of 185 delegates would be unwieldy, unnecessarily expensive and difficult to conduct. The Commission also considered the possibility of some at-large delegates either appointed by the Governor or elected on a state-wide basis. However, this too

was rejected. In its deliberations, the Commission received the benefit of the comments and suggestions of a number of consultants to the Commission and civic organizations. The great majority of these favored the Commission's ultimate view that representation in the Convention be on the identical basis which would prevail in the House of Delegates in January, 1967.

Accordingly, the Commission recommended on January 17, 1966, that representation in the Convention be limited to 142 delegates and that they be apportioned among the counties and the legislative districts of Baltimore City in the same manner as the House of Delegates is apportioned pursuant to Chapter 2 of the Acts of the Special Session of the General Assembly of October 11, 1965.

The House of Delegates, in January, 1967, will consist of 142 members, with each county and each legislative district of the City of Baltimore having a minimum of one delegate regardless of population, and the remaining 113 members being distributed according to a strict population formula. The adoption of this basis of representation as the apportionment plan for delegates to the Constitutional Convention strikes a balance between the desirable principles of strict proportional representation and the proposition that, in a convention called to recommend fundamental changes in the basic charter of state government, each county and legislative district of Baltimore City should have some minimum representation.

The Commission's recommendation was accepted by the General Assembly with the result that Chapter 500 of the Acts of 1966 was enacted. Chapter 500, however, did not provide the machinery for electing the delegates, nor any of the other details concerning the assembling of the Convention.

Inasmuch as there is no state-wide primary or general election in 1967, the delegates to the Convention must be elected at a special election. Under Chapter 500 the Convention will meet on September 12, 1967. It would appear, therefore, that the special election should be held in the spring of 1967 so that the delegates elected would have the summer of 1967 available for study in preparation for their services as delegates and also have sufficient time to make arrangements to be absent from their usual vocations for the three or four months that the Convention will be in session. Sufficient time should be allowed to enable interested persons to file certificates of candidacy and to withdraw after the expiration of the time for filing such certificates. The Commission believes that there should be a period of not less than six weeks available for the filing of certificates of candidacy and a period of at least two weeks thereafter for withdrawals. Since candidacies cannot be filed until the enabling act has become law and, since it is not known when this will be, the Commission suggests that the special election be held on June 6, 1967. This would assume that the enabling act has become law not later than the middle of March, 1967.

Although Chapter 500 of the Acts of 1966 fixed the total number of delegates at 142 and provided that they should be apportioned among the counties and the City of Baltimore in the same manner as the present House of Delegates, it did not specifically provide whether the delegates to the Convention should be elected on a county-wide or city-wide basis or by districts. In considering this

question, the Commission was mindful of the fact that the number of candidates is likely to be large.

The total number of delegates from Baltimore City is forty-three. It would appear obvious that this is much too great a number to be elected at large from the City. On the basis of the expected number of candidacies, the total number of candidates in Baltimore City would be substantially greater than forty-three. To require the voters of Baltimore City to choose forty-three delegates from an even larger number of candidates would be unreasonable. The Commission, therefore, recommends that the delegates from Baltimore City be elected from the legislative districts. This means that the number of delegates from one district will be six, from two districts will be eight, and from the remaining three districts will be seven.

The question whether delegates in the counties should run at large or from legislative districts or subdistricts has proven to be more troublesome. Obviously, in those counties where the total number of delegates is only one, two, three or four, it would not be desirable to elect delegates by districts and the election of such delegates on a county-wide basis would not only be feasible, but entirely proper.

There are only four counties having more than four delegates and, therefore, the question of whether delegates should be elected by districts rather than on a county-wide basis arises only in Anne Arundel, Baltimore, Montgomery and Prince George's Counties. These counties have respectively 9, 22, 16 and 16 delegates. Strong arguments have been made that with properly organized efforts, the problem of electing this number of delegates on a county-wide basis is not too great; but even stronger arguments have been made to the Commission that the election of such a large number of delegates in any county would present problems of the same nature, if not of the same magnitude, as in Baltimore City. For instance, in Anne Arundel County, the county of the four largest with the smallest number of delegates, if the delegates were to be elected on a county-wide basis, there might be from thirty-five to fifty names on the ballot from which the electorate would be obliged to choose nine. The Commission feels very strongly that this places much too great a burden on the voters and makes the task of properly acquainting the voters with the qualifications of the respective candidates almost insurmountable. In a county with twenty-two delegates, such as Baltimore County, the problem approaches in magnitude the problem in Baltimore City.

As a result of strong recommendations that the delegates from the counties be elected on a county-wide basis, the Commission in the early summer of 1966 tentatively decided to recommend the election of delegates from the counties on a countywide basis and made public announcements of this tentative action. Immediately thereafter, the Commission received a significant number of objections to this recommendation which caused the Commission to reconsider its tentative recommendation. The Commission again considered the matter at its October meeting and, after full discussion, decided to recommend that in the four counties of Anne Arundel, Baltimore, Montgomery and Prince George's, the delegates be elected from the same legislative districts or subdistricts as are members of the House of Delegates.

Section 3. *Each candidate for election as a delegate shall pay a filing fee of twenty-five dollars ($25) and the boards of supervisors of elections in the counties and in Baltimore City shall accept the filing of eligible persons as candidates for election during regular office hours during the period from the effective date of this Act to and including May 1, 1967. The boards shall accept the withdrawal of candidacies for election and shall refund the filing fee of twenty-five dollars ($25) during regular office hours up to and including May 15, 1967. No certificate of candidacy for election shall be accepted for filing unless the candidate named therein shall have made the affidavit required by Section 15 of Article 85A of the Annotated Code of Maryland (1957 Edition). The board of supervisors of elections in each county and in the City of Baltimore shall keep its office open for a period of not less than ten hours on May 1, 1967, and on each of not less than two days in the week preceding May 1, 1967, and on May 15, 1967, and on each of not less than two days in the week preceding May 15, 1967. Public notice of the hours and days on which its office is open shall be given by each board of supervisors of elections. Such notice shall be published at least once in each week between the effective date of this Act and May 15, 1967.*

This section provides for the filing of certificates of candidacy for election as delegates to the Convention, the amount of the filing fee and the periods of time during which certificates of candidacy may be filed and withdrawn.

The Commission recommends that any person possessing the necessary qualifications of age and residence may file a certificate of candidacy. The Commission further recommends that there be no primary election or nominating petitions or conventions.

As indicated above, there are no statewide primary or general elections in 1967. A primary election for the election of delegates to the Convention would therefore necessitate a second expensive special election. Of even more importance is the fact that a normal party primary election would be inconsistent with the nonpartisan election required by Section 5 of the Convention Enabling Act and discussed later in this report.

Consideration was given to a requirement that nominations be only on petition of a specified number of voters, but the Commission concluded that such a requirement would be unduly burdensome on both the candidates and the election officials and would serve no useful purpose. The possibility of prescribing a much higher filing fee was also discussed. Here again, the conclusion was that such a requirement would not accomplish any useful purpose and would be unduly burdensome.

On the assumption that the Convention Enabling Act will be enacted by the middle of March, 1967, and that a period of not less than six weeks should be available for the filing of certificates of candidacy, the Commission recommends that the filing period extend from the time of the enactment of the Convention Enabling Act to and including May 1, 1967. It is likely that after certificates of candidacy are filed, a number of candidates will decide to withdraw. There should be adequate time for this purpose, and the Commission therefore recommends that withdrawal of certificates of candidacy be permitted at any time up to and including May 15, 1967. This would then allow a period of approximately three weeks prior to the election for the voters to become

familiar with the names and qualifications of the candidates in their respective districts.

The Commission was advised that in some counties the offices of the boards of supervisors of elections are open at infrequent and irregular intervals. Inasmuch as the candidates for the office of delegate to the Constitutional Convention are not likely to be as fully informed and experienced in such matters as political candidates, and in order to make certain that the office of the board of supervisors of elections in every county is open on a sufficient number of days and for a sufficient length of time to enable any interested person to obtain information as to the special election and to file a certificate of candidacy, the Commission recommends that each board be required to keep its office open for a period of not less than ten hours on May 1 and May 15 and on four other days within the prescribed periods. Public notice of the days and hours on which each board is open should be required.

Section 15 of Article 85A of the Maryland Code (Ober Law) requires that "[n]o person shall become a candidate for election . . . to any public office whatsoever in this State, unless he or she shall file with the certificate of nomination . . . an affidavit that he or she is not a subversive person. . . ." In all probability, this section would be applicable without specific reference in the Convention Enabling Act, but the requirement is nevertheless included in Section 3 to remove any doubt about the matter.

Section 4. *At least once in each of the two weeks following May 15, 1967, the board of supervisors of elections in each county and in Baltimore City shall give public notice of the names of all candidates for election as delegates from that county or Baltimore City and of the legislative district or subdistrict from which they respectively seek election. Such notice shall be published in at least two newspapers of general circulation in the county or in Baltimore City, or in one newspaper in any county in which there is only one newspaper of general circulation.*

It is important that full publicity be given to the names and qualifications of all candidates for election as delegates to the Constitutional Convention so that the people of each county or district will know the candidates well in advance of the election. These provisions are substantially the same as those prescribed by Article 33, Section 72 of the Maryland Code for other elections except as to the time of the required publication.

Section 5. *At the office of the supervisors of elections in each county and in Baltimore City at two o'clock* P.M. *Eastern Daylight Saving Time on Tuesday, May 16, 1967, the names of all candidates for election as delegates from that county, the legislative districts or subdistricts thereof, or from the legislative districts of Baltimore City shall be publicly drawn by lot by the chairman of such board of supervisors of elections or some other person designated by him. The names of the candidates shall be printed on the paper ballots or on the ballot labels for voting machines without any party designation or other description whatsoever, and shall be arranged on the ballots or voting machines in the order in which the names have been drawn by lot.*

The Commission recommends that the arrangement of the names of candidates on the voting machines be determined by lot rather than be listed alphabetically. This seems more equitable and decreases the advantage possessed by a person whose surname begins with a letter which is early in the alphabet. This is especially desirable in an election where many of the candidates may not be well known to the public. It should discourage the filing of certificates of candidacy by persons with little likelihood of being elected except for the fact that their names, if listed alphabetically, would appear near the top of the ballot.

A public drawing at a stated time is recommended so that there will be no question but that the names have been properly drawn.

The Commission also recommends that the election of delegates be nonpartisan. It believes that it would be best to keep partisan political controversies to a minimum in all aspects of the work of the Convention. The judgment of experienced commentators and Maryland tradition both support this view. By prohibiting delegates from running under specific party labels and express party auspices, the Commission believes that the Convention would be more likely to attract a higher percentage of exceptionally interested, competent and experienced citizens to serve as delegates.

There are strong precedents for recommending that the election of delegates be nonpartisan. The Hawaii convention of 1950 was a successful convention to which the delegates were elected on a nonpartisan basis. Professor Wheeler notes that approximately one-third of the delegates who were elected to that convention had never sought an elective office before. WHEELER, THE CONSTITUTIONAL CONVENTION 34 (1961). The Hawaiian experience supports the Commission's view that a nonpartisan constitutional convention is more likely to attract delegates whose experience in the fields of government, law, finance, business, education and labor relations, for example, make them the type of persons who probably would contribute the most to a state constitutional convention.

As noted, a nonpartisan convention would be in accord with Maryland tradition. The last convention, other than a political party convention, assembled in Maryland was held in 1934 to consider ratification of the Twenty-first Amendment to the Constitution of the United States. The delegates to that convention were elected on a nonpartisan basis; that is, they did not run under party labels.

It is also significant that recent legislative proposals for convening a constitutional convention pursuant to Article XIV, Section 2 of the Maryland Constitution have prohibited party labels beside the names of candidates on the ballots. An example is H.B. No. 24, introduced in the House of Delegates on February 8, 1962, by the Speaker of the House, which provided in Section 4 that "the names of candidates . . . shall be arranged without any party designation or other description thereafter."

Identical provisions were contained in H.B. No. 55, introduced on February 4, 1961, by Delegate Robinson; H.B. No. 138, introduced on January 17, 1957, by Delegate Culotta; H.B. No. 725, introduced on March 13, 1961, by Delegate Lee; H.B. No. 31, introduced on February 4, 1954, by the present Speaker of the House and two other delegates; and S.B. No. 296, introduced on March 7, 1951, by Senator Della and others.

It thus appears that it has been the thought of the General Assembly in recent years that delegates to a constitutional convention should be chosen without regard to partisan affiliation. In addition, it appears that the enabling statutes pursuant to which delegates to the Constitutional Conventions of 1864 and 1867 were chosen did not provide for the printing of party labels on the ballots. Ch. 5, *Laws of Maryland* (1864), and ch. 327, *Laws of Maryland* (1867).

The Commission also believes that it is important that the election of delegates to the Convention be nonpartisan because of the Hatch Act.

Section 9 of the Hatch Act, enacted in 1939, makes it unlawful "for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof." 64 Stat. 475 (1950), 5 U.S.C. § 118i (1952). Section 9 also forbids federal employees from taking "any active part in political management or in political campaigns."

However, in 1940 the Hatch Act was amended, 54 Stat. 767 (1950), 5 U.S.C. § 118n (1952, to provide:

> "Nothing in the second sentence of section 118i(a) or in the second sentence of section 118k(a) of this title shall be construed to prevent or prohibit any person subject to the provisions of this Act from engaging in any political activity (1) in connection with any election and the preceding campaign if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected, or (2) in connection with any question which is not specifically identified with any National or State political party. For the purposes of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of similar character, shall not be deemed to be specifically identified with any National or State political party."[1]

The Civil Service Commission has interpreted the above-stated provision (Section 18 of the Hatch Act) to permit federal employees to participate in nonpartisan elections, such as those on charter or constitutional amendments. U. S. CIVIL SERVICE COMMISSION FORM 1236, POLITICAL ACTIVITY AND POLITICAL ASSESSMENTS OF FEDERAL OFFICE-HOLDERS AND EMPLOYEES 15 (1944). Indeed, twenty-five years before the Hatch Act was conceived, the Commission had ruled that a federal employee "may become a candidate for and serve in the elective office of a delegate to a state constitutional convention." CIVIL SERVICE COMMISSION FORM 1236, INFORMATION CONCERNING POLITICAL ACTIVITY AND POLITICAL ASSESSMENT OF OFFICE-HOLDERS AND EMPLOYEES 10 (1913).

The first exception provided by Section 18 of the Hatch Act would, then, clearly permit thousands of federal employees who reside in Anne Arundel, Montgomery and Prince George's counties, Baltimore City and other political subdivisions of this State, to participate,

[1] The legality of Section 18 was implied in *United Federal Workers of America (C.I.O.) v. Mitchell,* 56 F. Supp. 621, 627 (D.D.C. 1944), *aff'd,* 330 U.S. 75 (1946).

including becoming a candidate, in the election of delegates to a constitutional convention if, in the election, the candidates for delegates do not run under party labels or auspices.

It might be argued that as a result of the second exception provided by Section 18, federal employees could actively participate in the election of delegates to a constitutional convention, even if some of the delegates ran under party labels. The contention here would be that the election was one, in the words of the statutory provision, which was *not* "in connection with any question which is . . . specifically identified with any National or State political party." However, a constitutional convention is not expressly included as one of the matters which would be embraced within the second exception. Accordingly, if party labels were allowed, federal employees would be very reluctant, at least without a ruling in advance by the Civil Service Commission, to test the question of whether their participation in the election was legal, at the risk of losing their jobs if they guessed wrongly. Therefore, unless the election of delegates to the Constitutional Convention is conducted on a nonpartisan basis, many talented citizens of Maryland might be effectively foreclosed from participation in it. This would be another undesirable consequence of permitting the election of delegates to be conducted under political party labels.

Section 6. *The number of candidates in each county or district equal to the number of delegates to be elected from such county or district who receive the greatest number of votes in their respective districts shall be the delegates to the Convention. As soon as the polls are closed, the votes cast in the election shall be counted, canvassed and returned by the judges and clerks of election as in other elections. Within ten days after the election the Secretary of State shall convene a meeting of the Board of State Canvassers, which Board shall from the certified copies of the statements made by the boards of city and county canvassers make a statement of the number of votes cast in such election for each candidate named in the statements. The Board shall thereupon determine and declare which candidates have been elected. The Governor shall, as provided by law, issue commissions to those persons who are elected. The Convention shall be the final judge of the qualifications of its members and the validity of their election.*

The provisions of this section are the customary provisions for the canvassing and certification of the votes, except that the Board of State Canvassers is to be convened within ten days rather than thirty days after the election. The Commission recommends the shorter period so that no time will be lost in determining officially who are the elected delegates.

Attention is called to the last sentence of this section which makes the Convention the final judge of the qualifications of its members and the validity of their election. This is in accord with the usual practice with respect to constitutional conventions and is similar to the corresponding provision in Article III, Section 19 of the present Constitution with respect to the qualifications and elections of members of the General Assembly.

Section 7. *If a vacancy occurs in the office of delegate to the Convention prior to the first meeting of the Convention, the vacancy shall be filled by the Governor, but if the vacany occurs after the first meeting of the Convention, the vacancy shall be filled by the Convention. In either event, the person selected to fill the vacancy shall, as of the date of the special election for delegates to the Convention, have the qualifications prescribed by Section 1.*

The Commission recommends that a vacancy in the office of delegate be filled by the Governor if the vacancy occurs prior to the first meeting of the Convention, but be filled by the Convention if it occurs thereafter. In either event, the person selected to fill the vacancy should have the same age and residence qualifications as would have been required of him to be elected as a delegate. Since the election is nonpartisan, there is no existing machinery which could be utilized for filling vacancies prior to the meeting of the Convention such as exists for other political elections. Once the Convention assembles, however, only the Convention, using such procedure as it may prescribe, should fill the vacancy. This is in recognition of the fact that once the Convention assembles, it speaks for the people of the State, is the final judge of the qualifications and election of its members and should be entrusted with the power to fill any vacancy thereafter occurring.

Section 8. *Before any person elected or appointed as a delegate to the Convention shall enter upon his duties, he shall take and subscribe the oath or affirmation prescribed by Section 6 of Article I of the Constitution of Maryland.*

The oath prescribed by Article I, Section 6 of the Constitution is probably applicable to the office of delegate, but, to remove any uncertainty about the matter, the Commission recommends that the taking of the oath be specifically required.

Section 9. *The Governor by proclamation shall issue a call for the delegates elected to assemble in the chambers of the House of Delegates at the State House in the City of Annapolis on a date within sixty days after their election and at an hour as shall be fixed in his proclamation, for the sole purpose of organizing the Convention, electing its officers and adopting rules of procedure. The president of the Senate of Maryland shall attend upon the initial meeting of the Convention at the appointed hour, shall have the roll of the elected delegates called and shall act as a temporary chairman of the Convention until it has elected a president. Until the Convention has adopted rules of procedure,* Robert's Rules of Order *shall govern the procedure of the Convention.*

The Commission recommends that the Convention assemble in the chambers of the House of Delegates in the State House at Annapolis. All proposals for convening a constitutional convention introduced in the General Assembly in recent years have provided that Annapolis would be the site of the constitutional convention.

There is no doubt that a state capital has advantages if chosen as the site of a constitutional convention. These are summed up by Professor Wheeler

(WHEELER, THE CONSTITUTIONAL CONVENTION 8 (1961)), as follows:

> ". . . the state capital also has its advantages. It is the focal point of government activity and of public awareness. It contains the symbols of government upon which the attention of the people is focused. Physically, the legislative chambers offer a ready-made site for deliberation. Committee rooms are usually available. Facilities exist for housing and feeding the delegates. Often the committees can draw upon the staff and clerical personnel of state agencies for assistance. Newspapers, radio and television have their staffs there. Possibly the chief advantage is the usual availability of study materials in the state or the supreme court library as well as the proximity of state officials for information and testimony."

It is clear that the City of Annapolis has all of the desirable facilities, and possesses the significant advantages referred to by Professor Wheeler. Not only are there accommodations for the delegates and visitors, but press, radio and television facilities would be adequate. In addition, the State Law Library is just across the street. Finally, Annapolis is centrally located.

However, even apart from these practical advantages, history and tradition argue in favor of the selection of Annapolis as the place to hold a constitutional convention. All prior Maryland constitutional conventions have been held there, including the last one, that of 1867. PERLMAN, DEBATES OF THE CONSTITUTIONAL CONVENTION OF 1867 (1923).

The Commission recommends that the sessions of the Convention be held in the House of Delegates chamber in the State House because it is large enough, is equipped with the necessary voting machinery, and has the other facilities which would make it ideal. The sessions of the Convention would not conflict with any regular session of the legislature in view of the Commission's recommendation that the Convention adjourn in any event not later than January 12, 1968, which would be five days before the convening of the 1968 session of the General Assembly.

For the reasons set forth in Chapter I of this report, the Commission recommends that the Governor be authorized to issue a call for the delegates to assemble within sixty days after their election for the sole purpose of organizing the Convention, electing its officers and adopting rules of procedure. The Commission feels that this preliminary session of the Convention is absolutely necessary in order to enable the Convention to start its deliberative work on September 12, 1967 without undue delay. The Commission suggests July 4, 1967 as an appropriate day for the organizational meeting of the Convention.

Suggestions were made that the governor, the secretary of state, the chief judge of the Court of Appeals, or some other similar official be designated as temporary chairman. The Commission believes, however, that the president of the Senate is the most appropriate official to perform this duty.

The Convention will adopt its own rules of procedure, but until it does, the Commission recommends that *Robert's Rules of Order* govern the procedure of the Convention.

Section 10. *The elected delegates shall assemble in plenary session in the chamber of the House of Delegates in the State House in the City of Annapolis at twelve o'clock noon Eastern Daylight Saving Time on Tuesday, September 12, 1967, and continue in session for as long as necessary, but not later than December 12, 1967, unless the Convention by a vote of the majority of the whole number of delegates extends the session of the Convention to a date not later than January 12, 1968. At least ten days prior to September 12, 1967, the Governor by proclamation shall issue a call for the delegates to assemble on that date.*

Chapter 500 of the Acts of 1966 provides that the Convention shall convene on September 12, 1967, but it does not prescribe the length of the session. The Commission recommends that the duration of the Convention be limited to December 12, 1967, unless a majority of the whole number of delegates elected extends the session to a date not later than January 12, 1968.

In considering the desirable duration of a convention, the Commission considered the experiences of other states as well as Maryland's historical experience. The 1946 New Jersey convention, as well as the 1955 Alaska convention, completed its work within strict timetables set by their enabling acts, three months in the case of New Jersey and 75 days in the case of Alaska. GRAVES, STATE CONSTITUTIONAL REVISION 77 (1960); WHEELER, THE CONSTITUTIONAL CONVENTION 9 (1961). On the other hand, the Missouri convention, upon which no time limitation was imposed, dragged on for a year. GRAVES, STATE CONSTITUTIONAL REVISION 78 (1960). Similarly, the Michigan convention lasted seven and one-half months. Sturm, *Making A Constitution*, 53 National Civic Review 14, 17 (1964).

Some commentators feel that the time limits imposed on the New Jersey and Alaska conventions account significantly for the effectiveness of those two conventions since the time limitation "appeared to have the salutary effect of giving everybody a sense of urgency . . . [and] there was evident a strong feeling of obligation to avoid filibuster or diversionary tactics that might endanger success." GRAVES, STATE CONSTITUTIONAL REVISION 77 (1960).

The Commission considered the experiences of other conventions in regard to the preparatory work available to them prior to their deliberations and recognized that the work of the present Commission should reduce the time required for assembling necessary materials and research for the work of the Convention. Before the Convention assembles, it will have been presented all the materials which this Commission has prepared. Therefore, the Convention will not be meeting without the benefit of careful, comprehensive and official preparation for its work as was the case in Missouri's 1944 convention and to some extent in the case of the 1961 Michigan convention.

Nevertheless, in establishing a timetable for a convention, time must be allowed for the holding of hearings, for additional research, for committee deliberations and for sufficient plenary sessions. Based on its own experience in the past eighteen months, the Commission believes that the deliberations of the Convention will be extensive and time-consuming, but the imposition of

the recommended deadline will encourage the delegates to complete their task without engaging in unnecessary debate and endless parliamentary delays.

Section 11. *The Convention may select and employ such employees as it may deem necessary to the efficient conduct of its business, each of whom shall receive such compensation as may be fixed by the Convention. The Convention may make such other expenditures as it deems proper to carry out its work, but shall not authorize total expenditures in excess of the amount appropriated by law for its expenses.*

In order for the Convention to perform its work effectively, it must be provided with an adequate and experienced staff.

Recent proposals to convene a constitutional convention in Maryland have usually provided that the convention be authorized to appoint such staff "as it may deem necessary to the efficient conduct of its business, all of whom shall receive such compensation as may be fixed by the convention." H.B. 24, February 8, 1962, § 8. Of course, as other conventions have done, the Maryland Constitutional Convention also could utilize employees drawn from the administrative agencies of the state government.

The Commission recommends that the Convention be authorized to employ an adequate staff, but the total expenditures of the Convention for all purposes should be limited to the amount appropriated by the General Assembly.

Section 12. *The Convention shall keep a journal of its proceedings and a transcript of its debates and shall provide for the publication thereof. It may also provide for the publication of any of its other documents and reports.*

After considerable debate, the Constitutional Convention of 1867 decided to dispense with an official reporter, believing that the cost of such a reporter would be a waste of money and that there was no necessity for preserving the "debates" of the convention. One member argued vigorously that if the delegates knew that their speeches were being recorded, it would only induce them to talk more and, hence, slow down and delay the deliberations of the convention. There is, therefore, no "official" record of the debates of the Constitutional Convention of 1867 and the excellent work of Mr. Philip B. Perlman entitled *Debates of Maryland Constitutional Convention of 1867* is the result of able editing of the very detailed newspaper stories concerning that convention.

The importance of a journal and transcript of debates cannot be overestimated and the Commission recommends that they be required.

Section 13. *A majority of the whole number of delegates to the Convention shall constitute a quorum for the transaction of business, but any smaller number may adjourn from day to day. No proposed new constitution shall be finally approved by the Convention for submission to the voters of this State as provided for in Section 14 of this Act except by the affirmative vote of a majority of the whole number of delegates to the Convention.*

The Commission recommends that the decisions of the Convention be determined by the vote of a majority of those present and voting, except for the final adoption of the entire proposal which the Convention will submit to the voters for ratification as the State's new constitution. With this one exception, no justification exists for binding the Convention to anything more than the traditional majority vote of those present and voting which has prevailed in all prior constitutional conventions in Maryland and which seems to have been the universal rule of procedure observed in constitutional convention held in other states. See *e.g.*, ch. 211, § 6, *Acts of the Rhode Island General Assembly,* (January Session, 1963). The Commission believes, however, that no new constitution should be finally approved by the Convention for submission to the voters of the State until it has been approved by a majority of the whole number of elected delegates.

Section 14. *If a new constitution is proposed by the Convention, the same shall forthwith be certified by the president and secretary of the Convention and by them be transmitted to the Secretary of State who shall thereupon certify the same to the board of supervisors of elections of each county and of Baltimore City. The proposed constitution shall be submitted to the qualified voters of the State for adoption or rejection at a special referendum election to be held on May 14, 1968.*

After the Convention has adjourned, it will be necessary to acquaint the public with the proposed new constitution. There should be adequate time for informing the electorate about this important document which it will be asked to adopt or reject. On the other hand, there is danger if the time permitted for informing the public is overly extended, as seems to have been the case in Michigan. In that State, the convention adjourned in August, 1962, but the vote on the adoption of the constitution did not take place until April 1, 1963. During the interval, powerful special interest groups split bitterly over a number of the proposed provisions of the proposed new constitution. As a consequence, the Michigan constitution was adopted by the narrow margin of 7,420 votes out of the total 1,614,296 cast. Sturm, *Making A Constitution,* 53 National Civic Review 14 (1964).

Balancing the need for public review against the hazard that constitutional revision could be obscured by political or special interest partisanship and the passage of time, the Commission believes that the special election to adopt or reject the proposed constitution should be held not less than ninety days after the Convention adjourns and as soon as practicable after the ninety-day period. The Commission therefore recommends that the election for the adoption of the new constitution be held May 14, 1968.

Section 15. *The votes cast for and against the constitution proposed by the Convention shall be returned to the Governor in the manner prescribed by Article XIV of the existing Constitution with respect to votes on amendments thereof. If a majority of the votes cast at the special referendum election are cast in favor of the constitution proposed by the Convention, the Governor shall by his proclamation declare the proposed constitution to have been adopted by the people of Maryland. The new constitution shall take effect as provided therein, or as provided in a schedule of transitional provisions attached thereto.*

It is necessary to establish a procedure for declaring the results of the referendum upon adoption or rejection of the constitution proposed by the Convention. The Commission recommends that the same procedure be followed as is required by the existing Constitution in the case of amendments thereto.

The "schedule of transitional provisions" referred to in the last sentence of this section will be a part of the constitution and will not be subject to amendment or repeal by law, but its provisions will expire or become obsolete after the lapse of time, and thereafter it will not be necessary that it be printed as part of the constitution.

Section 16. *The Convention may also prepare a schedule of legislation to complement the proposed constitution, which schedule shall be attached to and certified with the proposed constitution. If the proposed constitution is adopted, the schedule shall be deemed to have been adopted also and shall take effect as provided therein. The schedule shall not be a part of the constitution, but shall have the effect of a public general law and may thereafter be amended or repealed by law.*

It is contemplated that the Convention will submit with any new constitution which it proposes a "schedule of legislation" which will be necessary to complement the constitution and which cannot await the next session of the General Assembly. The schedule should be attached to the constitution when the constitution is submitted to the voters for ratification. It should not, however, be subject to separate approval or disapproval and the Commission recommends that if the proposed constitution is adopted, the accompanying schedule shall be deemed to have been adopted also. Since this is a schedule of legislation, it is not a part of the constitution, but will have the effect of a public general law. Thereafter, it may be amended or repealed by law. It should be noted that the "schedule of legislation" is different from the "schedule of transitional provisions" referred to in the last sentence of Section 15.

Section 17. *Such funds as may be appropriated by law to pay the cost of the special elections provided for in this Act for the election of delegates to the Convention and for the adoption or rejection of a constitution which may be proposed by the Convention shall be allocated among the counties and the City of Baltimore in the ratio that the total expenditures of the respective boards of supervisors of elections of the counties and the City of Baltimore, with respect to the general election of November, 1966 bears to the aggregate total expenditures of the boards of supervisors of elections of all counties and of the City of Baltimore with respect to the same general election. The determination of the respective shares of each county and of the City of Baltimore shall be made by the comptroller, and, on the basis of such determination, the respective shares shall be disbursed to the counties and to the City of Baltimore. Any expenditures of a county or of the City of Baltimore for such special elections in excess of the share of the state appropriation therefor allocated as herein provided shall be paid by such county or by the City of Baltimore.*

The Commission could not determine precisely how much the special elections will cost. The expenditures of the boards of supervisors of election are paid by the

local political subdivisions and information as to the total costs of prior elections is not readily available. The office of the attorney general advised that an approximation of the total cost of a single special election would somewhat exceed $900,000 unless such special election were held simultaneously with the primary election in Baltimore City, in which event the additional cost of the special election might be approximately $750,000. The Commission is attempting to determine the cost of the general election of November, 1966, but the figures are not yet available.

In any event, the Commission believes that the cost of each of these special elections should be paid by the State and not by the local subdivisions. This is particularly true in the case of the election in the current fiscal year since the unexpected imposition of this additional cost could create serious fiscal and budgetary problems for the political subdivisions. More importantly, however, the Commission believes that as a matter of principle the costs of both elections should be paid by the State.

The Commission has recommended to Governor Tawes and to Governor-elect Agnew that a bill be introduced in the General Assembly providing a deficiency appropriation of $750,000 in the current fiscal year to pay the cost of the election of delegates and that the budget to be submitted to the General Assembly for the next fiscal year include an allowance of $750,000 to pay the costs of the special election to adopt or reject the new constitution. The commission understands that these recommendations have been accepted. On this basis, the Commission recommends that the amounts appropriated be divided among the counties and the City of Baltimore in proportion to their expenditures for the general election of 1966.

Section 18. *Except as otherwise provided in this Act, or as may be inconsistent therewith, the laws of this State relating to elections for members of the House of Delegates shall govern and apply to the election of the delegates to the Convention and those relating to referendum elections shall govern and apply to the special referendum election on the adoption or rejection of the constitution proposed by the Convention. All state and local officials shall do all those things which are appropriate to the holding of each of the special elections provided for in this Act and which are required under the general election laws.*

This section provides that the pertinent detailed provisions of the election laws of Maryland shall govern the special elections herein provided for except to the extent the Convention Enabling Act provides to the contrary.

Emergency Act Clause

Unless the Convention Enabling Act is enacted as an emergency law, it could not take effect until June 1, 1967. This would mean that the filing and election of candidates could not occur until after that time, with the result that the election of candidates could not be scheduled before mid-July, and perhaps later. The Commission believes that this circumstance would seriously interfere with desirable pre-convention study and preparation by the elected delegates. For these reasons, the Commission recommends that the Convention Enabling Act be enacted as an emergency law so that it will be effective immediately upon its passage.

IV

Analysis of Enabling Act Providing For Payment to Delegates

The Commission strongly recommends that delegates to the Convention be compensated for their services and be reimbursed for the expenses which they incur during such service by the payment to each delegate of a per diem of $50 for each day of actual participation in the work of the Convention, not to exceed an aggregate of $4,500.

It appeared to be an unnecessary and undesirable administrative complication to divide the payment as between compensation for services and an allowance for expenses. It is much simpler to compute each delegate's compensation and expenses at a flat rate and on a per diem basis. The per diem basis would encourage full participation in all sessions.

In discussing this recommendation, the Commission considered the experiences of recent constitutional conventions held in other states as well as that of the Maryland General Assembly. The delegates to Michigan's 1961 constitutional convention were paid $1,000 a month up to a maximum of $7,500. In addition, an allowance was provided of ten cents per mile for one round trip per month between the place of a delegate's residence and the state capital while the convention was in session. STURM, CONSTITUTION-MAKING IN MICHIGAN 39, 40 (1963). This compensation was authorized after the attorney general of Michigan had ruled that it was proper for those elected to receive compensation as delegates and at the same time draw their regular salaries from their employers. *Index of Opinions, Attorney General of Michigan* (1961), No. 3616, July 10, 1961.

In Connecticut, on the other hand, the legislature provided that the delegates to the convention were to "receive the same remuneration and expense allowance as is payable to members of the General Assembly . . . and the same transportation allowance. . . ." Public Act No. 1, § 18, *Acts of the Connecticut General Assembly,* (1965).

Members of Maryland's General Assembly now receive an annual salary of $2,400, plus an expense allowance of $15 a day when attending sessions of the General Assembly, meetings of its committees or meetings of the legislative council. Experience demonstrates that this averages approximately $50 a day for actual attendance at sessions of the General Assembly.

The Commission recommends that the matter of the allowance of a per diem for compensation and expenses be treated in a bill separate from the Convention Enabling Act for two reasons.

First, and foremost, is that Article XVI, Section 2 of the present Constitution provides "that no measure creating or abolishing any office, or changing the salary, term or duty of any officer . . . shall be enacted as an emergency law." The office of delegate to the Constitutional Convention was created by Chapter 500 of the Acts of 1966, but that act provided no compensation or allowance for expenses, and it might be argued that a provision for the payment of compensation or of an allowance for expenses would be one "changing the salary" of the delegate. By not including the provision for payment of compensation or reimbursement of expenses in an emergency law this problem is eliminated. Second, there has been considerable debate in many interested groups as to whether there should be any payment of compensation or reimbursement of expenses to delegates to the Convention. Although the Commission strongly recommends this provision for compensation, it is not one which must be determined immediately and certainly not one which must take effect before June 1, 1967. There is, therefore, no necessity to delay passage of the Convention Enabling Act because of discussions concerning the question of whether delegates to the Convention should be paid.

The Commission recommends that the delegates not be paid any compensation or reimbursement of expenses for any sessions prior to September 12, 1967, and that the total compensation in any event be limited to $4,500 per delegate. The reason for these recommendations is purely budgetary. Some amount had to be estimated as the total cost of the Convention and, in arriving at that estimate, the Commission thought that $4,500 per delegate should be adequate as payment of compensation and reimbursement of expenses. The number of days of actual sessions of the Convention prior to September 12, 1967, should be very few and the attendance of the delegates at these sessions without compensation or reimbursement of expenses should not impose any real hardship.

STATEMENT BY GOVERNOR SPIRO T. AGNEW ON THE SIGNING OF HOUSE BILL 28 MARCH 24, 1967

Governor Tawes, President James, Speaker Mandel, Mr. Eney and members of the Constitutional Convention Commission, Ladies and Gentlemen:

We are participating today in a significant moment in Maryland's history. The bill I am preparing to sign, House Bill 28, embodies a sharp departure from the past and the opening of a new window to the future. It establishes the procedures under which our basic vehicle of government, the State Constitution, will be reshaped for a modern era. After 100 years of patchwork amendment, the governmental machinery has clearly become outmoded.

The full significance of this legislation can only be imagined now, and measured later. Its success will depend entirely upon the quality of the people we choose to follow through with the actual drafting of a new constitution at the convention which will begin here in Annapolis September 12th.

It is vital therefore that we continue the spirit of bipartisanship in which this legislation was conceived and enacted. Maryland will need the best brains and talent that can be brought to bear on this important task. The election of delegates on June 13th is to be nonpartisan in nature. Party politics have played no significant role in the development of the convention to this point. It is my fervent hope that the citizens' committees now being formed in Baltimore City and the various counties will assure that this high level of statesmanship continues.

Governor Tawes, who honors us with his presence today, set the proper tone for this convention on June 16, 1965, when he named an outstanding nonpartisan committee of citizens to study the need for the convention and to prepare necessary legislation. One of the most outstanding members of the Maryland bar, Commission Chairman H. Vernon Eney, and the other very capable members of the Commission are here today. They have given unstintingly of their time and their talents and I thank them on behalf of the people of Maryland.

It is regretted by all of us that former Governor William Preston Lane, Jr., who was honorary chairman of the commission and who was so vitally interested in this project, could not have lived to see it accomplished.

The bipartisan or nonpartisan nature of this task came to full fruition in the Maryland General Assembly session now drawing to a close. The most gratifying aspect of my early days in office has been the outstanding cooperation I have received from the leadership of the Legislature and the manner in which Delegates and Senators of both parties have responded to the wishes and needs of the people without resort to partisan politics.

How fitting it is that this particular bill would be the first major piece of legislation from this constructive, bipartisan session of the General Assembly!

It is interesting to note that we are now on a very close time table to that of our predecessors of 100 years ago. The last Constitutional Convention enabling act in Maryland was passed on January 10, 1867. The delegates were elected on April 10, 1867, and they convened on May 8, 1867.

Let us resolve, a century later, to replace their work with a viable instrument of government that will be flexible enough to serve future generations as well as our own, without the need for the 215 amendments that brought about the overwhelming public demand for this revision.

CHAPTER 4 OF THE ACTS OF THE GENERAL ASSEMBLY OF 1967

HOUSE BILL NO. 28.

INTRODUCED BY THE SPEAKER.

APPROVED MARCH 24, 1967.

AN ACT to make provisions with respect to the election of delegates to, and the holding of, a convention to frame a new constitution for the State of Maryland pursuant to Chapter 500 of the Acts of the General Assembly of 1966 and prescribing the time, place, and manner of nominating and electing delegates and filling vacancies, the qualifications of delegates, the arrangement of the names of candidates on ballots and voting machines, the time, place, and duration of the sessions of the convention, the employment of employees, providing that the convention may request the advice and counsel of any department or agency of the State government or of the government of any political subdivision and for the duty of that department or agency in response to the request, establishing a requirement for per diem or other payments to the members of the convention, the keeping and publication of a journal and transcript of debates, the appointment of an historian and the providing of an information service, the designation of a quorum and of the number of votes required to approve a new constitution, the method of certifying and submitting to the voters of this State any new constitution proposed by the convention together with any schedules of implementing legislation attached thereto, providing for a special election to adopt or reject such proposed constitution and schedules and for a proclamation by the Governor of the results of such election, and providing for the allocation among the counties and the City of Baltimore of the monies appropriated by the State to pay the costs of the two special elections; and relating generally to a constitutional convention, the election of delegates thereto, the powers, duties, functions, finances, and operations of the convention, the powers and duties of certain persons and officers in relation thereto, and the proposed adoption of a new constitution for the State of Maryland.

WHEREAS, by Chapter 501 of the Acts of the General Assembly of 1966 it was provided that a special election be held on the second Tuesday after the first Monday in September, 1966, to take the sense of the voters of this State on the call of a convention not earlier than September 1, 1967, nor later than September 1, 1968, to frame a new constitution for Maryland; and

WHEREAS, that special election was held on September 13, 1966, and pursuant to that Act the Governor has issued his proclamation reporting that a majority of those voting at the special election voted in favor of the call of a constitutional convention and a copy of the Governor's proclamation has been transmitted to the General Assembly; and

WHEREAS, by Chapter 500 of the Acts of the General Assembly of 1966 it was provided that in the event there was a favorable vote on the referendum to hold a constitutional convention, a constitutional convention should be assembled and should convene at twelve o'clock noon on Tuesday, September 12, 1967, at such place and should continue in session for such length of time as might thereafter be prescribed by law, and that Act further provided for the number of delegates to be elected to the convention from each of the counties and from Baltimore City; and

WHEREAS, the General Assembly wishes to keep the people of Maryland fully apprized of the plans for and the operation of a constitutional convention and for this purpose are making provision herein for an historian to record and preserve the proceedings of the constitutional convention and also for an information service to give day-to-day information in relation thereto; now, therefore

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That, the following provisions with respect to the election of delegates to, and the holding of, a convention to frame a new constitution for the State of Maryland be, and the same are, hereby adopted.

1.

Any person shall be eligible to be a delegate to the Constitutional Convention who, at the time of his election as a delegate, is at least twenty-one years of age, is a citizen of the State of Maryland, has resided in the State for at least three years next preceding his election, and has resided in the county or the legislative district or subdistrict of the county or of the City of Baltimore from which he seeks election for at least one year next preceding his election.

2.

A special election shall be held on Tuesday, June 13, 1967, for the election of the delegates to the Convention, at which there shall be elected from each county, legislative district or subdistrict thereof for the election of members of the House of Delegates, or legislative district of Baltimore City the following numbers of delegates:

Allegany County ..... Four

Anne Arundel County

Delegate subdistrict No. 1 ..... Three
Delegate subdistrict No. 2 ..... Three
Delegate subdistrict No. 3
(part lying wholly within
Anne Arundel County) .... Three

Baltimore City

First Legislative District ..... Six
Second Legislative District ..... Eight
Third Legislative District ..... Eight
Fourth Legislative District ..... Seven
Fifth Legislative District ..... Seven
Sixth Legislative District ..... Seven

Baltimore County

Delegate subdistrict No. 1	Three
Delegate subdistrict No. 2	Three
Delegate subdistrict No. 3	Three
Delegate subdistrict No. 4	Three
Delegate subdistrict No. 5	Four
Delegate subdistrict No. 6	Three
Delegate subdistrict No. 7	Three

Calvert County	One
Caroline County	One
Carroll County	Two
Cecil County	Two
Charles County	Two
Dorchester County	One
Frederick County	Three
Garrett County	One
Harford County	Four
Howard County	Two
Kent County	One

Montgomery County

Delegate subdistrict No. 1	Seven
Delegate subdistrict No. 2	Seven
Delegate subdistrict No. 3	Two

Prince George's County

Legislative District No. 1	Three
Legislative District No. 2	Seven
Legislative District No. 3	Six

Queen Anne's County	One
St. Mary's County	Two
Somerset County	One
Talbot County	One
Washington County	Four
Wicomico County	Two
Worcester County	One

3.

Each candidate for election as a delegate shall pay a filing fee of fifty dollars ($50) and the boards of supervisors of elections in the counties and in Baltimore City shall accept the filing of eligible persons as candidates for election during regular office hours during the period from the effective date of this Act to and including April 21, 1967. The boards shall accept the withdrawal of candidates for election and shall refund the filing fee during regular office hours up to and including April 28, 1967. No certificate of candidacy for election shall be accepted for filing unless the candidate named therein shall have made the affidavit required by Section 15 of Article 85A of the Annotated Code of Maryland (1957 Edition). The board of supervisors of elections in each county and in the City of Baltimore shall keep its office open between the hours of 9:00 A.M. and 9:00 P.M. on April 19, 20 and 21, 1967, and on April 26, 27 and 28, 1967, and any such other hours and days as are now prescribed by law. Public notice of the hours and days on which its office is open shall be given by each board of supervisors of elections. Such notice shall be published at least once in each week between the effective date of this Act and April 28, 1967 and such notice shall be published in at least two newspapers of general circulation in each county or in Baltimore City, as the case may be, or in one newspaper in any county in which there is only one newspaper of general circulation.

4.

At least once in each calendar week immediately following April 28, 1967, until the date of election, the board of supervisors of elections in each county and in Baltimore City shall give public notice of the names of all candidates for election as delegates from that county or from Baltimore City and of the legislative district or subdistrict from which they respectively seek election. Such notice shall be published in at least two newspapers of general circulation in each county or in Baltimore City, as the case may be, or in one newspaper in any county in which there is only one newspaper of general circulation.

5.

The names of the candidates shall be printed on the paper ballots or on the ballot labels for voting machines without any party designation or other description whatsoever, and shall be arranged alphabetically according to their surnames.

6.

The number of candidates in each county or district equal to the number of delegates to be elected from such county or district who receive the greatest number of votes in their respective districts shall be the delegates to the Convention. As soon as the polls are closed, the votes cast in the election shall be counted, canvassed and returned by the judges and clerks of election as in other elections. Within ten days after the election the Secretary of State shall convene a meeting of the Board of State Canvassers, which Board shall from the certified copies of the statements made by the boards of city and county canvassers make a statement of the number of votes cast in such election for each candidate named in the statements. The Board shall thereupon determine and declare which candidates have been elected. The Governor shall issue appropriate and distinctive commissions to those persons who are elected. The Convention shall be the final judge of the qualifications of its members and the validity of their election.

7.

If a vacancy exists in the office of delegate to the Convention prior to the first meeting of the Convention in plenary session on September 12, 1967, the vacancy shall be filled by the Governor within 15 days after the vacancy occurs, provided however, if any vacancy exists or occurs after the first meeting of the convention in plenary session is called to order, the vacancy shall be filled by the Convention. In either event, the person selected to fill the vacancy shall, as of the date of the special election for delegates to the Convention, have the qualifications prescribed by Section 1, and as required by Section 2.

8.

Before any person elected or appointed as a delegate to the Convention shall enter upon his duties, he shall take and subscribe the oath or affirmation prescribed as follows: I, ... Delegate to the Constitutional Convention of Maryland, do swear, (or affirm, as the case may be) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the constitution and laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, fulfill my duties and responsibilities as delegate to the Constitutional Convention, according to the Constitution and laws of this State.

9.

The Governor by proclamation shall issue a call for the delegates to the convention to assemble in the chambers of the House of Delegates at the State House in the City of Annapolis on a date not later than sixty days after June 13, 1967 and at an hour as shall be fixed in his proclamation, for the purposes of organizing the Convention, electing its officers and adopting rules of procedure. The President of the Senate of Maryland, or in his absence or inability to serve, the Speaker of the House of Delegates of Maryland, shall attend upon the initial meeting of the Convention at the appointed hour, shall have

the roll of the delegates to the Convention called and shall act as temporary chairman of the Convention until it has elected a president. Until the Convention has adopted rules of procedure, ROBERT'S RULES OF ORDER REVISED shall govern the procedure of the Convention.

10.

The delegates to the Convention shall assemble in plenary session in the chamber of the House of Delegates in the State House in the City of Annapolis at 12 o'clock noon Eastern Daylight Saving Time on Tuesday, September 12, 1967, and continue in session for as long as necessary, but not later than December 12, 1967, unless the Convention by a vote of the majority of the whole number of delegates extends the session of the Convention to a date not later than January 12, 1968. At least ten days prior to September 12, 1967, the Governor by proclamation shall issue a call for the delegates to assemble on that date.

11.

The Convention may select and employ such employees as it may deem necessary to the efficient conduct of its business, each of whom shall receive such compensation as may be fixed by the Convention. The method of payment shall be in accord with such rules and regulations as may be established by the Comptroller. The Convention may make such other expenditures as it deems proper to carry out its work, but shall not authorize total expenditures in excess of the amount appropriated by law for its expenses. The Convention may request the advice and counsel of any department or agency of the State government or of the government of any political subdivision of the State, as to any matter of law or fact before the Convention; and the officers and employees of this department or agency shall do such things as are reasonable and proper in response to the request. The members of the Convention shall receive per diem or any other payments only with respect to those days on which they are in actual attendance of meetings at or on behalf of the Convention.

12.

The Convention shall keep a journal of its proceedings and a transcript of its debates and shall provide for the publication thereof. The Convention shall appoint an historian whose duties it shall be to collect, compile, document and preserve all proceedings of the Convention and its several committees. The Convention may also provide for the publication of any of its other documents and reports.

13.

A majority of the whole number of delegates to the Conveniton shall constitute a quorum for the transaction of business, but any smaller number may adjourn from day to day. Each separate article or division into which any proposed constitution may be divided shall be approved by the affirmative vote of seventy-two (72) delegates to the Convention and no proposed new constitution shall be finally approved by the Convention for submission to the voters of this State as provided for in Section 15 of this Act except by the affirmative vote of a majority of the whole number of delegates to the Convention.

14.

The Convention shall establish an information service for the purpose of regularly communicating to the people of Maryland information about all pertinent issues, and shall further provide for the publication of the whole constitution in such manner and at such times

after the constitution is proposed by the Convention as will allow the people of Maryland an opportunity to become informed before voting on May 14, 1968.

15.

If each and every provision of this Act, which is applicable to the conducting of the Convention is substantially complied with by the Convention and if a new constitution is proposed by the Convention, the same shall forthwith be certified by the president and secretary of the Convention and by them be transmitted to the Secretary of State. The Secretary of State must not certify the new proposed constitution, unless each and every provision of this Act, which was applicable to the conducting of the Convention, shall have been substantially complied with by the Convention. He then shall thereupon certify the same to the board of supervisors of elections of each county and of Baltimore City. The proposed constitution shall be submitted to the qualified voters of the State for adoption or rejection at a special referendum election to be held on May 14, 1968.

16.

The votes cast for and against the constitution proposed by the Convention shall be returned to the Governor in the manner prescribed by Article XIV of the existing Constitution with respect to votes on amendments thereof. If a majority of the votes cast on this particular question at the special referendum election are cast in favor of the constitution proposed by the Convention, the Governor shall by his proclamation declare the proposed constitution to have been adopted by the people of Maryland. The new constitution shall take effect as provided therein, or as provided in a schedule of transitional provisions attached thereto.

17.

The Convention may also prepare a schedule of legislation with respect to matters incorporated in the present Constitution which the Constitutional Convention determines should be provided by statute and matters which, under the proposed constitution, would require implementing legislation and which, in the opinion of the Convention, are of such urgency and importance that enactment thereof cannot be deferred until the next session of the General Assembly. This schedule shall be attached to and certified with the proposed constitution. If the proposed constitution is adopted, the schedule shall be deemed to have been adopted also and shall take effect as provided therein. The schedule shall not be a part of the constitution, but shall have the effect of statutory law and may thereafter be amended or repealed by law. The Convention shall include in the proposed constitution such provisions as legally necessary to confirm and validate the adoption and full effect of schedules of implementing legislation and to provide for their inclusion (as necessary or desirable) in the statute books of this State, including the Annotated Code of Maryland.

18.

Such funds as may be appropriated by law to pay the cost of the special elections provided for in this Act for the election of delegates to the Convention and for the adoption or rejection of a constitution which may be proposed by the Convention shall be allocated among the counties and the City of Baltimore in the ratio that the total expenditures of the respective boards of supervisors of elections of the counties and the City of Baltimore, with respect to the general election of November, 1966,

bears to the aggregate total expenditures of the boards of supervisors of elections of all counties and of the City of Baltimore with respect to the same general election. The determination of the respective shares of each county and of the City of Baltimore shall be made by the comptroller, and, on the basis of such determination, the respective shares shall be disbursed to the counties and to the City of Baltimore. Any expenditures of a county or of the City of Baltimore for such special elections in excess of the share of the state appropriation therefor allocated as herein provided shall be paid by such county or by the City of Baltimore.

19.

Except as otherwise provided in this Act, or as may be inconsistent therewith, the laws of this State relating to elections for members of the House of Delegates shall govern and apply to the election of the delegates to the Convention and those relating to referendum elections shall govern and apply to the special referendum election on the adoption or rejection of the constitution proposed by the Convention. All state and local officials shall do all those things which are appropriate to the holding of each of the special elections provided for in this Act and which are required under the general election laws.

SEC. 2. *And be it further enacted,* That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety, and having been passed by yea and nay votes, supported by three-fifths of all the members elected to each of the two houses of the General Assembly, this Act shall take effect from the date of its passage.

CHAPTER 5 OF THE ACTS OF THE GENERAL ASSEMBLY OF 1967

HOUSE BILL NO. 27.

INTRODUCED BY THE SPEAKER.

APPROVED MARCH 24, 1967.

AN ACT to provide for a per diem payment to cover compensation and reimbursement of expenses to delegates to the Constitutional Convention called pursuant to Chapter 500 of the Acts of the General Assembly of 1966.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That each delegate to the Constitutional Convention convened pursuant to Chapter 500 of the Acts of the General Assembly of 1966 shall receive the sum of $25 for each day to cover reimbursement of expenses for each working day in attendance on or after September 12, 1967, and $2,000 flat salary with a deduction of $15 for each day of unexcused absence from the sessions of the Convention or meetings of authorized committees or subcommittees thereof as determined by the rules of the Convention. In no event shall the total of all payments to a delegate exceed the sum of $4,500.

SEC. 2. *And be it further enacted,* That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety and having passed by a yea and nay vote supported by three-

fifths of all the members elected to each of the two houses of the General Assembly, the same shall take effect from the date of its passage.

CHAPTER 707 OF THE ACTS OF THE GENERAL ASSEMBLY OF 1967

SENATE BILL NO. 709.

INTRODUCED BY SENATOR FINNEY.

APPROVED MAY 4, 1967.

AN ACT to create a Legislative Liaison Committee from the membership of the General Assembly to perform certain advisory and liaison duties and functions with the Constitutional Convention and providing generally for the membership, powers, duties, functions, and compensations of this Committee.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That there be and there is hereby created a Legislative Liaison Committee from the membership of the General Assembly.

1.

(a) A Legislative Liaison Committee is created with the members, powers, duties, and functions provided in this section. There shall be ten members of this Committee, five from the Senate of Maryland and five from the House of Delegates of Maryland.

The five members from the Senate of Maryland shall be designated by the President of the Senate.

The five members from the House of Delegates of Maryland shall be designated by the Speaker of the House of Delegates.

(b) The Constitutional Convention shall send to each member of the Legislative Liaison Committee a copy of each report, monograph or research memorandum which the Constitutional Convention or any of its committees has prepared or caused to be prepared by any of the consultants, research employees or other personnel of the Constitutional Convention for submission to the Constitutional Convention or any of its committees.

(c) The Legislative Liaison Committee shall consider all such reports, monographs and research memoranda and shall submit to the Constitutional Convention or any of its committees its comments and recommendations on each of such reports, monographs and research memoranda.

(d) The Legislative Liaison Committee shall make itself available to the Constitutional Convention, its committees and members for consultation, advice and counsel on any matters pending before the Constitutional Convention or any of its committees.

(e) The members of the Legislative Liaison Committee shall receive the same compensation and reimbursement of expenses for attending meetings of the committee as is provided by law for members of committees of the legislative council, such payments to be made out of the appropriations for the legislative council.

(f) Vacancies on the Legislative Liaison Committee caused by the inability of any member to serve or continue

to serve thereon shall be filled by the President of the Senate from among the members of the Senate if the vacancy is caused by the inability to serve of a member of the committee from the Senate, and by the Speaker of the House of Delegates if the vacancy is caused by the inability to serve of a member of the committee from the House of Delegates.

SEC. 2. *And be it further enacted,* That this Act shall take effect June 1, 1967.

SENATE RESOLUTION NO. 82

INTRODUCED BY THE PRESIDENT.

ADOPTED MARCH 28, 1967.

Senate Resolution consenting to the use of any of the facilities of the Senate by the Constitutional Convention of 1967.

WHEREAS, By law a Constitutional Convention will convene in the State House in Annapolis during 1967 for the purpose of preparing a new Constitution for the State of Maryland, and

WHEREAS, It is desirable to give the permission of the Senate for the use by the Convention of such of the facilities of the Senate as may be desirable for the purposes of the Convention; now, therefore, be it

Resolved by the Senate of Maryland, That we hereby expressly consent to the use of any of the facilities of the Senate by the Constitutional Convention of 1967, and be it further

Resolved, That copies of this Resolution are delivered to the presiding officers of the 1967 Constitutional Convention.

OPINION OF ATTORNEY GENERAL FRANCIS B. BURCH ON THE ELIGIBILITY OF MEMBERS OF THE GENERAL ASSEMBLY TO SERVE AS DELEGATES TO THE CONSTITUTIONAL CONVENTION

JANUARY 26, 1967

Honorable H. Vernon Eney
Chairman
Constitutional Convention Commission
700 Mercantile Trust Building
Baltimore, Maryland 21202

Dear Mr. Eney:

You have requested an opinion as to whether certain State and municipal personnel are eligible for election and service as delegates to the forthcoming Constitutional Convention. You have further requested that we give priority to the eligibility of members of the General Assembly, one of the twenty categories mentioned in your letter. In an attempt to comply with your second request, we have devoted this opinion solely to the eligibility of State senators and delegates and will treat the other categories in a subsequent opinion.

ELIGIBILITY NEVER JUDICIALLY DETERMINED IN MARYLAND

The eligibility of a member of the General Assembly to serve as a delegate to the Constitutional Convention has never been determined by a Maryland court in a reported decision. In our opinion, it depends on the interpretation given to the following provisions of the State Constitution: (1) Article 35 of the Declaration of Rights; (2) Article III, Section 17 of the Constitution; (3) Article I, Sections 6 and 7 of the Constitution; and (4) Article III, Section 11 of the Constitution.

PRESENT CONSTITUTION

Article 35 of the Declaration of Rights provides that "no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State". In 1921, the Attorney General ruled that:

> "A member of the House of Delegates is unquestionably an officer of profit created by the Constitution or laws of the State within the meaning of Article 35 of the Declaration of Rights . . ."

6 *Opinions of the Attorney General* 232 (1921). See also 18 *Opinions of the Attorney General* 404 (1933). We reaffirm those decisions.

The question then is whether the position of Convention delegate is also an office of profit. This question, to our knowledge, has never been determined by a Maryland court. In fact, because the position is a unique one—not having existed in Maryland for a hundred years—there has been little or no discussion about the problem, even in academic circles. Accordingly, although we think that the decisions relating to other types of positions are relevant, we believe that it is perhaps more significant to examine how this precise question has been handled historically in Maryland.

FIRST CONSTITUTION

The provisions of Article 35 appeared in the Constitution of 1776 as Article 32 of the Declaration of Rights, in identical form. They were therefore a part of the organic law of the State when the General Assembly, in February, 1850, enacted Chapter 346, Acts of 1849-50, calling the first Constitutional Convention to assemble since 1776. Section 10 of that statute provided:

> "That any Senator or Representative in Congress, or State Senator, or any Civil Officer of the State or United States, residing within the limits of the State of Maryland for twelve months next preceding said election, or members of the House of Delegates, shall be eligible to a seat in the convention to assemble as hereinbefore prescribed, without affecting the tenure of their respective offices."

The roster of delegates actually elected to serve in the 1850 Convention, when compared with the roster of members serving in the 1849 Session of the General Assembly, shows that at least nine, and possibly eleven, delegates to the Convention were incumbent members of the General Assembly.* It would seem apparent, therefore, that neither the legislature nor the Convention considered the position of delegate to be an office in the constitutional sense.

CONSTITUTIONS OF 1851 & 1864

The provisions of Article 32 of the 1776 Declaration of Rights remained intact in the 1851 Constitution, also as Article 32. They therefore were part of the Constitution in 1864, when the legislature, by Chapter 5, Acts of 1864, called another Constitutional Convention. Section 4 thereof provided, *inter alia:*

> ". . . that any Senator or Delegate may be eligible to a seat in said Convention, but that no Senator or Representative in the Congress of the United States, or Judge of any Circuit Court, Superior Court, Court of Common Pleas, or Criminal Court of the City of Baltimore, Clerks of said Courts, Register of Wills or Sheriff, shall be eligible to said Convention."

The roster of delegates actually elected to serve in the Convention, when compared with the roster of members serving in the 1864 Session of the legislature, shows that fifteen delegates were incumbent members of the General Assembly. See Appendix attached hereto. Thus, once again, neither the legislature nor the Convention considered the election of Assemblymen as Convention delegates to violate the constitutional prohibition.

The Constitution of 1864 kept the prohibition intact, but renumbered it as Article 35 of the Declaration of Rights. It was thus part of the Constitution in 1867, when the legislature, by Chapter 327, Acts of 1867, called the Convention which wrote our present Constitution. Section 10 of that Act precluded clergymen, United States Senators and Representatives, Judges, State's Attorneys, Auditors, Court Clerks, Registers of Wills, and Sheriffs from serving as delegates to the Convention, but it was silent as to members of the General Assembly. Nevertheless, the records show that four delegates were incumbent members of the 1867 Session of the General Assembly. See Appendix attached hereto.

* The names of such delegates, and the counties from which they were elected, are set out in the Appendix hereto. The comparison was made to the 1849 Session since that was the last session of the General Assembly until 1852.

This analysis is very persuasive evidence of a long and uninterrupted interpretation which must be given great weight. In every Convention since 1776, members of the General Assembly were permitted to serve as delegates notwithstanding the effect of Article 35 and notwithstanding the further fact that, in each case, compensation was paid to the delegates. It would seem clear that, historically, the position of delegates was not considered to be an "office" in the constitutional sense.

JUDICIAL PRECEDENT IN OTHER STATES

The only court ruling which we have found directly bearing on this question has followed this approach. In *State v. Doyle* (1915), 138 La. 350, 70 So. 322, the court stated:

> "The judge a quo was of the opinion that a member of a constitutional convention is in no proper sense an officer, that such a position is fleeting and casual, and the member does not exercise his functions continuously and as part of the regular and permanent administration of the government. . . .
>
> * * * * * *
>
> "The first ruling is supported by the historical fact that state officials, high and low, have been delegates to constitutional conventions, without a suggestion from any quarter, that they had, thereby, vacated their respective offices."

We are cognizant of the case of *State v. Gessner* (1935), 129 Ohio St. 290, 195 N.E. 63, wherein the court held that a member of a municipal charter commission was an officer and, by *dictum*, indicated that a delegate to a State Constitutional Convention would be also. It unquestionably represents a different view—one which has a certain logic to it—but it is not in keeping with the unbroken Maryland experience. See also Jameson, *Constitutional Conventions*, 4th Ed., 1887.

ANALOGOUS MARYLAND AUTHORITY

We have carefully examined the decisions of the Maryland Court of Appeals on the question of what is an "office", and we find that essentially five criteria have been established. As most recently expressed in *Moser v. Howard County Board* (1964), 233 Md. 279, 281, they are whether:

1. the position was created by law and casts upon the incumbent duties which are continuing in nature and not occasional;

2. the incumbent performs an important public duty;

3. the position calls for the exercise of some portion of the sovereign power of the State;

4. the position has a definite term, for which a commission is issued, a bond required, and an oath required; and

5. the position is one of dignity and importance.

Each of these criteria has been applied singly or together at various times in order to make specific determinations; but, as the court stated in *Gary v. Board of Trustees* (1960), 223 Md. 446, 449, "each case must be decided on its own facts, that no one of the tests is conclusive, and [the court] from time to time has varied the emphasis put on the respective tests". Notwithstanding the occasional shift in emphasis, the third criteria (i. e., the exercise of some portion of the sovereignty of the State) has generally been considered of major significance (*Nesbitt v. Fallon* [1954], 203

Md. 534, 544; *Gary v. Board of Trustees, supra*, 223 Md. 446, 449) and we know of no instance where a position has been held to be an office where a finding was made that some part of the sovereignty of the State was not being exercised.

Viewing the position of Convention delegate in terms of these criteria, we must concede that the first, second and fifth are satisfied (although the language in *State v. Doyle, supra,* 70 So. 322, quoted above, casts doubt about the first criterion). As to the fourth criterion, until the General Assembly passes the required enabling legislation, it will not be known whether an oath or bond will be required, a commission issued, or a definite term established. In the 1864 and 1867 conventions, an oath was required and a commission issued. No bond was required, and the terms of the delegates were indefinite.

The key criterion is the third: whether the sovereignty of the State is being exercised. In this connection, we must distinguish between the sovereignty of the people and the sovereignty of the State. According to Lockian theory, which formed the basis of our republican government, the ultimate sovereignty lies in the people who, in constituent assembly, delegate a portion of it to the State. See Locke, *Second Treatise on Government;* United States Declaration of Independence; Article X of the Amendments to the United States Constitution; Article 1 and 3 Declaration of Rights of Maryland.

Although there is a difference of opinion on the subject (see 16 C.J.S., *Constitutional Law,* Section 8), we must conclude that a Constitutional Convention does exercise sovereign power. But the sovereignty which it exercises is that of the people, rather than of the State. The court expressed this view, at least inferentially, in *Anderson v. Baker* (1865), 23 Md. 531, when it stated at pages 615-616:

> "The powers of a Convention of the people of a State assembled to frame a form of Government, are no where defined. It is the right of the people to alter or abolish, or institute a new Government, 'laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness'. The *Convention is the depository of the residuary or reserved sovereignty of the people, unlimited, except so far as restrained by the Constitution of the United States, and the moral law.*" (Emphasis supplied.)

The distinction was expressed as follows by the Louisiana court in *State v. Doyle, supra,* 70 So. 322, at page 323:

> "Such delegates [to Constitutional Conventions] are *agents of the people* chosen to represent their constituents for a particular public purpose. They have never been styled officers, and hold no office in the sense of the Constitution. *A constitutional convention is not a co-ordinate branch of the government. It exercises no governmental power, but is a body raised by law, in aid of the popular desire to discuss and propose amendments, which have no governing force as long as they remain propositions.*" (Emphasis supplied.)

CONCLUSION

We accordingly find that a Convention delegate does not exercise part of the sovereign power of the State. Partly upon this basis, but far more on the basis of the established Maryland interpretation, we conclude that the position is not an "office" in the constitutional

sense. Article 35 would not, therefore, preclude a member of the General Assembly from election and service as a Convention delegate.

OTHER CONSTITUTIONAL PROVISIONS

(a) Article III, Section 17 of the Constitution provides that no member of the General Assembly shall be eligible "to any *office*, which shall have been created, or the salary, or profits of which shall have been increased, during such term". (Emphasis supplied.)

(b) Article I, Section 6 of the Constitution provides that every person elected to "any *office* of profit or trust" must take a prescribed oath. For Senators and members of the House of Delegates, the oath includes a statement that the affiant "will not, directly or indirectly, receive the profits of any other *office*" during the term of office for which the oath is taken (emphasis in both quotations supplied). This statement is not required for Convention delegates, however.

(c) Article III, Section 11 of the Constitution provides, *inter alia*, that "no person holding any civil *office* of profit, or trust, under this State, except Justices of the Peace, shall be eligible as Senator, or Delegate". (Emphasis supplied.)

It is evident that the above prohibitory sections are applicable only if the position of Convention delegate is an "office". Having already determined that it is not, we conclude that, as was the case with Article 35 of the Declaration of Rights, none of these provisions would render a member of the General Assembly ineligible to serve as a delegate to the 1967 Constitutional Convention with or without compensation.

We point out in conclusion that the General Assembly itself has on two prior occasions declared certain officials of the State and federal governments to be ineligible to serve as delegates. It has the power to do this and could well include its own members within the excluded group, if it so desires.

This decision may well dispose of the question with respect to the other categories listed in your letter, but there may be specific conditions or prohibitions attached to some of them that would dictate a different result. They will, as noted, therefore be treated in a separate opinion.

Trusting that we have answered your question with respect to members of the General Assembly, we remain

Very truly yours,

Francis B. Burch
Attorney General

Alan M. Wilner
Assistant Attorney General

APPENDIX

MEMBERS OF THE GENERAL ASSEMBLY SERVING AS DELEGATES TO THE CONSTITUTIONAL CONVENTION

Convention of 1850

Francis P. Phelps	Senator	Dorchester County
John D. Bowling	Senator	Prince George's County
George C. Morgan	Delegate	St. Mary's County
James Kent	Delegate	Anne Arundel County
George W. Weems	Delegate	Calvert County
Thomas J. Welsh	Delegate	Baltimore County
Edward Lloyd	Delegate	Talbot County
Daniel S. Biser	Delegate	Frederick County
Elias Brown	Delegate	Carroll County

Source: Journal of Proceedings of 1850 Constitutional Convention; Journal of House of Delegates December 31, 1849; Journal of Senate December 31, 1849. The Journal of Proceedings of the Convention show that John S. Sellman was a Delegate from Anne Arundel County and that Albert Constable was a Delegate from Cecil County. The Senate Journal shows that a Mr. Sellman was a Senator from Anne Arundel County and that a Mr. Constable was a Senator from Cecil County, but no first names were given.

Convention of 1864

Chapman Billingsley	Senator	St. Mary's County
James T. Briscoe	Senator	Calvert County
William L. Purnell	Senator	Worcester County
Archibald Stirling, Jr.	Senator	Baltimore City
John F. Dent	Delegate	St. Mary's County
Eli J. Henkle	Delegate	Anne Arundel County
William H. Hoffman	Delegate	Baltimore County
Daniel Clarke	Delegate	Prince George's County
Thomas B. Smith	Delegate	Worcester County
Henry Stockbridge	Delegate	Baltimore City
John Barron	Delegate	Baltimore City
Albert C. Greene	Delegate	Allegany County
Hopewell Hebb	Delegate	Allegany County
Jonas Ecker	Delegate	Carroll County
James Sykes	Delegate	Howard County

Source: Journal of Proceedings of 1864 Constitutional Convention; Journal of House of Delegates January 6, 1864; Journal of Senate January 6, 1864.

Convention of 1867

Alfred Spates	Senator	Allegany County
Thomas I. Hall	Delegate	Anne Arundel County
Edward F. Flaherty	Delegate	Baltimore City
Richard B. Carmichael	Delegate	Queen Anne's County

Source: Journal of Proceedings of 1867 Constitutional Convention; Journal of House of Delegates January 2, 1867; Journal of Senate January 2, 1867.

CHAPTER 1 OF THE ACTS OF THE GENERAL ASSEMBLY OF 1967

HOUSE BILL NO. 384.

INTRODUCED BY THE SPEAKER AND DELEGATE LOWE.

APPROVED FEBRUARY 17, 1967.

AN ACT to authorize and direct the Attorney General of Maryland on behalf of the General Assembly and the Secretary of State of Maryland to institute a declaratory judgment proceeding under Article 31A of the Annotated Code of Maryland (1957 Edition) to determine certain constitutional questions affecting the constitutional convention and the eligibility of persons to be delegates to such constitutional convention and relating generally to the details of said declaratory judgment proceeding and to the activities of the Court of Appeals of Maryland, the Circuit Court for Anne Arundel County, the Board of Supervisors of Elections for Anne Arundel County, the Board of Public Works, and of the Maryland State Bar Association, Inc. in connection therewith.

WHEREAS, by Chapter 501 of the Acts of the General Assembly of 1966, it was provided that a special election be held on the second Tuesday after the first Monday in September, 1966, to take the sense of the voters of this State on the call of a convention not earlier than September 1, 1967, nor later than September 1, 1968, to frame a new constitution for Maryland; and

WHEREAS, that special election was held on September 13, 1966, and a majority of those voting at the special election voted in favor of the call of a constitutional convention; and

WHEREAS, Chapter 500 of the Acts of the General Assembly of 1966 was passed as an emergency measure and provided that, in the event there was a favorable vote on the referendum to hold a constitutional convention, a constitutional convention should be assembled and should convene at twelve o'clock noon on Tuesday, September 12, 1967, at such place and should continue in session for such length of time as might thereafter be prescribed by law, and that Act further provided for the number and apportionment of the delegates to be elected to the convention from each of the counties and from Baltimore City; and

WHEREAS, the General Assembly of Maryland now has under consideration two proposed convention enabling acts which, among other things, will prescribe the qualifications of and the manner of electing the delegates to the constitutional convention; and

WHEREAS, a question has arisen as to whether a delegate to the constitutional convention would be the holder of an office within the meaning of Articles 33 and 35 of the Declaration of Rights and Section 6 of Article I and Sections 11 and 17 of Article III of the Constitution of Maryland; and

WHEREAS, if a delegate to the constitutional convention would be the holder of such an office, a further question arises as to the validity and effect of Chapter 500 of the Acts of the General Assembly of 1966 by reason of the fact that it was enacted as an emergency measure; and

WHEREAS, it is essential for the well-being and welfare of the citizens of

the State of Maryland that these questions be finally and expeditiously settled and determined so that the General Assembly may proceed promptly with the consideration of the convention enabling acts now before it and prescribe the qualifications of delegates to the constitutional convention without the threat of litigation to determine the constitutionality of such convention enabling acts; and

WHEREAS, by the Constitution of the State of Maryland, the Circuit Courts of the State and the Court of Appeals have such jurisdiction as may be prescribed by law; and

WHEREAS, it is deemed desirable by the General Assembly of Maryland that the Circuit Court for Anne Arundel County render a declaratory judgment on the several questions set forth in this Act and that the Court of Appeals of Maryland review such judgment on appeal or upon petition of the Attorney General; and

WHEREAS, the General Assembly is vitally interested in the speedy determination of these questions, but the question has arisen whether the Attorney General of Maryland is authorized to institute a declaratory judgment proceeding on behalf of the General Assembly under Article 31A of the Annotated Code of Maryland (1957 Edition); and

WHEREAS, the Board of Supervisors of Elections of Anne Arundel County will have certain duties and functions to perform in connection with the election of delegates to the constitutional convention; now, therefore,

Be it enacted by the General Assembly of Maryland, as follows:

SECTION 1. The Attorney General of Maryland is hereby authorized and directed to institute in the Circuit Court of Anne Arundel County a declaratory judgment proceeding under Article 31A of the Annotated Code of Maryland (1957 Edition) on behalf of the General Assembly and the Secretary of State of Maryland against The Board of Supervisors of Elections of Anne Arundel County and such other persons, if any, as the Attorney General shall deem appropriate, to obtain a declaratory judgment on the following questions.

(a) Would a delegate to the constitutional convention be the holder of an office within the meaning of Articles 33 and 35 of the Declaration of Rights and Section 6 of Article I and Sections 11 and 17 of Article III of the Constitution of Maryland?

(b) If a delegate to the constitutional convention would be the holder of such an office, was the office created by Chapter 500 of the Acts of the General Assembly of 1966?

(c) If a delegate to the constitutional convention would be the holder of such an office and the office was created by Chapter 500 of the Acts of the General Assembly of 1966, is that Act valid and effective notwithstanding the fact that it was passed as an emergency act?

(d) If Chapter 500 of the Acts of the General Assembly of Maryland of 1966 is null and void as an entirety because passed as an emergency act, is Chapter 501 of the Acts of the General Assembly of 1966 thereby rendered invalid, null and void?

(e) If Chapter 500 of the Acts of the General Assembly of 1966 is null and void in its entirety, can the General Assembly at its 1967 session call a constitutional convention without another referendum to take the sense of the

people on the calling of such a convention?

(1) if Chapter 501 of the Acts of the General Assembly of 1966 was and is unconstitutional, null and void?

(2) if Chapter 501 of the Acts of the General Assembly of 1966 was and is valid and effective?

(f) If a delegate to the constitutional convention would be the holder of such an office and the office was created by Chapter 500 of the Acts of the General Assembly of 1966, may a person holding another office within the meaning of the Declaration of Rights and Constitution of Maryland also hold the office of delegate to the constitutional convention?

(1) if such person does not, in fact, receive compensation as a delegate to the convention whether or not compensation be paid or provided for as to some or all of the delegates to the convention;

(2) if such person does not receive compensation but receives reimbursement of actual expenses incurred in serving as a delegate to the constitutional convention;

(3) if such person does not receive compensation but receives a per diem expense allowance for his service as a delegate to the constitutional convention without being required to account for the amount of such expense allowance?

(g) If a delegate to the constitutional convention would be the holder of such an office and the office was not created by Chapter 500 of the Acts of the General Assembly of 1966, but will be created by an act of the General Assembly of Maryland enacted at its 1967 session, may a person holding another office within the meaning of the Declaration of Rights and Constitution of Maryland also hold the office of delegate to the constitutional convention?

(1) if such person does not, in fact, receive compensation as a delegate to the convention whether or not compensation be paid or provided for as to some or all of the delegates to the convention;

(2) if such person does not receive compensation but receives reimbursement of actual expenses incurred in serving as a delegate to the constitutional convention;

(3) if such person does not receive compensation but receives a per diem expense allowance for his service as a delegate to the constitutional convention without being required to account for the amount of such expense allowance?

(h) In light of the fact that those voting "for" the calling of a convention did not constitute a majority of those voting in the election, is the calling of a convention at this time mandatory?

(i) Can the calling of the convention be delayed by a period of two years?

SEC. 2. Anything in Article 32A or Article 33 of the Annotated Code of Maryland to the contrary notwithstanding, The Board of Supervisors of Elections of Anne Arundel County is hereby authorized to employ special counsel to represent it in any proceeding instituted pursuant to Section 1 of this Act, such counsel to receive compensation in such amount as may be approved by the Board of Public Works.

SEC. 3. Upon petition of any person interested in or affected by the determination of the questions presented to

the court in the declaratory judgment proceeding to be instituted pursuant to Section 1 of this Act, the court may, in its absolute discretion, permit such person to intervene in such proceeding as a party plaintiff or defendant upon such terms and conditions as may be imposed by the court so as not to delay the proceeding. The Maryland State Bar Association, Inc. shall be considered an interested person within the meaning of this section.

SEC. 4. Upon appeal by any party to said proceeding, or upon petition by the Attorney General of Maryland without an appeal by any party, the Court of Appeals of Maryland shall have jurisdiction to review the judgment and determination of the Circuit Court for Anne Arundel County rendered in the declaratory judgment proceeding instituted pursuant to Section 1 of this Act and the decision of the Court of Appeals of Maryland upon such review shall have the same force and effect as any other final decision of the Court of Appeals of Maryland.

SEC. 5. The court costs of said proceeding shall be paid by the State of Maryland, with approval of the Board of Public Works.

And be it further enacted, That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of public health and safety and, having been passed by yea and nay votes supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, this Act shall take effect from the date of its passage.

OPINION OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

(No. B-7533)—Filed February 28, 1967

ATTORNEY GENERAL OF MARYLAND ET AL.
v.
BOARD OF SUPERVISORS OF ELECTIONS FOR ANNE ARUNDEL COUNTY ET AL.

JUDGE MATTHEW S. EVANS

The Attorney General of Maryland has filed this Petition for Declaratory Judgment in accordance with the directions of Chapter 1 of the Acts of the General Assembly of 1967, seeking a judicial determination of certain questions pertaining to the proposed Constitutional Convention.

Governor J. Millard Tawes on 16 June 1965 appointed a Constitutional Convention Commission to study the necessity for, and extent and nature of, revisions of the Constitution of Maryland, with particular respect to whether a constitutional convention should be held and the procedures for calling and conducting such a convention. The Commission concluded that complete revision of the existing Constitution was imperative, and adopted a resolution that this result can best be accomplished by means of a constitutional convention.

Pursuant to recommendations of the Commission, Chapters 500 and 501 of the Acts of the General Assembly of 1966 were enacted. Chapter 501 provided for a special election to be held 13 September 1966 to take the sense of the voters as to whether a convention should be called "not earlier than 1 September 1967, and not later than 1 September 1968, to frame a new Constitution for Maryland." Chapter 500 provided that in the event a majority of those voting at the special election on 13 September 1966 voted for a constitutional convention, the convention shall be assembled and convened at 12 Noon, Tuesday 12 September 1967, at such place and shall continue in session for such length of time as may hereafter be prescribed by law.

The special election was held 13 September 1966, pursuant to Chapter 501, simultaneously with the primary election. The vote was 160,280 for a constitutional convention and 31,680 against, constituting an overwhelming majority of the total votes cast in the special election, but only a minority of the total votes cast in the primary election.

Chapter 500 of the Acts of the General Assembly of 1966 provided that if a convention were assembled, "each county and each of the legislative districts of Baltimore City shall have in such convention the same number of delegates as Chapter 2 of the Acts of the General Assembly of the Special Session of 11 October 1965 provides shall be elected to the House of Delegates at the general election in 1966 from such county and legislative district." Thus, the number and apportionment of convention delegates were fixed, but Chapter 500 did not provide for the time or method of electing delegates, the quali-

fication of a delegate, whether and how delegates are to be compensated, the rules of procedure to be followed by the delegates at the convention, or any other matters essential to implementing the convention call.

The questions presented in the Petition are lettered (a) through (i). Question (a) is as follows:

Would a delegate to the Constitutional Convention be the holder of an office within the meaning of Articles 33 and 35 of the Declaration of Rights, or Article I, Section 6, Article III, Section 11, or Article III, Section 17 of the Constitution of Maryland?

If the Court finds that the position of Constitutional Convention delegate is not an office in the constitutional sense, then it will not be necessary to answer questions lettered (b) through (g). When the provisions of the particular sections referred to above are considered, however, it becomes clear that the real issue is whether the holders of offices in the State and local governments are eligible for election and service as delegates to the Convention. The sections involved are as follow:

1. Article 35 of the Declaration of Rights, which provides that "no person shall hold, at the same time, more than one office of profit, created by the Constitution and Laws of this State."

2. Article 33 of the Declaration of Rights, which provides that "no Judge shall hold any other office, civil or military, or political trust, or employment of any kind, whatsoever, under the Constitution or Laws of this State, or of the United States, or any of them."

3. Article III, Section 17 of the Constitution which provides that no member of the General Assembly shall be eligible "to any office, which shall have been created, or the salary, or profits of which shall have been increased, during such term."

4. Article I, Section 6 of the Constitution which provides that every person elected to "any office of profit or trust" must take a prescribed oath. For Senators and members of the House of Delegates, the oath includes a statement that the affiant "will not, directly or indirectly, receive the profits of any other office" during the term of office for which the oath is taken. This statement is not required for Convention delegates, however.

5. Article III, Section 11 of the Constitution which provides, inter alia, that "no person holding any civil office of profit, or trust, under this State, except Justices of the Peace, shall be eligible as Senator, or Delegate."

With the exception of Article 33, which applies to political trusts and other employment, these provisions are intended to prohibit the holding of more than one office, and it is in this context that the word "office" must be considered.

The Maryland courts have never considered the question of whether the position of Convention delegate is an "office" in the constitutional sense. There are three ways of approaching the problem; namely, (1) examine what other courts have done; (2) examine how Maryland has treated the problem extra-judicially; and (3) examine the Maryland decisions concerning other types of positions.

In the case of *State v. Doyle,* 138 La. 50, 70 So. 322 (1915), the above ques-

tion was presented. The defendant in this case moved to quash the jury list on the ground that one of the jury commissioners had been elected to serve as a delegate to the State Constitutional Convention, and had thereby vacated his office of jury commissioner pursuant to a constitutional prohibition against holding two offices. The court affirmed the conviction, holding as to this line of attack:

> "The judge a quo was of the opinion that a member of a constitutional convention is in no proper sense an officer, that such a position is fleeting and casual, and the member does not exercise his functions continuously and as part of the regular and permanent administration of the government. . . .
>
> "The first ruling is supported by the historical fact that state officials, high and low, have been delegates to constitutional conventions, without a suggestion from any quarter, that they had, thereby, vacated their respective offices."

As to the provision of the Constitution relating to the holding of two offices (similar to our Article 35), the court noted that:

> ". . .Conventions are not mentioned in our Constitution, and its provisions have no reference or relation to delegates of the people elected for the purpose of framing organic law for the body politic."

A second Louisiana case, *State v. Rogers,* 138 La. 867, 70 So. 863 (1916), restates the Doyle doctrine in the court's conclusion that "it is evident that delegates to a constitutional convention are not state officers."

In *Baker v. Moorhead,* 103 Neb. 811, 174, N. W. 430 (1919), the question arose as to whether delegates to a constitutional convention were officers within the meaning of a statute requiring all officers by the Constitution or laws made elective by the people to be elected at a general election. The specific issue was the validity of electing the delegates at a special election. In holding the statute to be inapplicable, the court states, at page 432:

> "We are also of opinion that members of the constitutional convention are not officers intended to be embraced in the provisions of section 13, supra. They are not constitutional officers in the strict sense; they are officers who create a Constitution, rather than officers who are created by the Constitution. . . ."

In *State v. Gessner,* 129 Ohio St. 290, 195 N.E. 63 (1935), the court expressed a contrary view, ruling that a member of a City Charter Commission held a public office of trust.

The possible split of authority—Louisiana and Nebraska holding the position not to be an office, and Ohio suggesting by dictum that it might be—establishes little except that it can be argued that there is precedent for either point of view, although the precedent in favor of the position not being an office is clearly more direct and persuasive.

Maryland has had four constitutional conventions—in 1776, 1851, 1864 and 1867. In the absence of a judicial determination, let us examine the various constitutional provisions that have been applied previously with respect to convention delegates. Article 35 of the Declaration of Rights appeared in the 1776 State Constitution in virtually identical form as Article 32 of the

Declaration. In addition, that Constitution, in Article 37, provided that no member of the General Assembly "shall hold or execute any office of profit . . . during the time for which he shall be elected," which is quite similar to Article III, Section 17 of the present Constitution.

These provisions were therefore part of the organic law of the State when the General Assembly, in February, 1850, enacted Chapter 346, Acts of 1849-50, calling the first Constitutional Convention to assemble since 1776. Section 10 of that statute provided:

> "That any Senator or Representative in Congress, or State Senator, or any Civil Officer of the State or United States, residing within the limits of the State of Maryland for twelve months next preceding said election, or members of the House of Delegates, shall be eligible to a seat in the convention to assemble as hereinbefore prescribed, without affecting the tenure of their respective offices."

The roster of delegates actually elected to serve in the 1850 Convention, when compared with the roster of members serving in the 1849 Session of the General Assembly, shows that at least nine, and possible eleven, delegates to the Convention were incumbent members of the General Assembly. It would seem apparent, therefore, that neither the legislature nor the Convention considered the position of delegate to be an office in the constitutional sense.

Each of the five provisions of the present Declaration and Constitution which relate to the holding of more than one "office" appeared in the 1851 Constitution. Articles 33 and 35 of the Declaration of Rights appeared respectively as Articles 30 and 32. The oath requirement of Article I, Section 6 appeared as Article I, Section 4. Article III, Sections 11 and 17 appeared as Article III, Sections 11 and 24. All of these provisions relating to the holding of more than one "office" were therefore in force when the legislature, by Chapter 5 of the Acts of 1864, called another Constitutional Convention. Section 4 of said Act provided, inter alia:

> " . . . that any Senator or Delegate may be eligible to a seat in said Convention, but that no Senator or Representative in the Congress of the United States, or Judge of any Circuit Court, Superior Court, Court of Common Pleas, or Criminal Court of the City of Baltimore, Clerks of said Courts, Register of Wills or Sheriff, shall be eligible to said Convention."

The roster of delegates actually elected to serve in the Convention, when compared with the roster of members serving in the 1864 Session of the Legislature, shows that fifteen delegates were incumbent members of the General Assembly. Thus, once again, neither the legislature nor the Convention considered the election of Assemblymen as Convention delegates to violate the constitutional prohibition.

Each of the five relevant Constitutional provisions were retained in the 1864 Constitution. Articles 33 and 35 of the Declaration of Rights appeared as Articles 33 and 35. Article I, Section 6 appeared as Article I, Section 7; and Article III, Sections 11 and 17 appeared respectively as Article III, Sections 10 and 16. Accordingly, they were part of the organic law of the State when the 1867 Convention, which drafted our present Constitution, was called by the legislature in Chapter 327 of the Acts

of 1867. Section 10 of that Act precluded clergymen, United States Senators and Representatives, Judges, State's Attorneys, Auditors, Court Clerks, Registers of Wills, and Sheriffs from serving as delegates to the Convention, but it was silent as to members of the General Assembly. Nevertheless, the records show that four delegates were incumbent members of the 1867 Session of the General Assembly.

The history of Maryland Constitutional Conventions thus presents clear evidence of a long and uninterrupted refusal to apply the particular constitutional provisions in issue here to Convention delegates. In every Convention since 1776, members of the General Assembly were permitted to serve as delegates, notwithstanding the existence of these very provisions, and notwithstanding the further fact that, in each case, compensation was paid to the delegates.

This uniform and contemporaneous interpretation by the legislature, by the Conventions, and most important, by the people who elected the delegates, is entitled to great weight in arriving at a judicial determination. The court has stated several times that:

> "A contemporaneous construction placed upon a particular provision of the organic law by the legislative department of the government, acquiesced in and acted upon without ever having been questioned, followed continuously and uniformly from a very early period . . . furnishes a very strong presumption that the intention is rightly interpreted."

Trustees of the Catholic Cathedral Church of Baltimore v. Manning, 72 Md. 116, 130, 19 Atl. 599 (1890); *Wyatt v. State Roads Commission,* 175 Md. 258, 1 A.2d 619 (1938); *Johns Hopkins Univ. v. Williams,* 199 Md. 382, 387, 86 A.2d 892 (1952). See also *County Commissioner's v. Supervisors of Elec.,* 192 Md. 196, 210, 63 A.2d 735 (1949).

This important guide to interpretation, in the light of the unambiguous contemporaneous construction given by the legislature, the Conventions, and the people in each of the three instances since 1850, makes it clear that the position of delegate to a Constitutional Convention was never intended to be an "office" and has never been treated as such.

The Court of Appeals and the Attorneys General have, on a number of occasions, been called upon to determine whether a particular position is or is not an "office" in the constitutional sense. In each case, however, the position has been within one of the coordinate branches of government established by the Constitution. Neither the position of Convention delegate, nor anything analogous to it, has ever been held to be an office by any Maryland court.

An examination of the decisions of the Maryland Court of Appeals on the question of what is an "office" reveals that essentially five criteria have been established. As most recently expressed in *Moser v. Howard County Board,* 233 Md. 279, 281, 196 A.2d 447 (1964), they are whether:

(a) The position was created by law and cases upon the incumbent duties which are continuing in nature and not occasional;

(b) The incumbent performs an important public duty;

(c) The position calls for the exercise of some portion of the sovereign power of the State;

(d) The position has a definite term, for which a commission is issued, a bond required, and an oath required; and

(e) The position is one of dignity and importance.

Each of these criteria has been applied singly or together at various times in order to make specific determinations; but, as the court stated in *Gary v. Board of Trustees,* 223 Md. 446, 449, 165 A.2d 475 (1960), "each case must be decided on its own facts, that no one of the tests is conclusive, and (the court) from time to time has varied the emphasis put on the respective tests." Notwithstanding the shift in emphasis, the third criterion (i.e., the exercise of some portion of the sovereignty of the State) has generally been considered of major significance. *Nesbitt v. Fallon,* 203 Md. 534, 544, 102 A.2d 284 (1954); *Gary v. Board of Trustees, supra.* In this connection it is important to distinguish between the sovereignty of the people and the sovereignty of the State. According to the Lockian theory, which formed the basis of our republican government, the ultimate sovereignty lies in the people who, in constituent assembly, delegate a portion of it to the State. See Locke, *Second Treatise on Government;* United States Declaration of Independence; Article X of the Amendments to the United States Constitution; Articles 1 and 3, Declaration of Rights of Maryland.

A Constitutional Convention does exercise sovereign power. But the sovereignty which it exercises is that of the people, rather than that of the State. The court expressed this view, at least inferentially, in *Anderson v. Baker,* 23 Md. 531 (1865), when it stated at pages 615-616:

> "The powers of a Convention of the people of a State assembled to frame a form of Government, are nowhere defined. It is the right of the people to alter or abolish, or institute a new Government, 'laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness'. The Convention is the depository of the residuary or reserved sovereignty of the people, unlimited, except so far as restrained by the Constitution of the United States, and the moral law."

The distinction was expressed as follows, by the Louisiana court in *State v. Doyle, supra,* at page 323:

> "Such delegates (to Constitutional Conventions) are agents of the people chosen to represent their constituents for a particular public purpose. They have never been styled officers, and hold no office in the sense of the Constitution. A constitutional convention is not a co-ordinate branch of the government. It exercises no governmental power, but is a body raised by law, in aid of the popular desire to discuss and propose amendments, which have no governing force as long as they remain propositions."

In further accord with this view are *Smith v. State,* 28 Okla. 235, 113 Pac. 932 (1911); *Frantz v. Autry,* 91 Pac. 193 (Okla. 1907). In *Frantz v. Autry,* which concerned the State Convention to draft the first Constitution of Oklahoma, prior to its admission as a state, the court stated, at page 202:

> ". . . in a territory, the source of all power is Congress. But in the formation of a Constitution and state government the power emanates from the people. The dele-

> gates to the convention were not the agents or representatives of Congress (i. e., the existing government) but they were the immediate agents and representatives of the people of the two territories. They derived their power and authority from the people in their sovereign capacity. . . ."

For the reasons stated above, the Court finds that the position of delegate to the Constitutional Convention is not an office in the constitutional sense.

As the position of delegate is not an office, it is unnecessary for the Court to consider questions lettered (b) through (g).

In Chapter I of the Acts of 1967, the General Assembly posed the following two questions:

(h) In the light of the fact that those voting for the calling of a convention did not constitute a majority of those voting in the election, is the calling of a convention at this time mandatory?

(i) Can the calling of a convention be delayed by a period of two years?

The apparent premise on which question (h) is based is that the referendum on the Convention was one of several issues before the voters at the primary election on 13 September 1966; that the number of persons voting in favor of the Convention did not constitute a majority of the total number of persons voting at the primary election; and that the vote was therefore not in favor of a Convention. This premise overlooks two facts which render it invalid; namely: (1) that the election was not held pursuant to Article XIV, Section 2 of the Constitution, and its provisions are therefore inapplicable to it; and (2) that the election was a special election at which only the one issue was presented, so that a favorable vote on the one issue constituted a majority of those voting in the election.

Article XIV, Section 2 of the Constitution requires the General Assembly to provide for the taking, at a general election to be held every twenty years, starting with 1930, the sense of the people as to the calling of a Convention. If a "Majority of the voters at such election or elections" shall vote for a Convention, the General Assembly, at its next session, is required to call the Convention.

It is undisputed that the General Assembly has the inherent power to call a Constitutional Convention at any time. Acting upon this inherent power, and not pursuant to Article XIV, Section 2, the legislature enacted Chapters 500 and 501 in 1966.

Chapter 501 provided that:

> ". . . at a special election to be held on the second Tuesday after the first Monday in September, in the year Nineteen Hundred and Sixty-Six, at the same time as the primary election . . . there shall be submitted to the legal and qualified voters of this State the question of whether there shall be called a Convention not earlier than: September 1, 1967 and not later than September 1, 1968 to frame a new Constitution for Maryland."

Section 2 of Chapter 501 provided, in part, that:

> "All other State and local officials shall do all those things which are appropriate in regard to the holding of this special election and that are required under the general election laws."

Chapter 500 provided, in Section 1 thereof:

> "That in the event a majority of those voting at the special election to be held on the second Tuesday . . . vote for a Constitutional Convention, such Convention shall be assembled and shall convene at twelve noon on Tuesday the twelfth day of September in the year 1967 at such place and shall continue in session for such length of time as may hereafter be prescribed by law."

The use of the words "special election" throughout these two Acts makes it clear that the referendum as to the calling of a Convention was not part of the primary election. It was an entirely separate election, at which only the one question was in issue. The majority vote on that one question constituted a majority vote at the entire election. Persons unaffiliated with either political party were permitted to vote on this one question; this makes inescapable the conclusion that it was not part of either party primary, but a separate special election.

Several courts have sustained the proposition that a special election may be held concurrent with a general election without losing its separate and special character. In *Houston v. Boltz*, 169 Ky. 640, 185 S.W. 76 (1916), a special election to approve the issuance of bonds, though held simultaneously with a general election, was still declared to be special. The Court stated, at page 78:

> "It would seem, therefore, that holding the election on a day different from the regular election day is not one of the essentials of a special election. When, therefore, section 157a of the Constitution provided that the vote on the road-bond issue should be taken at a special election, held in such manner as may be provided by law, and the law upon the subject does not require the election to be held upon a day different from the general election day, it follows that the special election may be held upon the general election day. It is nevertheless a special election, because it has been specially called for the purpose of voting upon a proposition specially submitted. And we see no reason why the proposition submitted should not be printed upon the ballot used in the general election held upon the same day."

See also *Eberhardt Const. Co. v. Board of Com'rs*, 100 Kan 394, 164 P. 281 (1917); *Munce v. O'Hara*, 340 Pa. 209, 16 A.2d 532, 131 A.L.R. 1379 (1940); *Derryberry v. State Board of Election Com'rs* 150 Tenn. 525, 266 S. W. 102 (1924).

One of the intervenors attacked the validity of the special election, contending it was not properly advertised and, therefore, there was only one election and Chapters 500 and 501 did not receive a majority of the votes cast at the election. The issue not having received a majority of the votes cast, the General Assembly is not required to call a Constitutional Convention.

Chapters 500 and 501, on their faces, show that they were to be voted on at a special election. The stipulation and exhibits clearly show that if the various advertisements did not meet with the letter of the law, it was substantially complied with and voters in every part of the State received actual notice of the special election. At this point, the law requires no more.

The character of the referendum as a special election distinguishes it from the referenda held at general elections under Article XIV, Section 2, and makes the majority affirmative vote a direct mandate of the people.

The final question to be considered is: (i) can the calling of the Constitutional Convention be delayed by a period of two years?

By enacting Chapter 501 of the Acts of 1966, the General Assembly put to the electorate the question "whether there shall be called a Convention not earlier than 1 September 1967 and not later than 1 September 1968," and by enacting Chapter 500, put to the electorate the question whether the Convention shall be assembled on 13 September 1967. Both Chapters 500 and 501 were approved by the voters by a 5-to-1 vote. The Convention was called by the legislature and confirmed by the people. The General Assembly cannot ignore this mandate.

It is true that the General Assembly did not have to take the sense of the people in 1966. But having submitted the question to the people in proper legal fashion, it bound itself to the mandate expressed by them. The people have spoken in clear and unmistakable terms, and the legislature is bound to obey. The only thing remaining to be done is to provide for the election of delegates.

The answer to question (i) is "No."

OPINION OF THE
COURT OF APPEALS OF MARYLAND

September Term, 1967—Filed April 14, 1967

BOARD OF SUPERVISORS OF ELECTIONS FOR ANNE ARUNDEL COUNTY, ET AL.

v.

ATTORNEY GENERAL OF MARYLAND, ET AL.

Appeal from the Circuit Court for Anne Arundel County, Matthew S. Evans, Judge.

Argued by *David M. Blum, William W. Cahill, Jr.* and *Mark D. Coplin (Weinberg & Green,* all of Baltimore, Maryland, and *John A. Blondell,* Glen Burnie, Maryland, on the brief), for Board of Supervisors of Elections for Anne Arundel County, part of appellants, and by *C. Maurice Weidemeyer,* Annapolis, Maryland, for Joshua F. Cockey of Baltimore, other appellant.

Argued by *Francis B. Burch,* Attorney General; *Alan M. Wilner,* Assistant Attorney General, and *Robert F. Sweeney,* Deputy Attorney General, for Attorney General of Maryland, et al., part of appellees, and by *Joseph Sherbow,* for Maryland State Bar Association, other appellee, all of Baltimore, Maryland.

Argued before HAMMOND, C. J.; HORNEY, MARBURY, OPPENHEIMER, BARNES, McWILLIAMS and FINAN, JJ.

HAMMOND, Chief Judge (with Barnes, J., dissenting)—

In June of 1965 Governor Tawes appointed a Commission to study the necessity for revision of the Constitution of Maryland, to determine whether a convention should be held to prepare the revision and to suggest the procedures for the calling and holding of such a convention. The Commission concluded that a completely new constitution should be prepared by delegates to a convention and submitted to the voters of the State for adoption.

Pursuant to the recommendations of the Commission the legislature by Ch. 501 of the Laws of 1966 provided for a special election to be held at the same time as the primary election of 1966 to take the sense of the voters on whether a convention should be convened, not earlier than September 1, 1967, and not later than September 1, 1968, to frame a new Constitution. By Ch. 500 of the Laws of 1966 it was provided that if a majority of those voting at the special election voted for a convention it should assemble on September 12, 1967, at such place and for such time as might thereafter be prescribed by law. Chapter 500 also provided that each County and each of the legislative districts of Baltimore City should have the same number

of delegates in the convention as Ch. 2 of the Laws of the Special Session of October 11, 1965, prescribed for election to the House of Delegates at the General Election of 1966 from such county and legislative district.

The special election proposed by Ch. 501 was held on September 13, 1966, concurrently with the primary election. The vote was 160,280 for a constitutional convention and 31,680 against. Although the number of favorable votes was more than a majority of the total votes cast in the special election, that number was a minority of the total votes cast in the primary election.

When the General Assembly of 1967 began consideration of legislation to provide for the qualifications of delegates to the convention, the manner of their election, their compensation and the duration of and other matters relating to the convention, almost immediately it was confronted with problems, most of which stemmed from the prohibitions of the existing constitution against the holding of more than one office of profit or trust under the constitution or laws of the State. These legal questions, which included (1) the validity of Chs. 500 and 501 of the Laws of 1966, both of which were enacted as emergency measures, even though § 2 of Art. XVI of the Constitution provides that no law creating an office shall be enacted as an emergency law, and (2) the eligibility of members of the legislature and other public officers to serve as delegates to the convention, caused grave concern to the General Assembly and to the Secretary of State, in his case for their bearing on the performance of his functions in relation to the elective process.

To obtain a solution to the dilemma, the legislature enacted Chapter 1 of the Laws of 1967 which authorized the Attorney General on behalf of the General Assembly and the Secretary of State to institute a declaratory judgment proceeding under Art. 31A of the Code in the Circuit Court for Anne Arundel County against the Board of Supervisors of Elections of Anne Arundel County and such other defendants as the Attorney General deemed appropriate to obtain a declaration of the correct answer to nine questions, lettered (a) to (i) (several of the questions having various subdivisions). Question (a) was: "Would a delegate to the constitutional convention be the holder of an office within the meaning of Articles 33 and 35 of the Declaration of Rights and Section 6 of Article I and Sections 11 and 17 of Article III of the Constitution of Maryland?" Questions (b) through (g) all were based on the premise that a delegate to the constitutional convention would be an officer and if it were held that he was not these questions, it was, and is, agreed, would not have to be answered. Question (h) was: "In light of the fact that those voting 'for' the calling of a convention did not constitute a majority of those voting in the election, is the calling of a convention at this time mandatory?" Question (i) was: "Can the calling of a convention be delayed by a period of two years?"[1] On February 17, 1967, suit was filed by the Attorney General in the Circuit Court

[1] The questions in full were:

"(a) Would a delegate to the Constitutional Convention be the holder of an office within the meaning of Articles 33 and 35 of the Declaration of Rights and Section 6 of Article I and Sections 11 and 17 of Article III of the Constitution of Maryland?

"(b) If a delegate to the Constitutional Convention would be the holder of such an office, was the office created by Chapter 500 of the Acts of the General Assembly of 1966?

for Anne Arundel County on behalf of the legislature and the Secretary of State against the individuals constituting the Supervisors of Elections of Anne Arundel County. On February 21, a petition to intervene as plaintiff was filed by the Maryland State Bar Association, Inc. (which had been designated in Ch. 1 as an interested entity) and granted, and on February 23 an individual taxpayer was allowed to intervene as a defendant.

The Attorney General and the Bar Association asked, inter alia, for a declaration that (1) a delegate is not the holder of an office, (2) a majority of persons voting at the election of September 13, 1966, voted in favor of calling a Constitutional Convention, and (3) the assembling of a convention may not be delayed. The Supervisors, on the contrary, answered and prayed the court to declare a delegate to be the holder of an office, that although a majority of

"(c) If a delegate to the Constitutional Convention would be the holder of such an office and the office was created by Chapter 500 of the Acts of the General Assembly of 1966, is that Act valid and effective notwithstanding the fact that it was passed as an emergency act?

"(d) If Chapter 500 of the Acts of the General Assembly of Maryland of 1966 is null and void as an entirety because passed as an emergency act, is Chapter 501 of the Acts of the General Assembly of 1966 thereby rendered invalid, null and void?

"(e) If Chapter 500 of the Acts of the General Assembly of 1966 is null and void in its entirety, can the General Assembly at its 1967 session call a constitutional convention without another referendum to take the sense of the people on the calling of such a convention?

(1) if Chapter 501 of the Acts of the General Assembly of 1966 was and is unconstitutional, null and void?

(2) if Chapter 501 of the Acts of the General Assembly of 1966 was and is valid and effective?

"(f) In a delegate to the Constitutional Convention would be the holder of such an office and the office was created by Chapter 500 of the Acts of the General Assembly of 1966, may a person holding another office within the meaning of the Declaration of Rights and Constitution of Maryland also hold the office of delegate to the Constitutional Convention?

(1) if such a person does not, in fact, receive compensation as a delegate to the Convention whether or not compensation be paid or provided for as to some or all of the delegates to the Convention;

(2) if such person does not receive compensation but receives reimbursement of actual expenses incurred in serving as a delegate to the Constitutional Convention;

(3) if such person does not receive compensation but receives a per diem expense allowance for his service as a delegate to the Constitutional Convention without being required to account for the amount of such expense allowance?

"(g) If a delegate to the Constitutional Convention would be the holder of such an office and the office was not created by Chapter 500 of the Acts of the General Assembly of 1966, but will be created by an act of the General Assembly of Maryland enacted at its 1967 session, may a person holding another office within the meaning of the Declaration of Rights and Constitution of Maryland also hold the office of delegate to the Constitutional Convention?

(1) if such person does not, in fact, receive compensation as a delegate to the Convention whether or not compensation be paid or provided for as to some or all of the delegates to the Convention;

(2) if such person does not receive compensation but receives reimbursement of actual expenses incurred in serving as a delegate to the Constitutional Convention;

(3) if such person does not receive compensation but receives a per diem expense allowance for his service as a delegate to the Constitutional Convention without being required to account for the amount of such expense allowance?

those voting in the special election favored a convention, its calling either on September 12, 1967, or between September 1, 1967, and September 1, 1968, is not mandatory, and that the calling of a convention can be delayed for two years.

The intervening defendant urged that a delegate is the holder of an office, that the calling of a convention on September 12, 1967, is not mandatory, the matter being in the sole discretion of the General Assembly, that no special election was properly held for lack of adequate notice, particularly to independent voters and others not interested in the primary election, and since the General Assembly alone has the responsibility of determining whether to call a convention in 1967, the calling of such a convention may be delayed for two years.[2]

The court (Evans, J.) declared on February 28 that (1) a delegate to the convention is not the holder of an office within the meaning of Articles 33 and 35 of the Declaration of Rights or the meaning of § 6 of Article I or §§ 11 and 17 of Article III of the Constitution of Maryland; (2) adequate notice of the special election was given; (3) a majority of the persons voting at the special election of September 13, 1966, voted in favor of a constitutional convention; (4) the assembling of a constitutional convention may not be delayed; and (5) by reason of the adjudication and declaration that a delegate would not be an officer, the remaining issues became moot.

Chapter 1 of the Laws of 1967 conferred jurisdiction on the Court of Appeals to review the judgment and determination of the Circuit Court for Anne Arundel County and provided that "the decision of the Court of Appeals of Maryland upon such review shall have the same force and effect as any other final decision of the Court . . . ." An appeal was taken from Judge Evans' order and we advanced the case, hearing argument on March 6. On March 7 we affirmed the adjudications and declarations below by per curiam order, all the judges but Judge Barnes concurring. We now set out the reasons for our affirmance.

No question was raised below or on appeal as to the jurisdiction of the Circuit Court and the Court of Appeals to hear and decide the matter. We think it appropriate to say that in our opinion the Circuit Court had jurisdiction under §§ 1, 2, 5 and 6 of Art. 31A of the Code, the Uniform Declaratory Judgments Act. Under § 1 courts have power "to declare rights, status, and other legal relations" whether or not further relief is or could be claimed. In the case filed in the Circuit Court there were conflicting claims and the parties were legally, although not personally, hostile. Section 6 of Art. 31A authorizes granting of relief in all cases in which there is an actual controversy between contending parties or in which the court is satisfied "that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or . . . that a party asserts a legal relation, status, right, or privilege in which he has a concrete interest and that there is a challenge or denial of such asserted

"(h) In light of the fact that those voting 'for' the calling of a convention did not constitute a majority of those voting in the election, is the calling of a convention at this time mandatory?

"(i) Can the calling of the Convention be delayed by a period of two years?"

[2] The plaintiffs and the defendants further disagreed as to the correct answers to questions (b) through (g) if it be declared that a delegate is the holder of an office under the Constitution or laws of Maryland.

relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment or decree shall serve to terminate the uncertainty or controversy giving rise to the proceedings." The proceeding in which the Circuit Court granted declaratory relief met the tests of Art. 31A. *Md. Committee for Fair Representation v. Tawes,* 228 Md. 412, 180 A.2d 656 (1962).

Chapter 1 of the Laws of 1967 gave the Court of Appeals its ordinary jurisdiction upon appeal to review the judgment and determination of the Circuit Court for Anne Arundel County. The Court of Appeals exercises appellate jurisdiction only and the legislature cannot confer original jurisdiction on the Court, *Sevinskey v. Wagus,* 76 Md. 335, 336, 25A. 468 (1892), nor require it to decide a moot question or an abstract proposition, *State v. Shields,* 49 Md. 301, 305, (1878), but the legislature may confer the right on this Court to hear appeals in special cases provided appellate judicial functions and powers are left untrammeled. *State v. Northern Central Railway Co.,* 18 Md. 193 (1862), 210; *Prout v. Berry,* 2 Gill 147, 150 (1844). In the present case, as in *Northern Central,* the appellate review authorized by Ch. 1 was the customary review of live, concrete questions fairly presented by the transcript, all of which necessarily were involved in the decision of the trial court, and therefore was permissible.

We pass to the merits. Article 33 of the Declaration of Rights states that no judge shall hold any other office, "civil or military, or political trust, or employment of any kind, whatsoever, *under the Constitution or Laws of this State. . . .*" Article 35 follows to provide that "no person shall hold, at the same time, more than one office of profit, *created by the Constitution or Laws of this State. . . .*" Section 6 of Art. I of the Constitution recites that "every person elected, or appointed, to any office of profit or trust, *under this Constitution, or under the Laws, made pursuant thereto,*" shall take a prescribed oath of office under which he swears that he will not receive the profits "of any other office" during the term of his acting in the office for which he is qualifying. Section 11 of Art. III declares ineligible as a senator or a delegate all ministers and all other persons holding "any civil office of profit, or trust, *under this State*" (except justices of the peace). Section 17 of Art. III prohibits a member of the General Assembly during the term for which he was elected, from serving in "any office, which shall have been created, or the salary, or profits of which shall have been increased, during such term." (All emphasis has been supplied.)

The need for and purpose of these provisions manifestly was to protect against conflicts of interest, self aggrandizement, concentration of power, and the blurring or obliteration of the doctrine of separation of powers, in the performance by the agents of the people of their delegated authorities to exercise the executive, legislative and judicial functions of the organized government. We think the incompatible and barred offices were intended to be only those created by the Constitution or by the laws enacted pursuant to the Constitution in the exercise of some part of so much of the sovereignty of the people as was delegated to the formal organization which the people of Maryland constituted the current government of the State by the adoption of the Constitution. Section 56 of Art. III of the Constitution of Maryland confers upon the General Assembly "power to pass all such Laws as may be necessary and

proper for carrying into execution the powers vested, by this Constitution, in any Department, or office of the Government, and the duties imposed upon them thereby." The delegated legislative powers of the General Assembly are plenary, except as limited by the Federal and State Constitutions. *Md. Committee for Fair Representation v. Tawes,* 228 Md. 412, 439, 180 A.2d 656, 670 (1962).

Commentators, lay and judicial, concur almost unanimously in the view that the general power of a state legislature to make, alter and repeal laws, pursuant to the constitution by which the people created the legislature, does not include the power or the right to make or remake the fundamental law, the constitution. A state constitution may aptly be likened to a legislative act enacted directly by the people themselves in their sovereign capacity as a political entity (that is, by the voters, for "the original power of the people, in their aggregate political capacity, is delegated in the form of suffrage to such persons as they deem proper," *Anderson v. Baker,* 23 Md. 531, 619), and therefore is the fundamental, extraordinary act by which the people establish the structure and mechanism of their government. COOLEY, CONSTITUTIONAL LIMITATIONS 355 (8th ed. 1927); JAMESON, CONSTITUTIONAL CONVENTIONS 84-86, 422, 586 (1887); HOAR, CONSTITUTIONAL CONVENTIONS 80-82 (1917); 16 AM. JUR. 2d, *Constitutional Law* § 26; *Staples v. Gilmer,* 183 Va. 613, 623, 33 S.E.2d 49, 53, 158 A.L.R. 495 (1945); *Ellingham v. Dye,* 178 Ind. 336, 99 N.E. 1 (1912); *State v. Cox,* 8 Ark. 436, 444 (1848). Essentially, a constitution is fundamental legislation directly by the people acting politically in their sovereign capacity, while a law is rule of conduct prescribed by the legislative agents of the people under and subject to the delegated limitations of the previously ordained superior legislation, the Constitution.

This Court has recognized that laws and legislative actions relating to amendment or revision of the constitution differ greatly and significantly from one another.

In *Warfield v. Vandiver,* 101 Md. 78, 113-116, 60A. 538 (1905) the Legislature, acting under Art. XIV of the Constitution, proposed an amendment to Art. I of the Constitution relating to the elective franchise and directed that the proposed amendment be submitted to the voters of the State in a prescribed manner at the next general election. The governor refused to submit the amendment because the legislative proposal had not been submitted to him for signature or rejection as an ordinary bill would have had to be. The case was argued well and fully by leading lawyers of the time. Chief Judge McSherry, for the unanimous Court on this point, in holding that submission to the governor was not required of a proposed constitutional amendment because it was not a potential law enacted under the Constitution but a potential part of the Constitution, said (pp. 114-116 of 101 Md., p. 540 of 60A.);

> "The distinction between a *bill* and a *law* is carefully maintained throughout the aforegoing section [§ 17 of Art. II providing for the executive veto]; and the plain and clear provisions of the section make it morally certain that it has no application to a proposed Constitutional Amendment. This is the only provision in the organic law except section thirty of Article three, which confers upon the Governor authority to sign or veto a bill. If a proposal to amend the Constitution is not embraced by either of

those sections, then Article 14 is unaffected by them; and as its terms do not include the Governor he has no power to approve or veto a measure propounded under it. . . . A bill proposing an amendment to the Constitution and nothing more, would *not* become a *law* if signed by the Governor nor would it become a *law* if passed by three-fifths vote over his veto; because it is required to be submitted to the people for *their* adoption or rejection; and not until it shall appear that a majority of the votes cast at the polls on such proposed amendment are in favor thereof can the Governor proclaim that it has been 'adopted by the *people* of Maryland as *part of the Constitution.*' It is not operative unless adopted by the *people*—it is a mere proposal to amend until sanctioned by them; and when adopted by *their* votes it becomes, not a *law* in the sense in which that word is used in the Constitution, but a '*part of the Constitution.*' . . .

"The people are the source of power. It is *they* who make and abrogate written constitutions, and when in the organic law which have chosen for themselves they have designated the General Assembly, consisting of a Senate and a House of Delegates and nothing more, to be the agency for propounding amendments to the Constitution; no executive has the right to step in between that agency and the people themselves and to say that without *his* approval *they* shall not be permitted to express *their* views on measures amendatory of the organic law. . . . Whilst the Governor is entrusted with power to protect the people against hasty *legislation,* he is not given a prerogative to guard them against *themselves* in the matter of amending the organic law. He is not superior to them. It is *their* will which *he* must obey—it is not *his* will which *they* must subserve.

"Article 14 is a separate and distinct subdivision of the Constitution. It deals, in its first section, exclusively with the process of amending the Constitution and has no relation whatever to legislation. [It deals in its second section with taking the sense of the people every twenty years on calling a constitutional convention to undertake a general revision of the Constitution.] The other provisions in other articles to which allusion has been made are confined to *law making—This article* (emphasis supplied) is restricted to *Constitution* making; and the two subjects are widely disconnected in location and in substance."

The interpretation Dodd in his book THE REVISION AND AMENDMENT OF STATE CONSTITUTIONS, 150 (1910), gives the *Vandiver* decision is that "The Maryland Court said that the word 'bill' was used in the amending clause simply to express a proposal or project, and not in the same manner as the word was used elsewhere in the constitution to refer to bills which should become law by legislative enactment and executive approval."

The legislature may not make the effectiveness or validity of a general law depend on its approval by the voters of the State, *Brawner v. Supervisors of Elections,* 141 Md. 586, 19 A. 250 (1922), because the people bindingly delegated to the legislature the power to make laws, reserving no part of such power to themselves (except by way of referendum), and the delegated power may not be redelegated. In contrast, neither piecemeal amendments of the Constitution nor total amendment by way of adoption of the recommendations

of the constitutional convention can take effect until the voters have given their approval—to piecemeal revision in the manner provided in § 1 of Art. XIV, and for total revision as provided in § 2 of Art. XIV, and as the legislature provided in Ch. 4 of the Laws of 1967, passed since the decision below and the affirmance by this Court, or, mayhap, as *Anderson v. Baker, supra,* at p. 616 of 23 Md. suggests, by acquiescence of the people, as happened in the case of the Constitution of 1776.

While the power of remaking the constitution is not in the legislature, nevertheless, the legislature may act to provide the mechanics for changes of the constitution by the people. To use the legislature, a body created by the constitution, to provide the mechanics and sinews for changing that constitution by ascertaining the will of the people, for the election of delegates and the submission of their work to the people and at the same time to class their legislative actions as not encompassed by the provisions of the constitution as to laws may at first thought seem so illogical as to be unsound. Yet it has been accepted generally as sound and proper. "A supraconstitutional right requiring the assistance of constitutional authority is certainly an anomaly, and yet that is what exists in the case of conventions." HOAR, *op. cit,* p. 76. This technique is but part of the exercise of the fundamental right of the people to change their constitution whenever and however they deem fit; this right derives not from constitutions, but is a retained inherent right above and beyond the constitution, and therefore actions of the legislature making available and supporting the exercise of that right—which with considerable perception and accuracy has been termed peaceful revolution[3]—are actions in exercise of the people's reserved powers of sovereignty and not actions in exercise of powers delegated by the Constitution. The Court, in *Anderson v. Baker, supra,* suggested, if it did not hold, this when Judge Bowie said (p. 616 of 23 Md.):

> "The powers of a Convention of the people of a State assembled to frame a form of Government, are no where defined. It is the right of the people to alter or abolish, or institute a new Government, 'laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.' The Convention is the depository of the residuary or reserved sovereignty of the people, unlimited, except so far as restrained by the Constitution of the United States, and the moral law. Whether this action is dependent upon the subsequent ratification of the people or not, is not clearly established; but when ratified and adopted, or acquiesced in, their acts are unquestionably within the limits prescribed. The wisdom or wantonness of the act, its effect upon majorities or minorities, are not subjects of judicial cognizance. These are determined by their adoption."

Maryland consistently has recognized and acted upon the principle enunciated in *Anderson v. Baker* that the people of the State have the fundamental right to alter, modify or abolish and replace their form of government according to their sovereign pleasure.

[3] JAMESON, CONSTITUTIONAL CONVENTIONS at 303 quotes Mr. George M. Dallas as saying in 1836 of the forthcoming Convention in Pennsylvania: "A Convention is the provided machinery of peaceful revolution. It is the civilized substitute for intestine war. . . . When ours shall assemble, it will possess,

PROCEEDINGS OF THE CONVENTION OF THE PROVINCE OF MARYLAND HELD IN THE CITY OF ANNAPOLIS IN 1774, 1775, AND 1776, at 184-89 (1836), reveals that on July 3, 1776, the Congress or Convention of Maryland, which had been the acting government for some two years, resolved "That a new convention be elected for the express purpose of forming a new government, by the authority of the people only, and enacting and ordering all things for the preservation, safety and general weal of this colony" and that all freemen above twenty-one, owning fifty acres of land or property "in this colony" of forty pounds sterling "be admitted to vote for representatives to serve in the said convention" and that "any person qualified as aforesaid to vote, may be elected a member of the intended convention" if he had resided in the colony for a year preceding the election. Members of the armed forces "of this province" were expressly disqualified.

The election was set for August 1, 1776, and the resolving Congress or convention dissolved itself and abrogated its powers and authority as of that date. The voters duly elected the delegates to the new convention, including a number who had been members of the previous convention.[4] The constitution they produced, under which the State was governed until 1851, was not formally ratified by the people, but its making had been authorized by them and it was not finally adopted until their views were known and respected. DODD, THE REVISION AND AMENDMENT OF STATE CONSTITUTIONS 12-13 (1910), indicates

within the territory of Pennsylvania, every attribute of absolute sovereignty, except such as may have been yielded and are embodied in the Constitution of the United States."

Mr. Philip B. Perlman, an oustanding Maryland lawyer who was later Solicitor General of the United States, in addressing the Maryland Senate Committee on Amendments to the Constitution and the House Ways and Means Committee on March 19, 1931, JOURNAL OF PROCEEDINGS OF THE SENATE OF MARYLAND 517, 533 (1931), quoted another great Maryland lawyer Mr. Reverdy Johnson to the same effect. Mr. Perlman said:

"The Constitution of 1867 dropped the method of amending contained in Section 2 of Article XI of 1864, and so, at present we may amend the Constitution by Acts of the General Assembly submitting amendments to the people, or we may call a convention by the vote directed to be held every twenty years. These methods are set forth in the Constitution. But there is still another way to constitutional revision sanctioned by precedent in this State, because in Maryland the provisions in the Constitution limiting the methods of calling Constitutional Conventions have never been considered binding.

"Down through the years comes to us the voice of the great Maryland lawyer, Reverdy Johnson, who defended the legality of the Convention of 1851, called when the Constitution contained no authority for such a convention. And these are his views:

> 'No man denies that the American principle is well settled, that all governments originate with the people, and may by like authority be abolished or modified; and it is not within the power of the people, even for themselves, to surrender this right, much less to surrender it for those who are to succeed them. A provision, therefore, in the Constitution of any one of the United States, limiting the right of the people to abolish or modify it, would be simply void. And it was upon this ground alone that our Constitution of '76 was superseded by that of '51.'

"Referring again to the American principle that the people have a right to change their government, he said:

'In its nature it is revolutionary, but, notwithstanding that, it is a legal principle.'

Letter to Wm. D. Bowie and others, dated October 7, 1864."

[4] Including, it would appear from the PROCEEDINGS OF THE CONVENTION OF THE PROVINCE OF MARYLAND HELD IN THE CITY OF ANNAPOLIS IN 1774, 1775 AND 1776 (1836), Richard Barnes, Charles Carroll, barrister, Samuel Chase, Jeremiah T. Chase and Matthew Tilghman who presided over both the resolving Congress and the Convention it called.

that there was direct popular influence on the forming and final adoption of the Constitution, saying:

> "That some of the people of this state took a lively interest in the organization of government is shown by the fact that B. T. B. Worthington, Charles Carroll, barrister, and Samuel Chase, the two latter undoubted leaders and members of the committee to prepare a form of government, resigned from the convention because they had received 'instructions from their constituents, enjoining them, in framing a government for this state, implicitly to adhere to points in their opinion incompatible with good government and the public peace and happiness. [PROCEEDINGS OF THE CONVENTION OF THE PROVINCE OF MARYLAND HELD IN THE CITY OF ANNAPOLIS IN 1774, 1775, and 1776, at 222, 228 (1836)[5]]. Although there was no formal reference of the first constitution of Maryland to the people, the action taken by the convention on September 17, 1776, probably served a similar purpose. The committee had reported to the convention a proposed bill of rights and constitution; action upon this report was postponed until September 30th, and it was resolved 'that the said bill of rights and form of government be immediately printed for the consideration of the people at large, and that twelve copies thereof be sent without delay to each county in the state.' [*Id.* at 258.]"

The Constitution of 1776 provided in § 39 that members of the General Assembly could not hold any other office of profit, a provision proposed and adopted by a convention in which sat members of the prior legislative body. It also provided in Art. 59 that it could not be altered except by Act of two successive legislatures, the second of which had to be after a new election. Yet the legislature in 1850 passed an act (Laws of 1849, Ch. 346) calling for an election to determine whether the people wanted a constitutional convention called and providing, if they did, for the election of delegates and a subsequent election at which the new constitution would be passed on by the people. Chapter 346 itself provided that members of the General Assembly "shall be eligible to a seat in the convention to assemble as hereinbefore prescribed, without affecting the tenure of their respective offices." Some—certainly nine, perhaps eleven, members of the General Assembly served in the convention notwithstanding the provision of § 39 of the Constitution of 1776.[6] The 1851 Constitution came into lawful and effective being by the action of the people, although not in the way prescribed in the then existing constitution. There seems to have been no challenge to the act calling the convention or the fact that members of the General Assembly sat as delegates.

The Constitution of 1851 provided in Art. 32 of the Declaration of Rights that "no person ought to hold at the same time more than one office of profit, created by the Constitution or laws of this State. . . ." In the midst of the dissension created on the one hand by Mary-

[5] It would appear that, although a special election was suggested to replace them, Worthington, Carroll and Chase reconsidered their resignations and either returned to or remained in the Convention. PROCEEDINGS OF THE CONVENTION OF THE PROVINCE OF MARYLAND HELD IN THE CITY OF ANNAPOLIS IN 1774, 1775, and 1776 AT 237, 241, 248 (1836).

[6] The roster of delegates elected to serve in the 1850 Convention lists nine delegates with names identical to those of nine incumbent members of the 1849 General Assembly and two with the same surname.

land's allegiance to the Union and on the other by sympathy and loyalty to neighbors, friends and relatives of the South, the General Assembly enacted Ch. 5 of the Laws of 1864 providing for a special election "for the taking of the sense of the people upon the call of a Convention to frame a new Constitution and Form of Government for this State" and at the same election to provide for the election of delegates to the convention. This call for a convention was not under or in accord with the Constitution of 1851 which provided in Art. XI for the taking of a vote on the question of calling a constitutional convention after each ten-year federal census, the vote to be taken at the election for delegates to the General Assembly. If the vote turned out aye, the legislature then was to provide for the election of delegates. There was no other provision for participation by the General Assembly in the amendatory process. The records show that fifteen members of the General Assembly were elected at a special election not provided for by the then constitution and sat as delegates. Chapter 5 of the Laws of 1864 provided that "any Senator or Delegate may be eligible to a seat in said Convention." The constitution proposed by the convention was approved only by counting in the absent soldiers' vote which was declared to be almost unanimous in approval. ANDREWS, HISTORY OF MARYLAND 554 (1929).

The Declaration of Rights of the 1864 Constitution, Art. 35, prohibited any person from holding more than one office of profit. By Art. XI it provided three ways of amendment. One was by passage of particular amendments by the Legislature with submission to the voters for ratification. The second provided that, whenever two-thirds or more of the General Assembly thought a convention was necessary, the question be submitted to the people and, if the people agreed, there should be an election of delegates to the convention. The third provided for the taking of the sense of the people every twenty years on the point at a general election and a subsequent legislative response to a favorable vote by the calling of a convention and the election of delegates.

The 1867 convention came about largely from the desire of the people to do away with the test oath required for suffrage by the 1864 Constitution which was approved as to legality in *Anderson v. Baker, supra.* So great was the popular pressure for quick action that the legislature again ignored the three ways of proceeding set out in the 1864 Constitution and by Ch. 327 of the Laws of 1867, called for a "vote on the question of a call of a Convention to frame a new Constitution and form of Government" and for the assembling of a convention and the election of delegates (in which clergymen, members of Congress, judges, state's attorneys and other officers, but not legislators, could not seek election as delegates). Four members of the legislature of 1867 served as delegates to the Convention of 1867 including the president of the Convention, Richard B. Carmichael, a resident of Queen Anne's County who had been dragged from his judicial bench in Talbot County in 1862 by Union soldiers and put in prison (having finally been released without being brought to trial).

The Convention of 1867 and the subsequent approval of the voters produced the constitution under which, with amendments, we have since lived. The three earlier constitutions each had provided for alteration or change as therein specified. Perhaps because these prior constitutional provisions had successively been honored in the breach more

than in the observance, when the Constitution of 1867 was proposed and adopted, it made no provision for complete amendment save to provide (§ 2 of Art. XIV) that it should be the duty of the General Assembly "to provide by Law" for taking at the general election of 1887 "and every twenty years thereafter" the sense of the people in regard to calling a convention for altering the constitution (the present section, amended in 1956, makes 1970 the next year for a taking of the sense of the people) and, if the people vote for a convention, to provide for its assembling and the election of delegates. The sense of the people to call a convention has on several occasions been ignored by the legislature ostensibly, at least once, because of a legal opinion that a majority of the voters voting at the general election must ask for a convention and this had not occurred although a majority voting on the particular question of whether to call a convention had approved a call.

Instead of providing for required ways for complete revision or amendment under its terms, the Constitution of 1867 by Art. 1 of the Declaration of Rights set forth ringingly:

> "That all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have at all times, the inalienable right to alter, reform or abolish their Form of Government, in such manner as they may deem expedient."

The people of Maryland from 1776 until today have shown that they concur in the generally prevailing view, which we believe to be sound, that the people retain the sovereign power to rewrite their constitution, that the legislative processes which lead to and assist in the exercise of that power are not a part of the previously bindingly delegated powers conferred on the legislature by the people, that those who are selected to sit in convention and do the rewriting of the Constitution are selected directly by the people and therefore are the direct agents of the people, rather than agents of the organized government, which is the State. The people also have shown that in their opinion, which we share, the offices which are rationed by the constitution one to a customer or the office which may not be held by one who helped create the office are offices which are established by the Constitution or by a law which implements or aids the execution of executive, legislative or judicial functions created by the Constitution, and that an agent of the people who helps create a new constitution does not hold an office within that category. These prior views and actions of the people are entitled to great respect and have aided us greatly in reaching the conclusion that a delegate is not a constitutional officer.

More support for that view is furnished by a consideration of the guiding standards that the cases have evolved to test whether a position is an office. These tests were reiterated in *Moser v. Board of County Com'rs of Howard County,* 235 Md. 279, 281, 201 A.2d 365, 366 (1964), in this wise: 1. the position was created by law and casts upon the incumbent duties which are continuing in nature and not occasional; 2. the incumbent performs an important public duty; 3. the position calls for the exercise of some portion of the sovereign power of the State; 4. the position has a definite term, for which a commission is issued, a bond required and an oath required; 5. the position is one of dignity and importance.

Certainly a delegate to a constitutional convention performs a highly important public duty of great dignity. However, the position he holds was not, under the principles which we see as controlling, one created by law as the term law is used in the definition. The duties a delegate performs are in a sense "continuing in nature and not occasional" and in a way the position "has a definite term," but only four constitutions have been adopted in Maryland in one hundred ninety-one years and the making of a constitution which, like the century plant, has taken a hundred years to bloom may fairly be said to be occasional. A delegate to a convention, like the male honeybee who mates and dies (MAURICE MAETERLINCK, THE LIFE OF THE BEE 194 (1964)—"the unique kiss of an instant that shall wed him to death no less than to happiness"), performs his creative duty and then ceases to exist as a public functionary since the position of delegate to the convention of which he is a member ends with the convention. The idea of continuity contemplated by the ordinary test for an office is lacking in the case of a delegate to a convention.

Most importantly, a delegate does not exercise any part of the sovereign power of the State—that is, any part of the sovereignty delegated by the people through their constitution to the executive, legislative or judicial branches of the government, even though, we may assume, he does exercise some part of the sovereign power retained by the people and by them committed to him to help create a new constitution.

Various courts have shared the concept we hold of the status of a delegate. In *State v. Doyle* 138 La. 350, 352, 70 So. 322, 323 (1915), it was said:

> "Such delegates [to constitutional conventions] are agents of the people, chosen to represent their constituents for a particular public purpose. They have never been styled officers, and hold no office in the sense of the Constitution. A constitutional convention is not a co-ordinate branch of the government. It exercises no governmental power, but is a body raised by law, in aid of the popular desire to discuss and propose amendments, which have no governing force as long as they remain propositions."

See also *State v. Rogers* 138 La. 867, 70 So. 863 (1916) and *Baker v. Moorhead* 103 Neb. 816, 174 N. W. 430, 432 (1919) ("They [the delegates] are not constitutional officers in a strict sense; they are officers who create a Constitution, rather than officers who are created by the Constitution.") In *Chenault v. Carter* (Ky.), 332 S. W. 2d 623, 626 (1960), the Court held that the choice of whether a convention should be called rested ultimately entirely with the electorate and said: "The delegates to the Convention are the agents not of the legislature, but of the people themselves." *Frantz v. Autry* 18 Okla. 561, 91 P. 193 (1907), held that (p. 202):

> ". . . In a territory, the source of all power is Congress. But in the formation of a Constitution and state government the power emanates from the people. The delegates to the convention were not the agents or representatives of Congress [i.e., the existing government] but they were the immediate agents and representatives of the people of the two territories. They derived their power and authority from the people in their sovereign capacity."

HOAR, op. cit. p. 186, in indicating disagreement with the position of Jameson

(*op cit.* pp. 317-20) that a delegate to a convention is an officer, says:[7]

> "The position of delegate to the Illinois convention was undoubtedly a position of public trust, and even a public office; but was not, if we regard such conventions as extraconstitutional, a position under the constitution. When a constitution refers to the incompatibility of offices, such provisions should be construed as relating solely to positions under the constitution itself and not to apply to any other position unless clearly so stated."

Hoar then quotes an opinion of an Attorney General of Massachusetts as follows (p. 187):

> " 'It is my view that the word "office," as used in article VIII of the Amendments, refers to a position the incumbent of which exercises some power of government, and not to the position of a person selected to act in an advisory capacity in framing a scheme or change of government to be submitted to the people for adoption or rejection.' "

Hoar comments:

> "It does not appear necessary to debase the convention in this way in order to reach his [the Attorney General's] conclusion. It would be sufficient to hold that the word 'officer' in the constitution means *constitutional* officer."

The disposition of the matters involved in questions (h) and (i) requires little discussion. The form of both questions shows that necessarily they were submitted by the legislature on the premise that it, in its discretion, could either call or not call a convention "at this time" or delay the call for two years. The parties, we must assume, proceeded before the Circuit Court on the agreement that this premise which was implicit in questions (h) and (i) was correct for Judge Evans in his opinion said: "It is undisputed that the General Assembly has the inherent power to call a Constitutional Convention at any time."[8]

In answering the claim that the calling of a convention was not mandatory because the number of voters favoring a convention was not a majority of all who voted on September 13, and therefore the vote was not in favor of a convention, Judge Evans pointed out that the election was not held pursuant to Article XIV, § 2, of the Constitution but by Chapters 500 and 501 of the Laws of 1966, enacted under the inherent power to call a convention at any time and the provisions of § 2 of Art. XIV did not apply, and that the election was a special election at which the only issue presented was whether or not to call a convention and those favoring the

[7] Jameson devoted his book to showing that the Illinois Legislature was superior to and supreme over the pending Illinois constitutional convention and this devoutly missionary point of view colored his reasoning and conclusions on many points.

[8] The authorities almost unanimously agree that a state legislature has the inherent power to call for a convention at any time, where the constitution is silent on the subject or where a permissive periodic interval for such a calling is established in the existing constitution. See JAMESON, CONSTITUTIONAL CONVENTIONS, §§ 219, 394-403, 570, 571, 574 (1887); DODD, THE REVISION AND AMENDMENT OF STATE CONSTITUTIONS 44 (1910), ("It has now become the established rule that where the constitution contains no provision for the calling of a Convention, but has no provision expressly confining amendment to a particular method, the legislature may provide by law for the calling of a Convention"); Ch. V (1917); 85 (8th ed. 1927); *In re Opinion to the Governor*, 55 R.I. 56, 178 A. 433 (1935); *City of Bessemer v. Birmingham Electric Co.*, 252 Ala. 171, 40 So.2d 193, 197 (1949).

call did constitute a majority of those voting at that election. He said:

"The use of the words 'special election' throughout these two Acts [Chapters 500 and 501 of the Laws of 1966] makes it clear that the referendum as to the calling of a Convention was not part of the primary election. It was an entirely separate election, at which only the one question was in issue. The majority vote on that one question constituted a majority vote of the entire election. Persons unaffiliated with either political party were permitted to vote on this one question; this makes inescapable the conclusion that it was not part of either party primary, but a separate special election.

"Several courts have sustained the proposition that a special election may be held concurrent with a general election without losing its separate and special character. In *Houston v. Boltz* 169 Ky. 640, 185 S. W. 76 (1916), a special election to approve the issuance of bonds, though held simultaneously with a general election, was still declared to be special. The Court stated, at page 78:

It would seem, therefore, that holding the election on a day different from the regular election day is not one of the essentials of a special election. When, therefore, section 157a of the Constitution provided that the vote on the road bond issue should be taken at a special election, held in such manner as may be provided by law, and the law upon the subject does not require the election to be held upon a day different from the general election day, it follows that the special election may be held upon the general election day. It is nevertheless a special election, because it has been called for the purpose of voting upon a proposition specially submitted. And we see no reason why the proposition submitted should not be printed upon the ballot used in the general election held upon the same day.

See also *Eberhardt Const. Co. v. Board of Com'rs,* 100 Kan. 394, 164 P. 281 (1917); *Munce v. O'Hara,* 340 Pa. 209, 16 A. 2d 532, 131 A.L.R. 1379 (1940); *Derryberry v. State Board of Election Com'rs,* 150 Tenn. 525, 266 S.W. 102 (1924).

One of the intervenors [the individual defendant] attacked the validity of the special election, contending it was not properly advertised and, therefore, there was only one election and Chapters 500 and 501 did not receive a majority of the votes cast at the election. [The intervenors' argument goes on to say that] the issue not having received a majority of the votes cast, the General Assembly is not required to call a Constitutional Convention.

"Chapters 500 and 501, on their faces, show that they were to be voted on at a special election. The stipulation and exhibits clearly show that if the various advertisements did not meet with the letter of the law, it was substantially complied with and voters in every part of the State received actual notice of the special election. At this point, the law requires no more. [*Dutton v. Tawes,* 225 Md. 484, 171 A. 2d 688 (1961).]

"The character of the referendum as a special election distinguishes it from the referenda held at general elections under Article XIV, Section 2, and makes the majority affirmative vote a direct mandate of the people.

"The final question to be considered is: (i) can the calling of the

Constitutional Convention be delayed by a period of two years?

"By enacting Chapter 501 of the Acts of 1966, the General Assembly put to the electorate the question 'whether there shall be called a Convention not earlier than 1 September 1967 and not later than 1 September 1968,' and by enacting Chapter 500, put to the electorate the question whether the Convention shall be assembled on 13 September 1967. Both Chapters 500 and 501 were approved by the voters by a 5-to-1 vote. The Convention was called by the legislature and confirmed by the people. The General Assembly cannot ignore this mandate.

"It is true that the General Assembly did not have to take the sense of the people in 1966. But having submitted the question to the people in proper legal fashion, it bound itself to the mandate expressed by them. The people have spoken in clear and unmistakable terms, and the legislature is bound to obey. The only thing remaining to be done is to provide for the election of delegates."

We agree generally with Judge Evans' views on questions (h) and (i) and from this and what we have said earlier in this opinion it is apparent why we affirmed his order that it was mandatory that a convention be called at this time and that the call could not be delayed. Since the passage of the order below and the affirmance in this Court the legislature by Ch. 4 of the Laws of 1967 has provided for the early call of a convention and established the mechanics for the election of delegates on June 13 of this year and their subsequent meeting on September 12. Questions (h) and (i) have in effect become moot and any further discussion of them would not, as we see it, be fruitful.

Order and decree dated February 28, 1967, affirmed.

BARNES, Judge (dissenting):

I dissent because I disagree with the answers given to all of the questions considered in the majority opinion, although I do agree with the majority that the lower court and this Court had jurisdiction to consider and determine the questions propounded for the reasons set forth in the majority opinion. I am of the opinion that both Chapters 500 and 501 of the Acts of the General Assembly of Maryland are unconstitutional as being in conflict with the provisions of Article XIV, Section 2 of the Maryland Constitution providing for taking of the sense of the people of Maryland in regard to the calling of a Constitutional Convention at the general election of 1970.

In my opinion the most important question—inherent in Question (i) propounded to us—is whether Chapters 500 and 501 are *rendered unconstitutional* because they conflict with Article XIV, Section 2 of the Constitution. If these Acts are unconstitutional, obviously the proposed Constitutional Convention cannot be held on September 12, 1967 or indeed, *upon the call of the General Assembly,* until it has taken the sense of the people in regard to such a call at the *General Election of 1970 and a majority of voters at such election shall vote for a convention.* In other words, I would have answered Question (i)—"Can the calling of a Constitutional Convention be delayed by a period of two years?" "Yes, and it *must* be delayed until the conditions required by Article XIV have been fulfilled." It would then not have been necessary to answer any of the other questions at this time.

Both the lower court and the majority of this Court have given primary

consideration to the question of whether or not delegates of the proposed Constitutional Convention would hold no "office under the Constitution or laws of this State" as the most important question presented. Counsel for the original parties also so considered it and the very helpful briefs filed on behalf of those parties gave it careful and exhaustive attention. Counsel for the intervening defendants, however, raised, briefed and argued other questions in regard to the validity of holding the Convention on September 12, 1967.

Although the issue of whether or not delegates are "officers" may well have been of primary importance as a practical political matter—possibly to induce the General Assembly to pass the enabling legislation at the 1967 Session—it is to my mind, rather unimportant so far as the basic constitutional issues are concerned. I say this because even if it had been decided by the majority of the Court that delegates to the Constitutional Convention were such officers, it would not, in my opinion, have prevented the Constitutional Convention from meeting but would only have excluded the present members of the General Assembly and others from being members of the Constitutional Convention, as will be more fully considered when this issue is considered later in this opinion. In view of the fundamental character of the question of the constitutionality of Chapters 500 and 501, I will consider this issue first.

I.

Unconstitutionality of Chapters 500 and 501 of the Acts of 1966 as being in conflict with Article XIV, Section 2 of the Maryland Constitution.

Article XIV of the present Maryland Constitution provides as follows:

"Section 1. *Proposal in General Assembly; publication; submission to voters; Governor's proclamation.*

"The General Assembly may propose Amendments to this Constitution; provided that each Amendment shall be embraced in a separate bill, embodying the Article or Section, as the same will stand when amended and passed by three-fifths of all the members elected to each of the two Houses, by yeas and nays, to be entered on the Journals with the proposed Amendment. The bill or bills proposing amendment or amendments shall be published by order of the Governor, in at least two newspapers, in each County, where so many may be published, and where not more than one may be published, then in that newspaper, and in three newspapers published in the City of Baltimore, once a week for four weeks immediately preceding the *next ensuing general election,* at which the proposed amendment or amendments shall be submitted, in a form to be prescribed by the General Assembly, to the qualified voters of the State for adoption or rejection. The votes cast for and against said proposed amendment or amendments, severally, shall be returned to the Governor, in the manner prescribed in other cases, and if it shall appear to the Governor that a *majority of the votes cast at said election on said amendment or amendments, severally,* were cast in favor thereof, the Governor shall, by his proclamation, declare the said amendment or amendments having received said majority of votes, to have been adopted by the people of Maryland

as part of the Constitution thereof, and thenceforth said amendment or amendments shall be part of the said Constitution. When two or more amendments shall be submitted in manner aforesaid, to the voters of this State at the same election, they shall be so submitted as that each amendment shall be voted on *separately.*

"Section 2. *Constitutional conventions.*

"It shall be the duty of the *General Assembly to provide by Law for taking, at the general election to be held in the year nineteen hundred and seventy, and every twenty years thereafter, the sense of the People in regard to calling a Convention for altering this Constitution; and if a majority of voters at such election or elections shall vote for a Convention,* the General Assembly, at its next session, shall provide by Law for the assembling of such convention, and for the election of Delegates thereto. Each County, and Legislative District of the City of Baltimore, shall have in such Convention a number of Delegates equal to its representation in both Houses at the time at which the Convention is called. But any Constitution, or change, or amendment of the existing Constitution, which may be adopted by such Convention, *shall be submitted to the voters of this State, and shall have no effect unless the same shall have been adopted by a majority* of the voters voting thereon." (Emphasis supplied.)

Article 1 of the Declaration of Rights provides:

"That all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their Form of Government in such manner as they may deem expedient."

Our predecessors have held that the Declaration of Rights and the body of the Constitution are to be construed as one document. *Mayor & C. C. of Baltimore v. State ex rel. Board of Police of City of Baltimore*, 15 Md. 376 (1860), and if the provisions of the body of the Constitution are clear and unambiguous those provisions are to be taken as a limitation upon the general principles declared in the Declaration of Rights. *Anderson v. Baker*, 23 Md. 531, 628 (1865). Construing Article 1 of the Declaration of Rights and Article XIV of the body of the Constitution together, it seems clear to me that a Constitutional Convention can, under Article 1 of the Declaration of Rights be called *by the direct action of the people themselves* at any time. Although this is difficult of practical accomplishment, it could be done, for example, by a petition of a *majority of the electorate* that a Constitutional Convention be called. Action in regard to changes in the Constitution or in the *call* of a Constitutional Convention *by the General Assembly*—as contrasted by direct action by the people themselves—is strictly limited by Article XIV of the body of the Constitution.

Section 1 of Article XIV makes clear and quite definite the procedure to be followed by the General Assembly in *proposing amendments* to the Constitution. This procedure requires an affirmative vote of three-fifths of both Houses in favor of the proposed amendment, recorded in their respective Journals,

adequate publication of the text of the proposed amendment, and submission to the electorate at the *"next ensuing general election,"* for adoption or rejection. Section 1 provides that if a "majority of the votes cast at said election *on said amendment or amendments,"* and if it appears to the Governor that a majority of the votes cast thereon were in favor thereof, the Governor shall declare that the amendment has been adopted, and thereafter, the amendment becomes part of the Constitution. These provisions of Section 1 have been held by our predecessors to be *mandatory* and not directory, *Hillman v. Stockett,* 183 Md. 641, 39 A.2d 803 (1944).

Section 2 of Article XIV mandatorily imposes the duty *on the General Assembly* to take "at the *general election* to be held in the year nineteen hundred and seventy, and every twenty years thereafter, the *sense of the People* in regard to *calling* a Convention for altering this Constitution; and if a majority of *voters at such election* or elections *shall vote for a Convention,* the General Assembly, at its *next* session, *shall provide by Law* for the assembling of such Convention . . . ." When a proposed new Constitution is framed by the Convention it "shall be submitted to the voters of this State, and *shall* have no effect unless the same *shall* have been adopted by a majority of the voters *voting thereon."*

The original provision of Article XIV in the Constitution of 1867 was that the sense of the people should be taken at the general election in 1887 and every twenty years thereafter. The date "1887" was changed to "1970" by an amendment adopted by the electorate in 1956. In other words, the people considered the very problem of a *legislative taking of the sense of the people to call a Constitutional Convention* not quite 11 years ago and decided that no such action by the General Assembly should take place until 1970 *at the earliest.*

This Court has held that the language of the Constitution was carefully chosen by its draftsmen and that the Courts should give great importance to the actual words used in construing the Constitution. *Buchholtz v. Hill,* 178 Md. 280, 13A.2d 348 (1940).

The lower court was of the opinion that the General Assembly had *implied powers* to take the sense of the people at times other than as specifically prescribed for in Section 2 of Article XIV. Curiously enough, the majority of this Court apparently adopts this position and quotes from the lower court's opinion to that effect, notwithstanding the citation in Note 8 of the authorities indicating that such "implied powers" or "inherent power" supposedly exists (quoting from DODD, THE REVISION AND AMENDMENT OF STATE CONSTITUTIONS 44) "where the Constitution contains no provisions for the calling of a convention, but has no provision expressly confining amendment to a particular method . . . ."

As has been pointed out, in the Constitution of 1867 there is *both* a provision "expressly confining amendment to a particular method in Section 1 of Article XIV *and* there is also a provision for the calling of a Constitutional Convention in Section 2 of Article XIV."

It seems manifest that the General Assembly has no "inherent" or "implied" power to do an act *directly contrary to the express provisions of the Constitution itself.* If the contrary should ever be the law, the death-knell of con-

stitutional government will have been sounded, as one of the principal reasons for a written constitution is to impose limits on the power of government in order to protect the liberty of the individual citizen. If the legislative branch of the State government can, at will, disregard express limitations in the Constitution, we will have reverted to the British system of absolute parliamentary supremacy from which I had thought we had happily escaped by the success of the War for American Independence, the establishment of State and the Federal Constitutions and the enforcement of limitations in those documents by the Courts. There simply cannot be any inherent or implied powers in the General Assembly contrary to the express provisions of the Constitution itself.

As Judge Offutt, for the Court, stated in *Brawner v. Supervisors of Elections,* 141 Md. 586, 604, 119 A. 250, 255 (1922):

> "The people adopted the Constitution and the people alone can change it, and while it stands unchanged it is the supreme law binding and controlling this Court as well as every other department of the State's government and its people, and when changed conditions make it desirable to amend its provisions, the amendment must be made in accordance with and not in violation of its mandates."

Judge Delaplaine, for the Court, stated in *Johnson v. Duke,* 180 Md. 434, 442, 24 A.2d 304, 308 (1942):

> "It is the sacred duty of the courts to preserve inviolate the integrity of the Constitution. Hence it would be a violation of their duty to treat the fundamental law as subject to modification except in conformance with constitutional methods."
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> "The Constitution of the State is a higher authority than any act or law of any officer or body assuming to act under it, for such an officer or body must exercise a delegated authority subservient to the basic law by which the delegation was made. In case of conflict the Constitution must govern, and the act or law in conflict with it must be held to have no legal validity."

Jameson on CONSTITUTIONAL CONVENTIONS (4th ed. 1887), §574f, pages 617-618, states the following:

> "To determine the degree of strictness with which constitutional provisions authorizing the call of Conventions must be pursued, in the absence of restrictive words, mandatory in their effect, is more difficult. 1. If the position hereinbefore taken be correct, that a legislature, under our constitutional system, has power to call a Convention to amend or revise the Constitution, though not expressly authorized, the case presented by the facts supposed would be this: A legislature having a general power to call a Convention, at its discretion, is expressly given power to do the same thing under certain conditions. What inference is warranted as to the intention of the people in imposing those conditions? Obviously, that they were not content longer to leave so important a power to the unlimited discretion of the legislature, but

desired to restrict it by express declaration of their will as to the time when, the purpose for which, and the number and character of the voters by whom, a Convention might be called. If this inference be just, the conditions laid down for the exercise of the power become, in effect, positive prohibitions upon its exercise in any other way, in conformity to the maxim, good both in civil and the common law, *expressum cessare facit tacitum.* In this reasoning, the people of the United States have generally, I might say universally, acquiesced, though occasional attempts have been made, under strong temptation, to induce the legislatures of some of the States to discredit it. Thus, the Illinois Constitution of 1848 provided, that whenever two-thirds of all the members elected to each branch of the General Assembly should think it necessary to alter or amend the Constitution, they should recommend to the electors at the next election of members of the General Assembly to vote for or against a Convention; and if it should appear that a majority of all the electors of the State voting for representatives had voted for a Convention, the General Assembly, at their next session, should call a Convention. In 1867, members of the dominant party in the State, desiring an early change of the Constitution, and impatient of the delay necessitated by its strict terms, attempted to carry through an act to call a Convention by what was styled 'a short cut,' that is, upon a vote of the people alone, omitting a reference of the subject to the next session of the General Assembly to make the call, should that vote favor it, as required by the Constitution. Happily, the scheme was defeated, and the wiser course taken of obeying to the letter the supreme law of the State."

Not only is there no implied or inherent power *by the General Assembly* to take the sense of the people and then call a Constitutional Convention otherwise than as provided in Section 2 of the Constitution as a general principle, but the history of Article XIV in prior Constitutions and of its adoption by the Constitutional Convention which drafted the present Constitution of 1867 shows conclusively to me that there was no intention that the General Assembly should have this power.

The Constitution of 1776 contained no provision for the taking of the sense of the people and for the calling of a Constitutional Convention. Article LIX of that Constitution provided that a change in it could be made by a bill passed by the General Assembly and provided it was passed at least three months before a new election of delegates to the General Assembly was confirmed by the General Assembly containing those newly elected delegates. Pursuant to this provision the Constitution of 1776 was amended in 1792, 1795, 1798, 1803, 1805, 1807, 1809, 1810, 1812, 1837 and 1846.

In the Constitution of 1851 the forerunner of Section 2 of Article XIV appeared as Article XI of that Constitution and provided, in relevant part, as follows:

> "It shall be the duty of the legislature, at its first session immediately succeeding ascertaining, at the next *general election* of delegates, the sense of the people of Mary-

land in regard to the calling of a convention for altering the constitution; and in case of the *majority of votes cast at said election* shall be in favor of calling a convention, the legislature shall provide for assembling such convention . . . ." (Emphasis supplied.)

In the Constitution of 1864, Article XI of that Constitution contained three provisions in regard to constitutional changes. Section 1 was almost identical with Section 1 of the present Constitution in regard to amendments to the Constitution.

Section 2, however, was quite significant. It prescribed:

> "Whenever two-thirds of the members elected to each branch of the General Assembly shall think it necessary to call a convention to revise, amend, or change this Constitution, they shall recommend to the electors to vote at the *next election for members of the General Assembly* for or against a convention; and if a *majority of all the electors voting at said election* shall have voted for a convention, the General Assembly shall, at their next session, provide by law for calling the same." (Emphasis supplied.)

Section 2 then provided that the convention shall consist of as many members as there are members of both houses of the General Assembly and that the Convention shall meet within three months of this election.

Section 3 is quite similar to Section 2 of Article XIV of the present Constitution and provided as follows:

> "At the *general election* to be held in the year one thousand eight hundred and eighty-two, and in each twentieth year thereafter, the question 'Shall there be a convention to revise, alter or amend the Constitution,' shall be submitted to the electors of the State; and in any case a *majority of all the electors voting at such election* shall decide in favor of a convention, the General Assembly at its next session shall provide by law for the election of delegates and the assembling of such convention, as is provided in the preceding section; but no amendment of this Constitution agreed upon by any convention assembled in pursuance of this article shall take effect until the same shall have been submitted to the electors of the State, and adopted by a majority of those voting thereon."[1] (Emphasis supplied.)

In the present Constitution of 1867, the substance of Sections 1 and 3 of Article XI of the Constitution of 1864 was retained, but the provisions of Section 2 in regard to submitting the question of a call for a Constitutional Convention by the *General Assembly* to

[1] The report of the Committee on Future Amendments to the Constitution was submitted to the 1864 Convention on May 27, 1864. See PROCEEDINGS OF THE MARYLAND CONSTITUTIONAL CONVENTION, 1864, p. 119. There were attempts to amend the proposed draft by changing the required legislative majority in Section 2 from "two-thirds" to "three-fifths"; an amendment of Section 2 to provide that the legislature should not impose restrictions as to the qualifications of delegates to the Convention; a change in Section 3 from 1882 to 1872 and a change in the 20-year requirement in Section 3 to a 10-year requirement. All of these proposed amendments were rejected by the Convention . Id. pp. 375 to 377. The report of the Committee was adopted as originally submitted by a substantial affirmative vote. Id. p. 388.

the people was entirely eliminated. This can only mean that the draftsmen of the Constitution of 1867 *did not intend* that the General Assembly should thereafter have the power delegated to it by Section 2 of the 1864 Constitution, but should be confined to the power and duty given it by Section 3 of the 1864 Constitution which, in substance, became Section 2 of Article XIV of the present Constitution.

There was good reason to remove the formerly delegated power *to the General Assembly* to submit the issue of a call for a Constitutional Convention at any time to the people.

As several of the authorities cited in the majority opinion indicate, the preparation and adoption of a new constitution is a "peaceful revolution." Revolutions, whether peaceful or accomplished by force, are upsetting, productive of much litigation, expensive and are only resorted to as a last resort when conditions under the established Constitution or government have become so intolerable that a change must be made. As the Declaration of Independence aptly stated: "Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes," and that experience had shown that "mankind are more disposed to suffer, while evils are sufferable, then to right themselves by abolishing the forms to which they are accustomed. . . ." Much of the Declaration of Independence is given over to listing the oppressions, usurpations, cruelties and outrageous conduct by the British Government which justified the Colonies in separating from the mother country.

When the Constitution of 1867 was adopted, Maryland had had *three* Constitutions in sixteen years. This was in itself upsetting to the orderly and regular processes of government. By providing for the submission of *amendments at any time* by the General Assembly and for a taking of the sense of the people for a Constitutional Convention every twenty years and the calling of such a Convention if a majority of votes cast at a *general election* favored such a call, the people had given all of the power necessary or thought to be expedient for changes in the Constitution. All other power for such changes was reserved to the people themselves and could not be exercised by the General Assembly.

As indicated in the majority opinion, the power to amend the 1867 Constitution has been freely—in the opinion of many, too freely—exercised by the General Assembly, there having been 203 amendments adopted since 1867. This is an average of over two a year since its adoption. This hardly indicates that the will of the people in the face of changed conditions has not been made effective. The remarkable programs of public works and other activities by various State administrations operating under the present Constitution conclusively indicate that the governmental powers granted by the present Constitution are ample to insure the growth and well being of proper State programs. Nothing appears in the record in this case—nor have I heard—any contention that any citizens have been oppressed, any rights denied, any legitimate interests adversely affected or impaired by the present Constitution, as so amended. If any such conditions should arise, undoubtedly they could be cured by amendment. It had been alleged that the present Constitution is not a tidy instrument, that it is too long, too

detailed, contains unclear and obsolete language and the like. But these adverse criticisms—if legitimate—in my opinion, go to matters of form and not to matters of substance. In any event, they are such matters as could well wait until 1970 in order to ascertain whether a *majority* of the voters at a *general election* believe that they are sufficiently important to justify the calling of a Constitutional Convention to draft a new Constitution, with its attendant expense, subsequent litigation and generally upsetting effect. No doubt the draftsmen of the 1867 Constitution had these factors in mind, and deliberately removed from the General Assembly and reserved to the people themselves, the power to issue a call for a Constitutional Convention except as provided in Section 2 of Article XIV. The authorities appear to confirm my opinion in this regard, as the maxim, *"Expressio unius est exclusio alterius"* is applicable to the construction of constitutional provisions. See *O'Connor v. Armstrong,* 299 Pa. 390, 149 A. 655 (1930); *Harbert v. Harrison County Court,* 129 W. Va. 54, 39 S.E.2d 177 (1946); *Yelle v. Bishop,* 55 Wash.2d 286, 347 P.2d 1081 (1959); *Whitney v. Bolin,* 85 Ariz. 44, 330 P.2d 1003 (1958). See also 16 C.J.S. *Constitutional Law* § 21, page 89.

It should be observed that Chapter 501 of the Acts of 1966 purports "to take the sense of the voters of this State," as appears in the title and the body of the Act, using almost the same language as appears in Section 2 of Article XIV of the Constitution.

II.

The calling of a Constitutional Convention is not mandatory because those voting "for" the call did not constitute a majority of those voting at the election.

This issue was presented by Question (h). As I have already indicated that the Constitutional Convention cannot at this time be called *at all,* it is, of course, not necessary to answer the question. Since the issue was pressed and argued by the intervenors, I think it should be answered.

In my opinion, apart from the unconstitutionality of Chapters 500 and 501 already mentioned, I am of the opinion that the General Assembly had no power whatever to take the sense of people at any *special election,* whether conducted by itself or as a part of a primary election. The "sense of the voters" means the sense of a majority of the electorate. Our past experience has indicated that the majority of the electorate is present at *general elections* and not at primary or special elections. Assuming, for the argument, that the General Assembly had inherent or implied power to issue the call, there is most certainly no inherent or implied power to submit the issue at any election other than a general election. Without exception in every prior constitution both amendments and the taking of the sense of the people for a Constitutional Convention have been required to be presented to the electorate at a general election. Laws referred to the people by Referendum pursuant to Article XVI of the present Constitution must be submitted to the electorate at a general election. Why? Obviously because such an important change in the basic law of this State should not be made or brought to pass by a small minority of the electorate. To permit submission of such basic constitutional changes at other than a general election frustrates the very concept of majority rule. The requirement of the necessity of a majority vote of the electorate at a general election is even more important

when considering the call of a Constitutional Convention and without exception every Constitution providing for such a call has required that a majority of those voting at the general election vote in favor of the call.

In the course of debate on this question at the Constitutional Convention in 1851, Alexander Randall of Anne Arundel County aptly observed:

> "If there should be a majority of the people in favor of such a change, and desirous of calling a Convention, and if such Convention should be called, then the chances were greatly in favor of the adoption of the Constitution framed by it. On the other hand, the chances were very much against the adoption of a Constitution, the work of a Convention called into existence by a mere majority of the voters who may have cast their votes in favor of such a course over those who cast their votes against it, regardless of the fact that those who voted for the Convention, and it may be united even with those who voted against it, that all who then voted on the subject did not constitute a majority of the voters of the State." 2 DEBATES OF MARYLAND CONSTITUTIONAL CONVENTION, 1851, 378.

I know of no authority for the submission of a call of a Constitutional Convention at any election other than a general election and none is cited in the opinion of the lower court or in the majority opinion of this Court. The results in this very case graphically show that only a small minority of the electorate who voted in the general election of November 8, 1966, or even of those who voted in the "primary-special" election of September 13, 1966, voted in favor of the call. From Exhibit 1 filed in the lower court by Joshua F. Cockey of B., the individual intervenor, and other data, the following appears, taken from the figures prepared by the Office of the Secretary of State on the September 13, 1966 Maryland Primary Election and on the November 8, 1966 General Election.

In the Primary Election of September 13, 1966, there were cast, statewide, for Governor a total of 609,747 votes, while only 191,960 votes were cast on the Convention Question, so that only approximately 31.5 per cent of the votes cast at that election were cast either for or against the calling of a Constitutional Convention. Of the 191,960 votes on the question 160,280 were for the call and 31,680 were against, so that only approximately 26.3 per cent of those voting at the primary election for Governor voted in favor of the call. Only 11.5 per cent of the registered voters of Maryland as of August 15, 1966 voted for the call of a Convention.

At the general election of November 8, 1966, 919,760 votes were cast for Governor. Of those voting at that election, 538,360 voted on the Bay Bridge Question presented by referendum, or 58.5 per cent of those voting for Governor in that election. If the proposed call had been presented to the voters at the general election of November 8, 1966, a majority of 459,881 votes would have been required for the approval of the call—a far cry from the 160,280 votes cast for it at the primary election of September 13, 1966. What possible legal justification can there be for purporting to take the "sense of the voters" at a "primary-special" election—known to have a

smaller vote than the vote cast at a general election—when only some eight weeks later there would be a general election in the State at which the call with other issues, could have been submitted, and the real sense of the people taken? I conclude that the sense of the voters has not yet been taken or received by the General Assembly and the attempt to take it at a "primary-special" election was unconstitutional and abortive.

It seems clear that under a provision for the calling of a Convention if the majority of the electors voting at a general election shall decide in favor of calling a Convention, the proposal must be adopted by a majority of the qualified electors voting at the election and not merely by a majority only of the electors voting on the proposal itself. See *Stoliker v. Waite, 359* Mich. 65, 101 N.W.2d 299 (1960); *People v. Alger,* 323 Mich. 523, 35 N.W.2d 669 (1949).

Assuming *arguendo,* that Chapters 500 and 501 of the Acts of 1966 were constitutional, in my opinion, the intervenors are correct in their position that in the absence of a majority of those voting in the election of September 13, 1966, it was not mandatory upon the General Assembly to call the Constitutional Convention. The call was submitted to the voters at the primary election of September 13, 1966. This election was in fact all one election and it cannot be fragmented by calling it a special election to be held at the same time as the primary election. There were only one set of voting places, one group of election officials and, most importantly, the proclamation of the election was not that the call was submitted at a *special election* but was submitted at the *primary election* at *which election* the issue should be submitted. The heading of the proclamation was as follows:

> "Proclamation of the Governor of Maryland directing publication of bill to *submit to voters at time of primary election, question of calling Convention* to frame a new Constitution for Maryland." (Emphasis supplied.)

In the Governor's order, it was provided:

"I . . . do by my proclamation, order that the aforegoing bill be published . . . not later than *twenty days prior to the primary election* to be held on September 13, 1966, *at which election the proposed question shall be submitted* . . . to the qualified voters of the State for adoption or rejection." (Emphasis supplied.)

It is true that in the body of the bill published, Section 1 of Chapter 501 is printed which refers to a special election, but it seems clear to me that the intervenor has established that the proclamation as a whole indicated that the issue of the call was to be submitted at the primary election and that the independent voters—not allowed to vote at a primary election—could well have concluded that they could not vote at that election.

In addition to the Proclamation, the individual intervenor having denied in his answer that the special election was duly held, offered in evidence newspapers published in Baltimore County and Anne Arundel County—two of the largest counties in the State—in which the primary election of September 13, 1966, was advertised as is required by Code (1957), Article 33, Section 12. Nowhere in these two advertisements were the voters notified that there was

any special election on the call of the Constitutional Convention. Article 33, Section 12(a) specifically requires that "[t]he board of supervisors in each county *shall* give ten days' notice of the time and place of *all elections* in each precinct of such county, by advertisements . . . in at least two newspapers of general circulation in said county. . . ." (Emphasis supplied.)

A specimen ballot for Baltimore County issued by the Board of Supervisors of Elections of Baltimore County headed "Primary Election, September 13, 1966" was also introduced into evidence. There is not a word in this Specimen Ballot that there was also an alleged "Special Election" to consider the call for a Constitutional Convention. On this Specimen Ballot on the right hand side at the extreme top over the list of primary candidates for Sheriff and Judges of the Orphans' Court is a block under "Question 11, FOR—AGAINST—"Should a Convention be held between September 1, 1967 and September 1, 1968 to draft a New Constitution for Maryland." Curiously, there is no lever provided for this block on the Specimen Ballot either over "For" or "Against". Not only would a voter not know that this was a special election for this issue, but the Specimen Ballot does not even indicate that there is a lever provided with which to make the choice.

The doctrine of "substantial compliance" with the mandatory requirements of the election laws in regard to notice resulting from publicity in newspapers, television, etc. as was invoked in *Dutton v. Tawes,* 225 Md. 484, 171 A.2d 688 (1961), has not, in my opinion, been sustained in this case as the Proclamation, the required official newspaper advertisement and the specimen ballot all indicate that the electorate was misled and this showing has not been rebutted. When the electorate has been misled, the doctrine of "substantial compliance" does not apply. As Judge (now Chief Judge) Hammond said, for a majority of the Court, in *Dutton v. Tawes, supra:*

> "All of the cases turn fundamentally on whether the mistake in procedure has caused harm by *misleading the electorate or by tending to prevent or frustrate an intelligent and full expression of the intent of the voters.*" (Emphasis supplied.) (225 Md. at 495, 171 A.2d at 693).

In my opinion the electorate was not only misled but an intelligent and *full* expression of its intent was most certainly prevented and frustrated. The small vote on the issue of the call clearly indicates this.

III.

Delegates to the Constitutional Convention are holders of an office created under the Constitution or Laws of this State.

I reluctantly disagree with the majority on this issue because I think if the Constitutional Convention can constitutionally be held on September 12, 1967, the presence of a number of members of the present General Assembly as members of the Constitutional Convention would make a substantial contribution to the formulation of the new Constitution to be prepared by the Constitutional Convention for later submission to the electorate for approval or rejection. Many members of the present General Assembly have had great experience in the governmental problems of this State for a number of years, and their advice and counsel would be most helpful in fram-

ing a just, effective and well balanced Constitution for Maryland.

In my opinion, however, the members of the proposed Constitutional Convention will hold an "office" or *"an office of profit or trust"* created by the Constitution or laws of this State.

The applicable provisions of the Maryland Constitution—Article 33, Article 35 of the Declaration of Rights, Article I, Section 6, Article III, Sections 11 and 17—have been adequately set forth in the majority opinion and need not be repeated here. I agree with the majority that the "need for and purpose of these provisions manifestly was to protect against conflicts of interest, self-aggrandizement, concentration of power, and the blurring or obliteration of the doctrine of separation of powers, in the performance by the agents of the people of their delegated authorities to exercise the executive, legislative and judicial functions of the organized government." Many of the provisions are designed to remove the *temptation* of self-aggrandizement from members of the General Assembly, so that an objective, rather than a subjective, consideration governs those members in creating offices and in creating or increasing the compensation of offices.

Although as the majority opinion points out (and I agree) "the general power of a state legislature to make, alter and repeal laws, pursuant to the constitution by which the people created the legislature, does not include the power or the right to make or remake the fundamental law, the constitution," in the Maryland Constitution, the functions of the General Assembly in regard to amendments to the existing Constitution and in regard to conventions to form a new constitution are, as has already been pointed out, *expressly provided for* in Article XIV, quoted above in full.

It will be observed that delegates to a Convention to form a new constitution are specifically mentioned, as such, in Section 2 of Article XIV and Section 2 does give the General Assembly the power to provide for such delegates when the conditions set forth in Section 2 are met.

Although this Court has never considered this precise question before, our prior decisions indicate to me that a delegate to a Constitutional Convention holds an "office" and an "office of profit or trust."

We have held, without exception, that persons who are *elected by the people* are public officers. In *Buchholtz v. Hill,* 178 Md. 280, 13 A.2d 348 (1940), our predecessors laid stress on the fact that the Clerk to the Board of County Commissioners of Allegany County was elected, in holding that he was a public official. See also *Truitt v. Collins,* 122 Md. 526, 89 A. 850 (1914) holding a city councilman of Snow Hill to be a public official, and *Howard County Metropolitan Comm. v. Westphal,* 232 Md. 334, 193 A.2d 56 (1963) and *Hetrich v. County Com'rs of Anne Arundel County,* 222 Md. 304, 159 A.2d 642 (1960) holding a county commissioner to be the holder of a public office. The Attorney General has generally advised that elected executives, legislators and judges, receiving compensation, are holders of public office under the Constitution or laws of Maryland.[2]

[2] Clerks of Circuit Courts, 7 Ops. Att'y. Gen. 460 (1922); County Commissioners, 6 Ops.Att'y.Gen. 226 (1921), 13 Ops.Att'y. Gen. 214 (1928), 48 Ops.Att'y.Gen. 323 (1963); Congressman, 2 Ops.Att'y.Gen. 352,

We and our predecessors have given a broad and comprehensive interpretation to the word "office" in the Maryland Constitution. In 1964 we held that even a notary public was a public officer. *Moser v. Board of County Com'rs of Howard County,* 235 Md. 279, 201 A.2d 365 (1964). Prior to *Moser* it has been held that a variety of positions were public offices; in *Howard County Metropolitan Comm. v. Westphal, supra,* a member of the Howard County Metropolitan Commission; in *Hetrich v. County Commissioners of Anne Arundel County, supra,* the Anne Arundel County Business Manager; in *State to Use of Clark v. Ferling,* 220 Md. 109, 151 A.2d 137 (1950), the Superintendent of the Maryland State Reformatory for Males; in *Pressman v. D'Alesandro,* 211 Md. 50, 125 A.2d 35 (1956), the Mayor, the City Comptroller and members of the City Council of Baltimore City; in *Nesbitt v. Fallon,* 203 Md. 534, 102 A.2d 284 (1954), a member of a county liquor board; in *Buchholtz v. Hill, supra,* the clerk to the Board of County Commissioners of Allegany County; in *Kimble v. Bender,* 173 Md. 608, 196 A. 409 (1938), a justice of the peace; in *County Com'rs of Calvert County v. Monnett,* 164 Md. 101, 164 A. 155, 86 A.L.R. 1258 (1933), the Treasurer of Calvert County; in *Day v. Sheriff of Montgomery County,* 162 Md. 221, 195 A. 602 (1932), a police justice of Takoma Park; in *Lilly v. Jones,* 158 Md. 260, 148 A. 434 (1930), a member of the Port Development Commission of Baltimore City; in *Truitt v. Collins, supra,* a city councilman of Snow Hill; in *Sappington v. Slade,* 91 Md. 640, 48 A. 64 (1900), a supervisor of elections; in *Robb v. Carter,* 65 Md. 321, 4 A. 282 (1886), the City Solicitor of Baltimore City; in *Harman v. Harwood,* 58 Md. 1 (1882), the Register of Voters for a district in Anne Arundel County; and in *Warfield v. County Com'rs of Baltimore County,* 28 Md. 76 (1868), the Commissioner of Records to restore and re-establish records destroyed by fire in the office of the Circuit Court for Baltimore County. In view of this wealth of prior authority, it is difficult to believe that a delegate to a Maryland Constitutional Convention would not also be a "public officer" and the holder of an "office."

In *Moser v. Board of County Com'rs of Howard County, supra,* we mentioned five criteria which are often present when a position has been held to be a "public office," although the absence of one or more of these criteria would not be fatal to a holding that a particular position is a public office. As pointed out in the majority opinion, these criteria are:

> 1. The position was created by law and cast upon the incumbent duties which are continuing in nature and not occasional.
>
> 2. The incumbent performs an important duty.
>
> 3. The position calls for the exercise of some portion of the sovereign power of the State.

355 (1917); City Councilman—with salary —2 Ops.Att'y.Gen. 352, 354 (1917), 11 Ops.Att'y.Gen. 100 (1926), 20 Ops.Att'y. Gen. 586 (1935), 48 Ops.Att'y.Gen. 323, 332, 333 (1963); Mayors, 6 Ops.Att'y.Gen. 226, 232 (1921), 7 Ops.Att'y.Gen. 476 (1922), 23 Ops.Att'y.Gen. 386 (1938); Judges of the Orphans' Court, 15 Ops. Att'y. Gen. 237 (1930), 48 Ops.Att'y.Gen. 323, 326 (1963); Delegates to State Conventions to consider repeal of 18th Amendment to U. S. Constitution, 18 Ops.Att'y.Gen. 408 (1933); members of the General Assembly, 3 Ops.Att'y.Gen. 271 (1918), 6 Ops.Att'y. Gen. 231, 232 (1921), 8 Ops.Att'y.Gen. 438 (1923), 12 Ops.Att'y.Gen. 201 (1927).

4. The position is for a definite term for which a Commission is issued, a bond required and an oath required.

5. The position is one of dignity and importance.

In my opinion, *all five criteria are present* for the position of delegate to the Constitutional Convention.

1.

The majority indicates that the position is not "under principles we see as controlling, one created by law as the term law is used in the definition." No authority is cited for this position and I cannot think it is sound. If the position of delegate to this Constitutional Convention was not "created by law," how was it created? It did not like Minerva spring full grown from the head of Jove. On the contrary, it was created by Chapter 500 of the Acts of 1966 and Chapter 4 of the Acts of 1967. Chapter 500 in its title recites that it was an act to provide for the calling of a Convention under certain circumstances "and to *provide* for the number and apportionment of delegates thereto." This Act provides that if the Convention is called, each county and each legislative district in Baltimore City shall have in the Convention "the same number of delegates" as Chapter 2 of the Acts of 1965 (Special Session) provides shall be elected at the General Election in 1965. Chapter 4 of the Acts of 1967 makes provision with respect to the election of those delegates provided for in Chapter 500. Both Chapter 500 and Chapter 4 are Acts of the General Assembly, passed pursuant to the present Constitution, presented to the Governor for his consideration and signed by him. I cannot think that this position of delegate is not "created by law."

I also believe that the position of delegate to the Convention has "duties which are continuing in nature and not occasional."

The elected delegate, holds his position for the entire time during which the Convention is in session—a three and possibly a four month period. It continues for this entire period; it is not sporadic or casual. The duties are not "occasional" so far as the Convention is concerned. Indeed, Chapter 5 of the Acts of 1967, providing compensation and expense money for the delegates indicates that constant attendance is expected as there is a deduction of $15 from a delegate's compensation for each day of unexcused absence from the sessions of the Convention.

The position fortunately is not created frequently as, generally speaking, amendments to constitutions are sufficient to meet new or changed conditions, rather than the calling of a Constitutional Convention to frame a new constitution, but this does not mean that when a Constitutional Convention is called, the *duties* of a delegate are occasional or not continuing. I do not see the relevance of the century plant and the sexual functions of the male honey bee mentioned in the majority opinion—as interesting as both are.

2.

It is conceded in the majority opinion that a delegate does "perform an important duty."

3.

The majority apparently adopts the contention of the Attorney General in this case (which was also adopted by the trial court) that although a delegate to the Constitutional Convention does exercise sovereignty, it is the "sovereignty

of the people" he exercises rather than the "sovereignty *of the State."* The supposed distinction between "sovereignty of the people" and "sovereignty of the State" eludes me. With respect, I fear the "distinction is one without a difference." In Maryland, there is no sovereignty but that of the people. *All sovereignty* emanates from the people. No official or other person may exercise sovereignty which is not sovereignty of the people, be it the exercise by the Governor, judges, members of the General Assembly, notary public or by any one else. There is no distinction, in my opinion, between sovereignty of the State and sovereignty of the people. No authority is cited in support of this unusual concept in the majority opinion and I think the concept is erroneous. The sovereignty required by this criteria is exercised by the delegates to a marked degree.

It should be pointed out that the phrase "sovereignty of the State" has only been recently used by the Court in cases involving executive officials. See *Moser v. Board of County Com'rs of Howard County, supra,* (notary public); *Howard County Metropolitan Comm. v. Westphal, supra,* (member of Howard County Metropolitan Commission); *Hetrich v. County Com'rs of Anne Arundel County, supra,* (county business manager); *Gary v. Board of Trustees of Employees' Retirement Sys. of Md.,* 223 Md. 446, 165 A.2d 475 (1960) (deputy state auditor). An earlier case used the word "sovereignty" in its broad sense as the sovereign power of the people as well as that of the State, when considering elective officials. See *Truitt v. Collins, supra,* (town councilmen). In *Truitt,* Judge Burke, for the Court, adopted the test as enunciated by the Supreme Judicial Court of Massachusetts in *Attorney General v. Tillinghast,* 203 Mass. 539, 89 N.E. 1058 (1909), as follows:

> "It may be stated as a general rule, fairly deducible from the cases discussing the question, that a position is a public office when it is created by law, with duties cast upon the incumbent which involve the exercise of some portion of the sovereign power, and in the performance of which the public is concerned, and which also are continuing in their nature, and not occasional or intermittent." (122 Md. at 531, 89 A. at 851-852).

If it could be assumed, *arguendo,* that there was a distinction between "sovereignty of the people" and "sovereignty of the State," the latter being possibly that portion of the sovereignty of the people which an officer holds in order to perform a function of government for the people, nevertheless, a delegate to the Constitutional Convention exercises such sovereignty.

The Constitutional Convention in preparing a proposed Constitution exercises legislative power of the highest order. The delegates formulate the State's highest organic law and the draft of the proposed Constitution may only be adopted *in toto* by the electorate. Both the formulation—the legislative act—and the adoption by the people must occur before a new Constitution can be effective. Both are necessary to establish the State's highest organic law. But the Constitutional Convention exercises "State sovereignty" in connection with its primary function, i. e., (1) it must employ adequate personnel to enable it to function, and (2) it must authorize the expenditure of the revenues of the State to carry on its

functions and pay personnel employed by it. This means that the Constitutional Convention necessarily must contract in the name of the State for the services and supplies necessary to carry out its functions. Indeed, the State administration has already budgeted $1,000,000 for the initial operation of the Constitutional Convention. There will most likely be expenditures in excess of the budgeted amount which the State Treasury must pay. This is most certainly the exercise by the Convention of "State sovereignty." Moreover, the Constitutional Convention is to adopt a *schedule of legislation* to be attached to the proposed draft of the new Constitution which if the proposed Constitution is adopted, will not be a part of the Constitution "but shall have the effect of a public general law and may thereafter be amended or repealed by law." See Section 16 of the proposed Convention Enabling Act, *Report of the Constitutional Convention Commission on Constitutional Convention Enabling Act,* January 16, 1967, page 32. This recommendation, with amendments, was adopted in Chapter 4 of the Acts of 1967. See Section 17 of that Act. Indeed Section 17, as amended, directs the Convention to provide for the inclusion of "implementing legislation . . . (as necessary or desirous) in the Statute books of this State, including the Annotated Code of Maryland." It is difficult to believe that this power to adopt statutes and codify them, is not the exercise of the "sovereignty of the State." It is clear to me that it is.

4.

The position most certainly has a definite term and it was contemplated by the proposed legislation in 1967 and enacted into law by Chapter 4 of the Acts of 1967, that a delegate take an oath. No bond is required as the delegate does not handle collections for the public. For a similar reason, bond is not required for members of the General Assembly.

5.

It is conceded in the majority opinion that the position is one of dignity and importance—as it obviously is.

A Constitutional Convention may be viewed as part of the whole system referred to as "government." It is the highest branch of that system which works out the will of the people in relation to delegated and restricted political power. Jameson in his treatise CONSTITUTIONAL CONVENTIONS (4th Ed. 1887) § 324 refers to a Constitutional Convention as "a part of the apparatus by which a sovereign society does its work as a political organism." He further states:

> "It [the constitutional convention] is the sovereign, as organized for the purpose of renewing or repairing the governmental machinery. That same sovereign, as organized for the purpose of making laws, *is a legislature;* as organized for the purpose of applying or carrying into effect the laws, it is the judiciary or the executive. These successive forms into which the sovereign resolves itself, are but systems of organization having relation more or less directly to the government of the society. *Together, they constitute the government.* . . . The government of the Commonwealth is a totality of those instruments through whose ministry its political organization is begun and continued. It is that totality which governs. . . ." (Emphasis supplied.)

In addition, it is apparent that the Constitutional Convention Commission understood that the delegates were officers. In the proposed Enabling Act appearing in the Report of the Commission dated January 16, 1967, the position is referred to as an "office." See for example, Section 7 of the proposed Act (Report, p. 26), which provides, in part, as follows:

> "If a vacancy occurs in the *office of delegate* to the Convention prior to the first meeting of the Convention, the *vacancy* shall be filled *by the Governor, . . .*" (Emphasis supplied.)

See also p. 36 of the Report.

It was recommended that delegates be required to take the oath or affirmation prescribed by Section 6 of Article I of the present Maryland Constitution (see Report, p. 26, Section 8 of the proposed Act.) Section 7 of Chapter 4 of the Acts of 1967 provides:

> "If a vacancy exists in the *office of delegate* prior to the first meeting of the Convention in plenary session on September 12, 1967, the vacancy shall be filled by the Governor . . ." (Emphasis supplied.)

Section 8 of Chapter 4 provides for the taking of an oath or affirmation in the form set out in Section 8. Chapter 5 of the Acts of 1967 provides for the compensation of the delegates. In short, both the Commission and the General Assembly refer to the *"office of a delegate"* and treat it as an office, providing for an oath and for compensation from the State Treasury. They thought a delegate held an office under the Constitution or laws of the State of Maryland, and so do I.

The trial court and the majority of this Court were impressed with the practice in the 1851, 1864 and 1867 Conventions in permitting members of the General Assembly to be delegates to those Constitutional Conventions notwithstanding constitutional limitations on the holding of any other office of profit, and concluded from this practice that delegates to those Constitutional Conventions were not considered to be "offices of profit" under the prior Constitution or laws. I do not think this conclusions follows. The validity of the holding of the position of delegate by members of the General Assembly in the prior Conventions was never challenged judicially *prior to the time the Convention met,* as is the situation in the present case. Assuming that the members of the General Assembly were improperly elected and qualified as delegates, they were nevertheless *de facto* officers of the Convention. Cf. *Kimble v. Bender, supra.* After the adoption by the people of the proposed constitution, no one could challenge the action of the Convention because of the illegal presence as delegates of the relatively few members of the General Assembly.

After the Constitutional Convention convenes, *it* is the judge of the qualification of its members and when it decides (as the 1864 Constitutional Convention did decide) that its members are validly qualified, there can be no successful challenge to that action, regardless of what might have been decided prior to the convening of the Convention. See also *Anderson v. Baker, supra.* The present case is the *first one* in which a judicial determination has been sought *prior* to the convening of the Constitutional Convention, so that it is an entirely new issue unaffected by prior examples of possible illegality

or disregard of constitutional provisions.

Then too, in my opinion, the words of the Constitution are not ambiguous, so that no prior "construction" of those words by prior conventions may be considered to cause us to depart from this plain meaning. See *Moser v. Board of County Com'rs of Howard County, supra,* holding that a notary public was an officer within the meaning of Article 35 of the Declaration of Rights notwithstanding the long established practice to the contrary. Indeed, our decision in *Moser* precipitated a constitutional amendment to exclude notaries public from the definition of "office of profit."

As I read the cases from jurisdictions other than Maryland, it appears that the weight of authority supports a holding that delegates to a Constitutional Convention are officers and that the existing constitutional prohibitions against dual office-holding apply.

In *Fyfe v. Mosher,* 149 Mich. 349, 112 N.W. 725 (1907) the Constitution of Michigan provided that: "No person elected a member of the Legislature shall receive any civil appointment within this state, ..." A senator of the Michigan Legislature attempted to file for election to the Constitutional Convention of that state. The county clerk refused to place his name on the ballot on the ground that he was not eligible under the prohibition against dual office-holding. The Supreme Court of Michigan held that the position of delegate to the Constitutional Convention was a state office and that the senator was not eligible to serve as a delegate. The Supreme Court of Michigan stated:

> "It is conceded that delegates to the constitutional convention are state officers. . . . We are all of the opinion that delegates to the constitutional convention come within the term 'civil appointment' as used in this provision of the Constitution, that they receive their appointment from state authority, and therefore that members of the Legislature which enacted the law and thus provided for the offices, fixing compensation, etc., are ineligible as delegates. They are both within the spirit and letter of the law. The writ is denied."

In *State ex rel. Bricker v. Gessner,* 129 Ohio St. 290, 195 N.E. 63 (1935), the Supreme Court of Ohio held that a member of a County Charter Commission convened to draft a new constitution for a county (analogous to a state constitutional convention) was the holder of a "public office of trust" within the meaning of the Ohio Constitution and hence a judge elected to serve on the Commission was precluded by the provisions of the Ohio Constitution from serving as such a commissioner. The Supreme Court of Ohio said in its opinion:

> "While there is disagreement, the weight of authority and the more logical reasoning support the proposition that a state constitutional convention, in the discharge of its powers, duties, and obligations, performs an important act of sovereignty and exercises legislative functions of a high order." (129 Ohio St. at 293, 195 N.E. at 64).

In *Kederick v. Heintzleman,* 132 F. Supp. 582, 15 Alaska 582 (1955, D. Alaska), the Organic Act of Alaska (37 Stat. 512) provided:

> "That no member of the legislature shall hold or be appointed to any office which has been created, or the salary or emoluments of

> which have been increased, while he was a member, during the term for which he was elected and for one year after the expiration of such term; . . . ."

The question arose as to whether members of the Alaska Legislature were entitled to serve as delegates to the territorial Constitutional Convention provided for by the Act of the Legislature. In holding that they were ineligible, the District Court stated:

> "The purpose of the prohibition is to eliminate, as far as possible, any hope in the mind of the legislator, that the office so created may be filled by himself, and to insure to the people independent judgment of their representatives. It is necessary to good government that legislators exercise their judgment free from selfish motives and, to this end, these prohibitions have been placed in constitutions and on statute books. If the territorial legislature can create an office and rely on the possibility of Congress lifting the prohibition between the time of the election and the time to hold the office, then it cannot be said that the possibility of bias has been limited to the greatest possible extent." (132 F. Supp. at 585).

Jameson, in his treatise, CONSTITUTIONAL CONVENTIONS, *supra,* states in § 324:

> "In my judgment, there can be but little doubt, that a member of a Convention is, in the enlarged and proper acceptation of the term, an 'officer' of the State."

The majority relies principally on *State v. Doyle* 138 La. 350, 70 So. 322 (1915); *Baker v. Moorhead,* 103 Neb. 811, 174 N. W. 430 (1919); and *Frantz v. Autry,* 18 Okl. 561, 91 P. 193 (1907). In my opinion, this reliance is misplaced.

In *Doyle,* convicted cattle thieves appealed their conviction on the ground that the jury lists drawn by the jury commissioner were void because there was a vacancy in the commission. This vacancy was alleged to have been caused by the election to the Louisiana Constitutional Convention of 1913 of one of the jury commissioners who had participated in the drawing of the jury list. It was argued that the office of jury commissioner was vacated by this election to and acceptance of another office. The Supreme Court of Louisiana in sustaining the convictions quoted—apparently with approval from the opinion of the trial court—as follows:

> " . . . [A] member of a constitutional convention is in no proper sense an officer, that such a position is fleeting and casual, and the member does not exercise his functions continuously and as a part of the regular and permanent administration of the government." (138 La. at 351, 70 So. at 323).

It has already been pointed out, that the first test in the *Moser* case is satisfied, i.e., that the incumbent had duties which are continuing in nature and which are not occasional. See also MECHEM, PUBLIC OFFICES AND OFFICERS, § 8 (1890); *State ex rel. Clark v. Stanley,* 66 N.C. 59, 63-64, 8 Am. Rep. 488 (1872). The Louisiana Court has incorrectly analyzed the function of a constitutional convention and its decision, in my opinion, is of little weight in support of the proposition that a member of a constitutional convention is not an officer.

Baker v. Moorhead, supra, recognizes that delegates to the Nebraska Constitutional Convention *are officers.* The point in that case was whether they were officers "who have fixed terms of office," so that they would have to be elected at a *general election* under the provisions of the Nebraska Constitution. In holding that the delegates were not officers *having a fixed term of office,* the Supreme Court of Nebrasks stated:

> "Section 13, read in connection with section 14, which has to do with *terms of office,* would indicate that those provisions have to do only with officers elected who have fixed terms of office, and should be elected at an election called with reference to the time of the beginning of their terms. The members of the convention have no fixed term *of office,* and by the Constitution itself the convention may be called at any time within three months after the election of its members." (Emphasis supplied.) (103 Neb. at 816, 174 N.W. at 432).

Frantz v. Autry, supra, involved an injunction suit to prevent the election of county officials in two new counties created in the proposed Constitution of Oklahoma by the Constitutional Convention at the same election which provided for the adoption or rejection of the proposed new constitution. There was nothing in the suit involving the question of whether the delegates to the Constitutional Convention were officers and, indeed, Oklahoma did not have an existing constitution at the time of filing suit. It was then a territory of the United States, authorized by an Act of Congress to proceed to form a constitution and be admitted as a State of the Union. It was held that the equity court erroneously enjoined the election as such questions were not of judicial cognizance. This case is not in point on the issue of whether delegates to the Convention were "officers."

I consider that the delegates to the Constitutional Convention are the holders of an office created under the laws of the Constitution or laws of Maryland and that the prohibitions of the Maryland Constitution against dual office-holding are applicable.

As I have already indicated, the conclusion that the delegates are officers, although of importance as a practical political matter in possibly inducing the General Assembly to vote for the enabling legislation, does not prevent, in itself, the holding of a Constitutional Convention.

Although the Maryland Constitution provides in Article XVI, Section 2 "that no measure creating or abolishing any office, or changing the salary, term or duty of any officer . . . shall be enacted as an emergency law," and Chapter 500 of the Acts of 1966 was passed as an emergency law, we have said that such an attempt to pass an emergency law does not render the statute invalid, but merely makes it effective on the following June 1, as provided in Article XVI. As we stated, by way of *dictum* in *Allied American Mutual Fire Ins., Co. v. Commissioner of Motor Vehicles,* 219 Md. 607, 626, 150 A.2d 421 (1959):

"If the Legislature provides that an act, which under Art. 16 may not take effect until June 1, is to take effect sooner, the act stands but will not take effect until June 1. *Woelfel v. State,* 177 Md. 494, 504-505, 9 A.2d 826; 1 Ops. Att'y. Gen. 286, 288."

In my opinion, this is a correct view of the applicable law so that Chapter 500 would not be invalid and void because

it was passed as an emergency measure and purported to be effective upon the date of its passage on May 6, 1966, rather than June 1, 1966.

Even assuming, *arguendo,* that the General Assembly could validly take the sense of the people in regard to calling a Constitutional Convention prior to the General Election of 1970, that Chapters 500 and 501 of the Acts of 1966 are valid and that there was a proper affirmative vote at a valid special election to approve the calling of such a Convention, it seems clear to me that it was not mandatory upon the General Assembly at the time we filed the *per curiam* order of a majority of the Court on March 7, 1967, to call the Constitutional Convention on September 12, 1967. This issue is implicit in Question (1), above discussed. The question propounded to the electorate was not whether the General Assembly should call a Constitutional Convention on September 12, 1967, but was "whether there will be called a Convention not earlier than 1 September, 1967, and not later than 1 September, 1968." This was the only question submitted to the electorate on the calling of the Constitutional Convention and it seems clear to me that the General Assembly could have repealed Chapter 500 of the Acts of 1966 and changed the date for the meeting of the Convention at any time between September 1, 1967 and September 1, 1968. This most certainly is within the exact language of the question submitted to the electorate. Neither the lower court nor the majority of the Court gives any reason and cites no authority which would remove the right of the General Assembly to call the Convention at any time between September 1, 1967 and September 1, 1968. I conclude that there is no valid reason and that there is no authority holding that the General Assembly might not have done this. I would have so answered Question (i).

I do not think under the circumstances that it is necessary or desirable to consider other questions propounded to us. My answers to the other questions are, I think, obvious and it would unnecessarily prolong this dissenting opinion to develop them in detail.

OPINION OF ATTORNEY GENERAL FRANCIS B. BURCH ON THE ELIGIBILITY OF RETIRED JUDGES TO SERVE AS A DELEGATE TO THE CONSTITUTIONAL CONVENTION APRIL 18, 1967

Honorable Godfrey Child
Two Winter Quarters Drive
Pocomoke City, Maryland 21851

Dear Judge Child:

Your letter of April 8, 1967, to Mr. Louis L. Goldstein has been referred to this office for reply. You have advised that you are a retired judge now receiving a pension in accordance with Article 26 of the Annotated Code of Maryland, and have asked (1) whether you are eligible to run for and serve as a delegate to the Constitutional Convention and (2) if elected, what effect your service would have on your pension rights.

Assuming that you meet the eligibility requirements of Chapter 4 of the Acts of 1967, we can see no legal impediment to your candidacy by reason of being a retired judge.

The provisions for the retirement pension are set forth in Section 49 of Article 26. This section, in essence, provides

that the pension shall permanently cease if the retired judge resumes the practice of law, and shall temporarily cease if he "accepts any salaried public office or position, municipal, county, State or federal . . . so long as he remains in such office or position." We do not consider service as a delegate to the Convention as a resumption of the practice of law. In *Board of Supervisors v. Attorney General* (September Term, 1967, No. 10 [Advanced]), the Court of Appeals held that the position of delegate was not an office in the constitutional sense. Applying the reasoning of that case to the instant situation, we would conclude that the position of delegate is not a "public office or position" within the meaning of Section 49. Therefore, your election and service as a delegate would not affect your retirement pension rights under Section 49.

We can see nothing in Section 50 of Article 26 that would affect the pension rights of your wife, in the event of your death, because of your service as a delegate.

Very truly yours,

Francis B. Burch
Attorney General

Alan M. Wilner
Assistant Attorney General

OPINION OF ASSISTANT ATTORNEY GENERAL ALAN M. WILNER ON THE ELIGIBILITY OF MEMBERS OF BOARDS OF ELECTION SUPERVISORS TO SERVE AS DELEGATES TO THE CONSTITUTIONAL CONVENTION APRIL 18, 1967

Peter Parker, Esq.
10 Light Street
Baltimore, Maryland 21202

Dear Mr. Parker:

You have advised us that you have been appointed as President of the Board of Election Supervisors for Baltimore City scheduled to take office on June 1, 1967, and that your appointment has been confirmed by the State Senate. You ask whether you are eligible to be a candidate for delegate to the coming Constitutional Convention, and whether your election, should you be successful, would affect your position on the Board of Election Supervisors or the salary attendant thereto.

In *Board of Supervisors v. Attorney General* (September Term, 1967, No. 10, [Advanced]), the Court of Appeals held that the position of delegate to the Convention is not an office within the meaning of the various constitutional provisions relating to dual office holding. Accordingly, there would be no specific constitutional prohibition to your candidacy.

However, it has been consistently held by this office, dating back to 1917, that a member of the Board of Election Supervisors should not be a candidate for any elected position. As a matter of overriding public policy, it has been held that "a Supervisor of Elections cannot be a candidate at a primary election which he himself is charged with the duty of conducting and canvassing, and also, in case of a contest, of recounting and recanvassing." 2 *Opinions of the Attorney General* 180. See also 4 *Opinions of the Attorney General* 63; 11 *Opinions of the Attorney General* 128; 43 *Opinions of the At-*

torney General 167. This consideration of being a judge in an election in which one participates has been applicable not only to public offices but also to private party offices, such as positions on a party State Central Committee. 43 *Opinions of the Attorney General* 167.

Although it is unquestionably the policy to make the Convention open to the greatest number of people, nevertheless, because of the peculiar duties of the Supervisor of Elections, we are constrained to conclude that you would be ineligible to run.

Very truly yours,

Alan M. Wilner
Assistant Attorney General

OPINION OF ATTORNEY GENERAL FRANCIS B. BURCH ON THE APPLICABILITY OF THE CORRUPT PRACTICES ACT TO THE ELECTION OF DELEGATES TO THE CONSTITUTIONAL CONVENTION MARCH 31, 1967

H. Vernon Eney, Esquire
Chairman
Constitutional Convention Commission
700 Mercantile Trust Building
Baltimore, Maryland 21202

Dear Mr. Eney:

In response to your letter of March 14, 1967, this is to advise you that we have, on March 23, 1967, forwarded sample copies of Certificate of Candidacy, as well as instructions to the various Boards of Supervisors of Elections relating to the election of delegates to the convention to be held on June 13, 1967.

You have also inquired whether, in our opinion, the provisions of the Corrupt Practices Act (or Fair Election Practices Act, as it may now be known) apply to the election for delegates to the Constitutional Convention, so as to require that each candidate designate a campaign treasurer with the clerk of the circuit court within seven days of filing his certificate of candidacy. House Bill 28, as passed by the General Assembly, provided as follows:

> "Except as otherwise provided in this Act, or as may be inconsistent therewith, the laws of this State relating to elections for members of the House of Delegates shall govern and apply to the election of delegates to the Convention and those relating to referendum elections shall govern and apply to the special referendum election on the adoption or rejection of the constitution proposed by the Convention."

Members of the House of Delegates are elected not at a primary or special election, but at general elections. Under these circumstances, we are of the opinion that to the extent any provisions contained in Article 33, including the Corrupt Practices Act, are not inconsistent with the provisions of House Bill 28, then the provisions of Article 33 relating to general elections would apply. It follows, therefore, that candidates for delegate to the Constitutional Convention should comply with all the provisions of Article 33 which govern any other candidate whose name would appear on the ballot of a general election to be held in this State.

As to the application of the Corrupt Practices Act to the special referendum election to be held on the adoption or

rejection of the Constitution to be prepared by the Convention, we are also of the opinion that any organization soliciting contributions and incurring expenses in connection with the acceptance or rejection of the constitution would also be subject to the provisions of the Corrupt Practices Act. Section 219(a) of Article 33 provides that: "No person . . . shall, to aid or promote the success or defeat of any . . . principle or of any proposition submitted to vote *at any public election* . . . make a payment or contribution of money or property or incur any liability or promise any valuable thing to any person other than to the treasurer . . . of a political committee; . . ." A political committee, as defined by Section 212 of Article 33 is any "combination of two or more persons to aid or promote the success or defeat of any principle in any election or any proposition submitted to vote *at a public election,* . . ." (Emphasis supplied). We are inclined to view this language as sufficient to include the special referendum election, which certainly must be characterized as a public election.

It is our opinion, therefore, that the provisions of the Corrupt Practices Act would also apply to the special referendum election and that it would be unlawful for anyone to expend any money or seek any contribution for the purpose of urging the adoption or rejection of the constitution unless such contributions are made in strict conformity with the provisions of the Corrupt Practices Act.

We trust this information will be satisfactory for your present purposes, and if we may be of any further assistance to you in this regard, please do not hesitate to let us hear from you.

Very truly yours,

Francis B. Burch
Attorney General

OPINION OF ATTORNEY GENERAL FRANCIS B. BURCH ON THE NECESSITY OF CANDIDATES FOR ELECTION AS DELEGATES TO THE CONSTITUTIONAL CONVENTION TO FILE THE NAME OF THEIR TREASURER WITH THE SECRETARY OF STATE
APRIL 20, 1967

Honorable C. Stanley Blair
Secretary of State
State House
Annapolis, Maryland 21404

Dear Mr. Blair:

In your letter of April 18, 1967 you have requested our opinion as to whether candidates for election as Delegates to the Constitutional Convention must advise your office of the name of their political agent or treasurer. You have also requested our opinion as to whether CIVIC (Council of Independent Voters for an Improved Constitution), as a state-wide group, is required to file a financial report with the Secretary of State if over Fifty ($50) Dollars has been expended.

It is our opinion that candidates for election as Delegates to the Constitutional Convention need not file the name of their political agent or treasurer with you; those persons' names should, however, be filed with the Clerk of the Circuit Court of the county or Baltimore City in which the candidate re-

sides. We are also of the opinion that CIVIC is required to file a financial report with the Secretary of State if it expends over $50.

The filing of the name of a candidate's political agent or treasurer is controlled by Section 213 of Article 33 (Annotated Code of Maryland, 1957 Edition, 1967 Replacement Volume). Subsection (a) provides, in effect, that each candidate must file the name and address of the campaign treasurer with the Clerk of the Circuit Court of the county or Baltimore City in which the candidate resides, or if he is a candidate for state-wide office, with the Secretary of State. Subsection (b) provides, in effect, that no person shall act as political agent unless he files his authorization with the Secretary of State. That subsection also provides, however, that where the election for which the political agent has been appointed is limited to any county, city or legislative district, his authorization shall be filed with the Clerk of the Circuit Court of the county or Baltimore City to which the election is limited, instead of with the Secretary of State. In light of the fact that candidates for Delegates to the Constitutional Convention are neither running for a state-wide office nor for an office which requires election from more than one county, city or legislative district, we are of the opinion that they need not file with your office.

Subsection (a) of Section 212 of Article 33 defines a "political committee" as every committee or combination of persons "to aid or promote the success or defeat of any . . . principal in any election . . . or to aid or take part in the . . . election of any candidate for public office." As we understand it, CIVIC will attempt to aid and promote the success of the various persons whom it endorses. As such, it clearly comes within the definition of a political committee. Section 214 of Article 33 clearly provides that a political committee must submit a statement of contributions and expenditures if more than $50 is disbursed for such a purpose. We, therefore, feel that CIVIC must file such a statement if it expends over $50 for the purpose mentioned.

I might point out that the 1967 Amendments to the Election Laws will not change the answers to the questions which you have posed.

Very truly yours,
Francis B. Burch
Attorney General

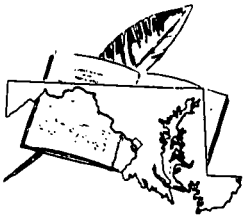
Lewis A. Noonberg
Assistant Attorney General

FLYERS

The following are facsimile reproductions of nine flyers published jointly by the University of Maryland Cooperative Extension Service and the Constitutional Convention Commission:

OUR MARYLAND CONSTITUTION

101 *DOES MARYLAND NEED A NEW CONSTITUTION?*
102 *THE GENERAL ASSEMBLY*
103 *LOCAL GOVERNMENT*
104 *CONSTITUTIONAL CONVENTION*
105 *THE EXECUTIVE BRANCH*
106 *CONVENTION DELEGATES*
107 *THE JUDICIAL BRANCH*
108 *DECLARATION OF RIGHTS AND ELECTIVE FRANCHISE*
110 *CONVENTION DELEGATES*



OUR MARYLAND CONSTITUTION

DOES MARYLAND NEED A NEW CONSTITUTION?

Maryland adopted its present Constitution in 1867. A century and some 203 amendments later, the State is presented an opportunity to rewrite that document so that it may better accommodate the changed circumstances of today.

The writers of the Maryland Constitution in 1867 provided that the "sense of the people" be taken at least every twenty years on the desire for a constitutional convention. Thomas Jefferson thought that each generation should be allowed to create a new frame of government in order that democracy be maintained. This question is now presented again to the people of Maryland. On September 13, Primary Election Day, a proposal to call a constitutional convention will appear on the ballot.



The "sense of the people" was taken on this issue in 1887 and 1907, at which times relatively little interest was shown. In 1930 and again in 1950 the question was on the ballot and in both cases a majority of those voting on it favored a convention, in 1950 by the wide margin of 4 to 1. In both cases, the General Assembly chose not to call a convention, partly because of an interpretation of the constitutional requirement, but chiefly because of its fear of legislative reapportionment. The United States Supreme Court has settled the apportionment issue and the constitutional interpretation does not apply to the vote to be taken September 13, 1966, because this will be a special election.

The opportunity is thus presented for this generation of Marylanders to follow Jefferson's advice. Each person has a responsibility to himself, his children, and his fellow citizens to vote wisely on this question. This prompts an examination of the document and a consideration of what may best be done.

PURPOSE OF A CONSTITUTION

According to Aristotle an institution is to be judged in relation to its functions. The proponents of a written constitution in the Puritan Revolution wanted protection from an arbitrary government—they wanted a documentary allocation of power. Their political descendants, the Fathers of the American Revolution and writers of our first constitutions, were interested primarily in the same thing—the allocation of governmental power by the people so that an arbitrary government could not exist.

As will be shown, many changes affecting governmental institutions have occurred, but the basic function of state constitutions remains the same—the assignment of powers to those political institutions of the State so that ours shall be a government of laws and the rights of the individual shall be safeguarded from arbitrary action. The constitution is not a proper instrument for the exercise of power; its function is to allocate power and set guidelines for its use.

CHANGES OF A CENTURY

Maryland has greatly changed in the ninety-nine years since its Constitution was adopted. The test of a constitution, however, is not its age, but how well it functions. Our present basic law was written immediately after the close of a bitterly contested war in which the differences among Maryland citizens were sharply drawn. It was written for a people who were mostly agricultural and still unburdened by congestion or urbanization.

By the census of 1860, there were 687,000 people in Maryland; in 1960 there were 3,100,000. The population of Baltimore City increased in that period from 212,000 to 939,000. Growth in the metropolitan areas of the State has been even more striking; metropolitan Baltimore has 1,707,000 residents, and the two counties adjacent to Washington, D. C., Montgomery and Prince George's, have 698,000. Urban residents are now 73

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per cent of the total state population. This congestion has produced problems of law enforcement, health protection, public education, water supply, and transportation—to name just a few—totally unlike those of the 1860's.

This great increase in population, especially in and around the cities, has been accompanied by extensive growth in both industry and commerce. The changes in communcations and transportation have been profound. From the roads of 1867 to the highways of 1966 is a large step; even larger is the change from clipper ships to jet airplanes. The seemingly simple problems the State faced in the nineteenth century have been replaced by larger and more difficult ones.

There have been equally important changes in the attitudes of people toward their government. The typical nineteenth century view was that the government was best which governed least, but the current position of many is that government exists chiefly as a service institution. The demands now made by the people for governmental services are beyond the expectations of a century ago. A modern constitution should reflect this change. To do so it must allocate the powers of government in a manner which provides security against the capricious actions of governmental authorities while at the same time giving sufficient powers to perform those functions which circumstances and demands require.

AMENDMENTS TO THE CONSTITUTION

Many changes in the circumstances and attitudes of the people are reflected in the Constitution of Maryland. Numerous provisions deemed advisable in 1867 have fallen into disuse. Other changes have been recognized by the passage of amendments. A total of 203 amendments have been added to the 1867 document. Frequently amendments have themselves been amended and reamended with the resulting uncertainty of patchwork.

No better illustration can be found of the need for general constitutional revision than the fact that sixteen amendments to the Constitution will appear on the November, 1966 election ballot. These deal with such widely varied subjects as the creation of an Intermediate Court of Appeals, special powers for municipal corporations in Cecil County, a commissioner of the Land Office, the salary of the governor, and the signing of state bonds by a deputy treasurer and a deputy comptroller. Quite aside from the merits of these proposals, having so many amendments at one election points to the need for a careful examination of the entire document.



LIMITATIONS UPON POWER

Frequent amendments have been necessary because the Constitution, as adopted in 1867, had two basic faults: (1) the powers granted to the State's agencies and subdivisions were too severely limited; and (2) in some cases, there was too much detail, requiring a constitutional amendment for a minor change the General Assembly should have had power to make.

While a state government generally has all the powers not denied it either by its own constitution or that of the United States, the tendency in Maryland and elsewhere in the nineteenth century was to fill state constitutions with all manner of restrictive provisions. This has made it difficult or impossible for a variety of institutions to operate effectively. These restrictions are either an explicit denial of power to a particular branch or office of government, or a specific grant of power, which has then been interpreted by the courts as a denial of power beyond the constitutional provisions. The net effect in either case is to make it difficult for the State's agencies to operate effectively in a rapidly changing society.

In less than six pages, the United States Constitution covers the legislative department. The Constitution of Maryland devotes nineteen pages to the organization, procedures and powers of the General Assembly. This difference results from the use of general language in the United States Constitution and very specific language in Maryland's Constitution. A good example can be found in Article III, Section 52, where more than three pages are devoted to the powers, procedures and limitations of the General Assembly in adopting the State's budget.

Similarly, there is constitutional detail in the matter of governmental machinery. The Constitution provides for constables, court clerks, coroners, elisors, sheriffs, registers of wills, a state librarian, notaries public, the Baltimore Redevelopment Commission, county surveyors, etc. Any change affecting these positions may require a constitutional amendment. The question here is not if these offices are necessary or desirable, but whether they should be provided for in the Constitution or left to legislative action.

LEGISLATIVE DETAIL IN THE CONSTITUTION

A constitution should allocate the powers of government to the proper authorities, furnishing desirable con-

trols, but leaving the application of these powers to the established authorities. How well does the Maryland Constitution meet this criterion? Both in the original document and in various amendments, much material has been introduced which can only be described as legislative in nature. Article XIII is an excellent example. The first section lets the General Assembly organize "New Counties, locating and removing county seats, and changing county lines." This is an allocation of power. Yet Section 2 provides in great detail the boundary lines of Wicomico County, designates the county seat and places the county in the First Judicial District. Thus, the original allocation of power to the General Assembly was withdrawn for Wicomico County in the next section. Detailed provisions need to be set forth somewhere, but the establishment of Wicomico County is an exercise of power and, hence, a legislative matter.

There are important objections to the inclusion of legislative matter in the Constitution. The more legislative matter that is placed in the Constitution, the more difficult the amendment process becomes. Detailed provisions tend to become obsolete or to demand revision much more frequently than statements of the allocation of power. In other words "detail breeds detail," leading to the situation we now face—sixteen amendments on one ballot.

The Constitution of the United States, written in 1787 consists chiefly of provisions allocating power in general terms. It has required only twenty-four amendments to date, while Maryland's Constitution of 1867 has been amended in some 203 places. A constitutional convention could prepare a document needing fewer amendments than has been required in the present detailed instrument.

COURT DECISIONS

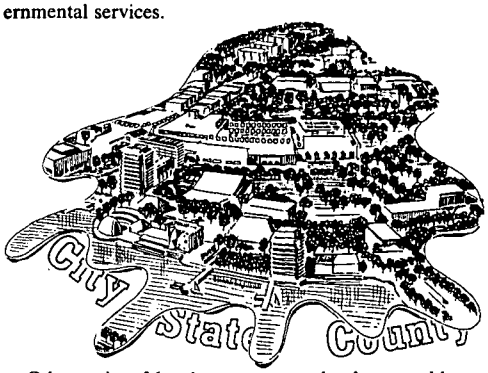
The practice of judicial review has produced many decisions defining provisions in both the United States and Maryland Constitutions to the extent that a rewriting of many articles in Maryland's present Constitution is desirable. The relationship between the states and the union is no longer what it was a century ago.

The recent "one man, one vote" decisions of the United States Supreme Court have far-reaching effects on the basis of representative government throughout the nation. In Maryland they have made obsolete the provisions concerned with representation in the General Assembly, particularly the one which stipulates that there shall be a senator for each county. In fact, they have even raised the question of the need for two houses in the General Assembly.

Recent interpretations of the Fourteenth Amendment's restrictions upon states may reach even further. A careful examination of our basic law needs to be undertaken in light of recent decisions interpreting the "equal protection of the laws" and "due process of law" clauses of the federal Constitution.

LOCAL SUBDIVISIONS

An expert on local government has explained the size of American counties in terms of the cow and the horse. He maintained that county lines were originally laid out so that the farmer could milk his cow in the morning, ride his horse to the county seat during the day and get home in time to milk his cow at night. However accurate this explanation, it is certainly true now that county lines and county sizes often have little relation to the current functions of local government. In terms of both efficiency and finances, counties are having great difficulty in handling the many functions associated with growing populations and increased governmental services.



Other units of local government also have problems. Many municipalities are too small and have too limited a tax base to be effective. The geographical limits of local governments often do not coincide with the area current problems encompass. This is particularly true in metropolitan areas where population growth has disregarded the existing boundaries of both cities and counties. No longer is it possible to divide governmental functions into three neat packages labeled "State," "County," and "City." If present tendencies in population continue, the urbanization of large sections of Maryland will only make the problem of the division of authority more difficult. The state Constitution must reflect the great changes which have taken place in local circumstances and provide a framework for solving both present and future problems.

METHODS OF CONSTITUTIONAL CHANGE

Admitting the need for constitutional revision, an effective procedure must still be found. Certainly it is possible for the General Assembly to continue its policy of proposing piecemeal amendments. However, this has been going on for a century and the Constitution seems to have become worse rather than better. Each amendment increases the amount of "detail" and often leads to further amendment. Moreover, a governing body,

such as the General Assembly, may not be the most effective one for proposing this basic a change. The General Assembly is in a unique position to exercise power, but the allocation of power may better be accomplished elsewhere.

Some suggest that a constitutional commission draft a constitution for direct submission to the voters. Various forms of constitutional commissions have been created to do this. In most cases, however, the proposals of these commissions must be submitted to the state legislature for approval before the voters can consider them.

While commissions of this sort may be extremely valuable as research organizations, they lack the independence of conventions, whose proposals go directly to the electorate. If, however, a constitutional commission can draft a document for the convention to consider, its contribution to the revision process is invaluable.

There is also the constitutional convention itself. A convention directly represents the people through the election of delegates, and is independent since it is not controlled by any other body. It can be composed of competent people, particularly so if the popular vote for a convention is overwhelming, and potential delegates recognize the importance of rewriting the fundamental law of the State. It can examine all important and relevant problems and focus public attention on constitutional issues. In recent years, constitutional conventions have been held in several states, and the dedicated effort of the delegates has underlined the importance of their task. Without doubt, a representative convention is the proper organization to propose the document which, when adopted by the people, becomes the State's constitution.

THE CONVENTION OF 1967

Several steps have already been taken toward a Maryland Constitutional Convention in 1967. More than a year ago, Governor Tawes appointed a commission to consider holding a convention and to conduct an inquiry into the content of the Constitution. The Commission, composed of twenty-seven civic leaders from the entire State, has undertaken these two tasks. It has been preparing material on all phases of the Constitution to serve as a basis for the Convention's consideration. When finished, this material will include a tentative draft of a constitution with alternate proposals on controversial subjects and a collection of articles, documents and opinions to serve as background material for the members of the Convention.

In addition, the Commission has recommended that a convention be held and has presented a proposed schedule to the General Assembly. By legislative enactment, September 13, 1966, Primary Election Day, has been set for a special election to secure "the sense of the people" on the calling of a convention. Since this is a special election, all registered voters, party members or not, may vote on this question and those voters registered "Declined" are urged to exercise their right of franchise on this proposal.

If a favorable vote is cast on September 13, the Convention, consisting of 142 delegates apportioned in the same manner as the House of Delegates, will meet on September 12, 1967, Defender's Day, to draw up a new constituition for the State of Maryland. The document drawn by the Convention would then be submitted to the people of the State for ratification at a special election in 1968.

It is of the utmost importance that an overwhelming vote be cast on September 13 so that there is no question of the desire of the people for the drafting of a new constitution. Full advantage should be taken of the opportunity afforded at this special election. If favorable, a massive vote will help assure that the delegates to the Convention will be chosen from among the best qualified people of the State.

This article is published by the University of Maryland Cooperative Extension Service in cooperation with the Constitutional Convention Commission for the purpose of providing citizens of Maryland information about the Constitution of the State of Maryland. This article was prepared in cooperation with the Maryland Cooperative Extension Service by Dr. Clinton I. Winslow, Professor Emeritus, Political Science, Goucher College.

Cooperative Extension Work in Agriculture and Home Economics, Extension Service, University of Maryland and United States Department of Agriculture Cooperating. Edward W. Aiton, Director. Distributed in Furtherance of Acts of Congress of May 8 and June 30, 1914.

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OUR MARYLAND CONSTITUTION

The General Assembly

Of the three departments of state government—legislative, executive, and judicial—the first, elected from rather small areas, is closest to the people. Yet the legislative department is often held in lowest esteem and most often subject to adverse criticism. Despite this attitude, a flood of candidates has appeared seeking places on the November ballot, enough in some districts to give a voter great difficulty if he wishes to select his representatives intelligently. The coming elections of 1966 and the studies now in progress by the Constitutional Convention Commission suggest that the public should give consideration to the nature and problems of our General Assembly.

What is a legislature for? Primarily, its function is to declare public policy, that is, to enact laws for the State. This includes the authorization of taxes and the appropriation of money. As a subsidiary function, the legislature exercises some control over the administrative agencies of the State through investigations, budgets, approval of personnel, etc.

Since we have a democratic form of government and the General Assembly's primary function is policy-making, the General Assembly should be representative of the people, who are sovereign. This presents one major constitutional problem—how is the State to be apportioned and districted for representative purposes? Under the present Maryland Constitution the Senate consists of 29 senators, one from each county and one from each legislative district of Baltimore City. The House of Delegates has 123 members, with from two to six delegates from each county and city legislative district. However, the courts have declared that under this system neither house is properly apportioned and have held that the present arrangement violates the United States Constitution. To meet this problem new districts have been created, and the General Assembly which meets in January 1967 will consist of 43 senators and 142 delegates. Every county has at least one delegate, with the larger counties having more, in proportion to their populations. New senatorial districts are created so that some counties are part of a larger district, while others are divided into two or more districts. Even so, the resulting apportionment does not accurately reflect population differences since in some instances there will be more than a 25 per cent deviation from the State's delegate-population ratio. If a Constitutional Convention is called in 1967, it should take the first step in solving this problem by providing a regular and efficient procedure for future reapportionments.

Two important questions must be answered in resolving this problem: (1) Who shall be responsible for reapportionment? (2) What constitutional restrictions shall be provided so that representation is fair? The second question may be easier to answer than the first. There is general agreement that legislative districts should be composed of "compact and contiguous" territory. The Supreme Court decisions require "one man, one vote"—i.e., the ratio of the number of legislators to population shall be the same in each of the State's districts. However, the question arises of how much variation is permissible. Since exactly equal ratios are impossible, one suggestion is to fix a maximum variation (5 per cent above or below the norm for instance); others would only require the ratios to be as "nearly equal as practical," leaving the courts to rule out any unacceptable deviation.

It has been proposed by many that a one-house legislature would be more effective than a bicameral one. As the Supreme Court has decided that it is people and not



acres which are to be used as a basis for representation in both houses of state legislatures, the debate over bicameralism changes materially. The only strong argument for bicameralism which remains is that one house serves as a check upon the other. The question is whether it is a necessary or desirable check.

What now exists to prevent the General Assembly from acting hastily and passing poor legislation? First, we have in Maryland a legislative council, whose task is to give a preliminary examination to proposed legislation. Second, each proposed law is considered three times in the house where it is introduced: by a committee, by the house as a whole when it receives the committee report, and by the entire house on final passage. Finally, there are three additional checks of the same nature when the bill goes to the other house.

Should any proposed legislation pass, there are still other checks. The governor has veto power and, if he exercises it, the General Assembly must again consider the proposal and then accept or override his veto. Moreover, each law is subject to judicial review and, in most cases, to popular referendum. If the pressures of public opinion be added to all these, we indeed have a formidable array of checks.

How essential is it that all these be preserved? Specifically, how effective is the two-house system in pre-

venting the passage of hasty and ill-considered legislation? It is difficult to be sure, but there are sufficient arguments in favor of unicameralism to suggest that the Constitutional Convention will pay serious attention to the proposal.

On the procedural side, other questions are presented. One of the most difficult is the length of legislative sessions. In this regard Maryland has experimented. Not so long ago the General Assembly met every two years for a maximum of 90 days. Then it was felt a short session was needed in the off-years to deal with financial matters. The Constitution was then amended to provide for a 30-day session every other year. Soon after this, the General Assembly proposed a new arrangement—a 70-day session every year. Hence, another constitutional amendment was submitted to and ratified by the people. In the 1966 session there was complaint that the 70 days were insufficient to deal with all the important matters.

The answer to this problem is not easily obtained. In other states, attempts to prevent bad legislation by limiting the length of the sessions have failed. Control over legislative action must be sought elsewhere. Neither a fixed length for sessions nor an increase in the number of bodies watching the legislature is likely to afford answers to these problems. Many states leave it to the legislature to determine when its sessions will begin and end. In other states, the legislature may call special sessions if it wishes.

Closely related to the length of sessions is the problem of local legislation. In Maryland, aside from Baltimore City and four home-rule counties, the General Assembly acts as the legislative body for the counties. In the 1966 session, the General Assembly passed 415 local measures and 341 measures for the State at large. If local areas of the State could determine their own policy in most instances, the General Assembly would then be free to perform its primary purpose—fix policy for the entire State. If this were done, local democracy would be immeasurably strengthened and it might be unnecessary for the General Assembly to sit for so long a period.

The Maryland Constitution is unfortunately filled with restrictive provisions upon legislative action. This in part explains why in 99 years we have added 203 amendments to it. Often an amendment is proposed to meet a particular situation with little regard for its general application.



An excellent example is to be found in Article III, Section 40 A, B, and C: here, a series of amendments applicable to the State Roads Commission, Baltimore City, Baltimore and Montgomery counties and the Washington Suburban District deal with the condemnation of property for public purposes. Unless some general action is taken, we shall in all likelihood add other amendments affecting other subdivisions of the State.

There are many other matters of importance, both constitutional and within the control of the General Assembly itself. A thorough study of all aspects of the institution is needed. If a Constitutional Convention can find good solutions for the constitutional problems and the General Assembly devotes attention to its own reorganization, Maryland may well have a legislature of which it can be proud.

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OUR MARYLAND CONSTITUTION

Local Government

On September 13 the citizens of Maryland will have the opportunity of answering "yes" or "no" to the question: *Should a convention be held between September 1, 1967, and September 1, 1968, to draft a new Constitution for Maryland?* If their answer is favorable, the Convention, consisting of 142 delegates, will convene on Defender's Day, September 12, 1967, to draft a new constitution for the State of Maryland. The document prepared by the Convention will then be submitted to the people of the State for ratification.

One of the greatest benefits of a constitutional convention is its ability to consider fully the problems which a constitution must resolve. This differs from the usual process of amendment, which ordinarily deals with only one aspect of a problem at a time. An opportunity to examine all aspects of a problem will be most beneficial in the field of local government, that is, the governments of cities, towns and counties.

Many people feel that local government is often unsatisfactory today. This is apparent in the writings of scholars, in the pronouncements of public officials and civic leaders, and in the conversations of Americans from all walks of life. "Taxes are too high . . . services are not good . . . personnel are inadequate . . . local government is not effective" are some of the comments frequently heard. Although these criticisms may be valid, many persons who are concerned with the inadequacy of local governments are apathetic about any change for the better. This apathy is dangerous, because it can only be overcome by the time-consuming efforts of citizens who could more profitably direct their attention to the improvement of local government itself.

A partnership exists between the federal, state, and local governments. If one partner does not fulfill his obligations, the others will buy him out—at their prices—and assume his responsibilities. Local government faces this possibility if it is unable to perform its assigned duties. The federal or the state government may quickly divide the third share of the partnership and exercise the powers once exercised only by local governments.

How would the Constitutional Convention assist local governments in meeting their increasing responsibilities as members of this partnership? A partial answer to this question lies in the future legal basis of local governments. Local governments are and will remain creations of the State. The 23 counties of Maryland, the City of Baltimore, and the other nearly 150 cities and towns have no inherent right of self-government. The powers which they exercise are granted to them by the Constitution and the laws of the State of Maryland. Often, local governments are hamstrung by restrictive provisions in a state's constitution or by the absence of provisions which would enable them to solve their problems. The Maryland Constitution of 1867, under which we are governed today, originally said little about local government. It provided for the creation of new counties and for the office of county commissioner, and outlined the structure of the government of Baltimore City. Amendments in 1915, 1948, and 1954 authorized home rule for counties and cities, and gave this and other powers to the City of Baltimore. But the present Constitution is silent on some subjects and excessively detailed on others.

The principal items which a constitutional convention would consider regarding the nature and future of local governments are those relating to "units of government," "home rule," "metropolitan areas," and "intergovernmental relations." These subjects must be considered together, rather than independently, to provide the most effective and responsive local government.

Maryland has vested its local governmental power in two general types of units—the county and the incorporated municipality. The City of Baltimore, although not within



the boundaries of a county, is treated as a county in most aspects of Maryland law. One area of exploration for a constitutional convention would be to determine what units of local government are most suitable for the future. Should we have a single unit of general purpose government throughout the State, should we have a level of special purpose governments, or should we retain some type of regional government? These are some of the questions which must be considered. Although the answers can only be determined after lengthy research and discussion, one fact is abundantly clear: the citizens of Maryland are today no longer willing to accept a maze of fragmented units of local government whose overlapping jurisdictions and duplication of services necessarily result in inefficiency and waste.

Although Maryland was among the first states to provide home rule for its local governments, state-local relationships in Maryland are still characterized by extensive control by the General Assembly over the counties and municipalities. Home rule transfers the power over a county or city from the state legislators to local officials. The concept of home rule is based on a fundamental

American political maxim—"Keep government as close to the people as possible."

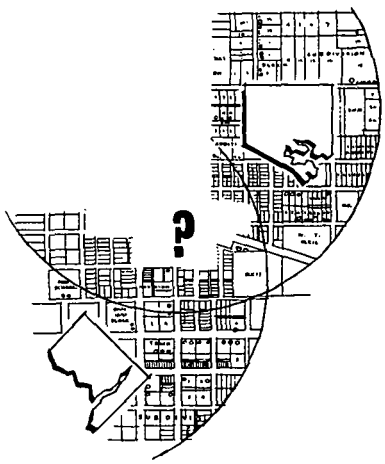
Home rule serves two purposes: it places responsibility in one local governing body which can develop according to the needs of the area and, as a corollary, it frees the General Assembly from having to deal with many items of a purely local nature. Of the 756 laws enacted at the 1966 session of the Maryland General Assembly, 415, or over 55 per cent, were local laws. Home rule would not entirely eliminate this pattern, but would substantially reduce it.

How much home rule? In what manner should home rule be exercised? What restraints should be placed on the local governments in their exercise of home rule? What limitations should be placed on the General Assembly in its enactment of legislation for counties and cities? These questions, too, will be considered by a constitutional convention.

In studying home rule, one must take into account problems peculiar to metropolitan areas. Home rule allows local units of government autonomy in some respects, whereas the problems of metropolitan areas transcend the boundaries of existing units of government and require co-operation and co-ordination of several local units. Metropolitan areas, such as Baltimore and Washington, have outgrown the existing structure of local government. A clear and flexible legal basis for solving the unique problems of metropolitan government must be developed in Maryland, or they may revert by default to the state or federal government or come to rest in a no-man's land between the state and local governments.

Several new possibilities for metropolitan development can be considered—federated councils, multi-purpose special districts, federations of governmental units, regional councils of governments, or special purpose authorities. The existing Constitution of Maryland is not sufficiently flexible to allow development along any of those lines. The Convention would develop a framework within which the General Assembly and local governments can act.

The development of efficient relations between various governments, local, state and federal, is also curtailed by the existing Constitution. No provisions exist to authorize the merger of services or units of government. This possibility must be considered, for no longer is any unit of government responsible only to its own citizens. Constitutional provisions would give the General Assembly and local units authority to facilitate intergovernmental co-



operation whenever the need arose. It is necessary to consider such co-operation both between similar units of government and between different levels of government on an interstate and intrastate basis.

Only a constitutional convention can provide the means for considering the entire subject of local government. Only through a constitutional convention can the questions of the units of government and home rule be interwoven within a broader framework of metropolitan structure and intergovernmental relations. If local government in Maryland is to meet the challenges of the new federalism, its basic legal authority must be studied and a proper framework developed.

This article is published by the University of Maryland Cooperative Extension Service in cooperation with the Constitutional Convention Commission for the purpose of providing citizens of Maryland information about the Constitution of the State of Maryland. This article was prepared for the Maryland Cooperative Extension Service by William S. Ratchford, II, Executive Secretary, Maryland County Commissioners Association.

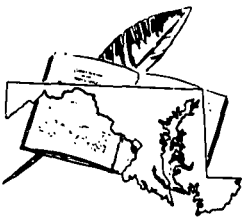
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OUR MARYLAND CONSTITUTION

Constitutional Convention

On September 13, 1966, the citizens of Maryland voted 160,280 to 31,680 in favor of a Constitutional Convention to frame a new constitution for the State of Maryland.

When and where will the Convention be held? How will delegates be selected? What are the qualifications for delegates? How will the Convention operate? How long will the Convention last? What preparations are being made for the Convention? These and many other questions about the Convention are now being asked throughout Maryland.

The General Assembly, at its 1966 session, passed a law setting the date of the Convention as September 12, 1967, and providing that representation of delegates in the Convention shall be the same as representation in the House of Delegates of the General Assembly—142 delegates. However, many other questions, about the site of the Convention, the manner of electing delegates and the organization and finances of the Convention, must be answered by the General Assembly in its 1967 session.

The Constitutional Convention Commission, appointed by Governor Tawes in June, 1965, to pave the way for constitutional revision, has drafted, after considerable study of these questions, a Convention Enabling Act to establish procedures for the election of delegates and for the Convention. The Convention Enabling Act will be introduced in the 1967 session of the General Assembly. This "fact" sheet about the Convention is largely based upon the recommended provisions of that Enabling Act. *It must be kept in mind that these provisions represent only the proposals of the Constitutional Convention Commission and not the final determination of procedures by an act of the General Assembly.* This information is disseminated at this time, in this tentative form, because of the many requests for such information, because of the expectation that a substantial number of the recommendations of the Commission will be enacted by the General Assembly, and because of the importance of keeping the public informed on the work of the Commission and the issues under debate as Maryland moves toward constitutional reform.

Time and Place

The General Assembly, by law enacted in its 1966 session, provided that the Convention shall convene on Defender's Day, September 12, 1967. The Enabling Act would provide that the site of the Convention be the House of Delegates chamber in the State House in Annapolis and that the Convention should continue in session no later than January 12, 1968, permitting the Convention four months to do its work. The Enabling Act would, however, authorize the governor to assemble the delegates prior to September 12, 1967, for the limited purpose of electing officers, organizing committees and adopting rules of procedure, thereby assuring that the Convention, once convened, will be geared and ready for the hard task at hand.

Election of Delegates

Date of the Election. The Enabling Act would provide for a special statewide election on June 6, 1967, for the election of delegates.

Voting. The Enabling Act would require a nonpartisan election. Under the Hatch Act a large number of federal employees who reside in Maryland would be barred from participating in a partisan election. The names of all candidates would appear on the ballot without any party designation. It is proposed that there not be a primary election, nominating conventions, or nominating petitions. It is also proposed that candidates' names on the ballot not be arranged alphabetically, but that their arrangement be determined by drawing lots.

All legally qualified voters in each county or legislative district will be eligible to vote. No additional registration will be required.

Basis of representation. Representation in the Convention will parallel representation in the House of Delegates of the General Assembly as reapportioned for 1966. The proposed Enabling Act provides that each county or legislative district of the State shall elect the same number of delegates to the Convention as it elects members of the House of Delegates. In Baltimore City, and Baltimore, Anne Arundel, Montgomery and Prince George's Counties, which have legislative districts, election would be by legislative district. The number of delegates from each county or legislative district is shown in the chart below.

REPRESENTATION IN THE CONVENTION

Counties and Districts	Number of Delegates
Allegany	4
Anne Arundel	
#1	3
#2	3
#3	3
Baltimore City	
#1	6
#2	8
#3	8
#4	7
#5	7
#6	7
Baltimore County	
#1	3
#2	3
#3	3
#4	3
#5	4
#6	3
#7	3
Calvert	1
Caroline	1
Carroll	2
Cecil	2
Charles	2
Dorchester	1
Frederick	3
Garrett	1
Harford	4
Howard	2
Kent	1
Montgomery	
#1	7
#2	7
#3	2
Prince George's	
#1	3
#2	7
#3	6
Queen Anne's	1
St. Mary's	2
Somerset	1
Talbot	1
Washington	4
Wicomico	2
Worcester	1

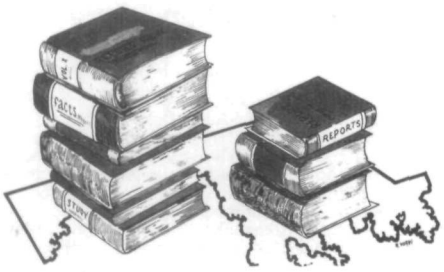
Qualifications. The Enabling Act would provide that qualifications for delegates be the same as required of candidates for election to the House of Delegates, with one exception.

The qualifications are that a candidate be at least 21 years of age, a citizen of Maryland, resident of the State

for three years, and a resident of the county or legislative district in which he wishes to run for one year preceding the election.

The exception allows ministers and preachers of the gospel to serve as delegates, although they are prohibited by the present Constitution from serving in the General Assembly.

The Enabling Act would further require each candidate to pay a filing fee of $25 and to make an affidavit of non-subversiveness as provided in Section 15 of Article 85A of the Annotated Code of Maryland.



In the event of a nonpartisan election for delegates to the Convention, a person employed by the United States Government would not be barred by the Hatch Act from becoming a candidate or otherwise participating in the election campaign.

Compensation. The Enabling Act would provide that each delegate be paid $50 for each day's actual attendance at sessions of the Convention or committee meetings. No additional payment would be made for personal expenses such as travel, lodging and food.

Preparation for the Convention

The Enabling Act would authorize the governor to assemble the delegates prior to the actual convening of the Convention to elect officers, organize committees and adopt rules of procedure. The Enabling Act would also authorize the Convention to employ a permanent secretary, parliamentarian, research staff and such other clerks, stenographers and employees as it needs for the efficient conduct of its business. It is contemplated that the delegates will assemble shortly after their election on June 6, 1967, to choose the Convention's officers, committees and staff, so that preparatory work for the Convention can be carried on during the summer.

The Convention will have the benefit of the comprehensive work products of the Constitutional Convention Commission. For the past 18 months, the Commission, which is composed of 27 persons broadly representative of the State, has been studying the present Constitution and preparing a revised constitution and extensive background materials for the use of the delegates to the Convention. The Commission is organized into nine committees, including the Committee on Convention Procedures which drafted the Enabling Act and seven committees on substantive areas of constitutional law: Elective Franchise and Declaration of Rights; Executive Department; Legislative Department; Judiciary Department; Political Subdivisions and Local Legislation; State Finance and Taxation; and Miscellaneous Provisions.

The Commission has met as a whole at least once a month since its inception, approximately 20 full working days in all. The various committees have met at least monthly; one committee has met weekly. The Commission has an executive director and a staff of part-time reporters for the committees, research assistants and consultants.

Referendum on the Proposed Constitution

The Convention may propose, by a final vote of a majority of the whole number of delegates, a new constitution or any changes or amendments of the existing Constitution. Its proposals will be submitted to a special referendum election in the spring of 1968. If approved by a majority of voters in that election, the proposals would generally become effective July 1, 1968; although, the terms of present elective officials would not be shortened.

This article is published by the University of Maryland Cooperative Extension Service in cooperation with the Constitutional Convention Commission for the purpose of providing citizens of Maryland information about the Constitution of the State of Maryland. This article was prepared for the Maryland Cooperative Extension Service by Mr. Kalman R. Hettleman, Assistant to the Executive Director, Constitutional Convention Commission.

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OUR MARYLAND CONSTITUTION

The Executive Branch

A constitution establishes the basic machinery of government. In Maryland this machinery was last revised in 1867. Our current movement towards constitutional revision, initiated by leaders of government and overwhelmingly approved by the citizens of Maryland, who voted 160,280 to 31,680 in favor of a Constitutional Convention to frame a new constitution for the State, arises because of the need to modernize this machinery to accommodate the great changes of the past 100 years.

Roles and Responsibilities

The executive branch of the state government is headed by the governor: the highest elected representative of *all* the people of the state. It has been observed that historically the role of the governor has changed "from detested minion of royal power, to stepson of legislative domination, to popular figurehead, to effective executive." Certainly, as the size and complexity of modern state government have grown over the past century, the demands upon a governor have increased. These demands are multifaceted. In the broadest terms the governor carries upon his shoulders total responsibility for the effectiveness of the government of the state and for the general welfare and prosperity of its people.

Though not a member of the legislative branch, the governor is commonly regarded as the chief lawmaker of the state. Traditionally, he formulates and proposes to the legislature a series of so-called "administration bills" embodying his administration's legislative program. This legislative program is backed by his mandate and prestige as the highest elected official of the state, by his access to communications media, and by his political muscle as party leader and dispenser of patronage.

Of equal if not greater importance, he is regarded as the chief administrator of the state government. He is expected to administer and manage the vast bureaucratic network of agencies, departments, bureaus, boards, commissions and sundry other units that carry out the business of the state. In Maryland, these number approximately 150.

These are the roles and responsibilities that the governor is expected to fulfill and *must* fulfill, if state government is to function creatively and effectively. Therefore, a basic question that the delegates to the Constitutional Convention must answer is whether the present Maryland Constitution gives the governor the power and authority to carry out these tasks. Does he, the captain of the ship of state, have the necessary power and authority to be master of that ship?

The Constitutional Convention must examine and decide whether the structure of the executive branch permits the huge, complex business of the State to be conducted efficiently and with modern tools of management. Are there clear lines of authority between the governor and the various executive agencies? Can he choose his subordinate officers? Are there clear and adequate procedures in the event of his death or disability? What should be the extent of his veto power over legislation?

Administrative Framework

A primary area of inquiry must be the constitutional framework for the administrative apparatus of the State. Maryland, like other states, has been struggling for a long time with the problems created by an ever-growing bureaucracy. Beginning with a study initiated by Governor Albert C. Ritchie in the early 1920's, a chain of governors and study groups have recommended extensive reorganization of the administrative arms of the State. Most recently, the Sobeloff-Stockbridge Commission on the Administrative Organization of the State, appointed by Governor McKeldin, and the Curlett Commission for the Modernization of the Executive Branch of Maryland Government, appointed by Governor Tawes, have proposed steps to strengthen the governor's hands by concentrating authority and responsibility, by integrating functions of agencies and by substituting single administrative heads for boards and commissions of agencies that do purely administrative work. These steps and problems involve two major areas of constitutional dimension: (1) the power to establish and change the organizational structure of the executive and administrative departments; and (2) the power to select and, if necessary, remove heads of administrative departments.



The present Constitution creates the Board of Public Works and other executive offices such as the Secretary of State, the State Librarian and the Adjutant General, and rests the power to establish and modify offices and agencies not created by the Constitution in the General Assembly. These provisions raise questions. Should the governor, the head of the executive branch, have more authority to determine the structure of the organization that he heads? Should the principal departments and agencies be created by the constitution, or should their establishment be left to the discretion of the legislature and the governor? Should there be a maximum limit on the number of principal departments and agencies?

Many knowledgeable persons propose that the legislature retain initial responsibility to establish departments and to define their functions and duties, but, in keeping with the concept of the governor as general manager of

the state's administrative structure, that the governor be granted broad power to initiate administrative reorganization. The same authorities generally recommend that no departments be constitutionally created and that there be no maximum limit on their number. The principle underlying these recommendations is the need to avoid the slow and cumbersome process of amending the constitution and to give the legislature and the governor flexibility in adapting the structure of the executive branch to changing times and circumstances.

Power to Appoint and Remove

The delegates to the Constitutional Convention will also need to take a close look at the power of the governor to appoint and remove the heads of administrative departments. To what extent should policy-making heads of departments be directly responsible to the governor? Should the governor have the right to hire, but not the unrestricted authority to fire? Should there be policy-making boards and commissions as opposed to single administrative heads of departments; and, if so, to what extent should the governor control appointments to them?

Arguments are made that as the chief executive, the governor should be able to select his own administrative team, each member of which is subject to his direction. This is the way the national government and any large industrial or business corporation is managed. Proponents state that any other system results in a lack of control and coordination, and a diffusion of authority that impair efficient management of the business of the State. Along these lines some persons propose that the attorney general and comptroller be appointed by the governor, rather than elected. These proponents point out that as the governor's chief legal and fiscal officers, respectively, these officers must share the governor's viewpoint, and that the checks and balances on action by the executive branch should come from the legislative and judicial branches of government, not from within the executive branch itself. Other persons oppose this proposal, stating that it is salutary for two other high officials to be elected and thereby be directly responsible to the people for the conduct of the legal and fiscal affairs of the State.

Some Other Issues

Term of Office. An amendment to the present Constitution ratified in 1948 limits the governor to two successive four-year terms. Again, there is a difference of opinion among experts on this question, and the practice in other states varies. On the one hand, the view exists that we should be assured of a fresh face every eight years; on the other, that such a limitation eliminates from the prospective field of candidates the one person whose qualifications the electorate is best able to judge.

Succession to Office. The present Constitution of Maryland provides for succession to the office of governor in the event of death, but is silent as to disability. How is disability, either temporary or permanent, to be determined? Who is to succeed? There is agreement that constitutional machinery is needed to provide quick, effective answers to these questions. Succession in most states devolves upon the lieutenant-governor. The Constitutional Convention will undoubtedly consider whether the office of lieutenant-governor should be created in Maryland. In addition to providing for orderly succession, the lieutenant-governor could perform at the direction of the governor some of the proliferating gubernatorial duties and ceremonial chores.

Veto. The veto power of the governor raises difficult constitutional questions. Under judicial interpretations of the present Constitution, the governor has almost an unlimited amount of time within which to sign and veto a bill enacted by the General Assembly. Should a time limit be fixed to enable the legislature to overide a veto? Should certain kinds of bills be beyond the veto power?

Delegates Must Find Solutions

Space permits only a suggestion of the problems and principles involved in a thorough review of the constitutional machinery for an effective executive branch of the state government. Easy, quick explanations or solutions are not possible. It will be the difficult work of the delegates to the forthcoming Constitutional Convention to examine in detail these problems, to find solutions to them and to implant those solutions in a modern constitution that will stand the test of many years to come.

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OUR MARYLAND CONSTITUTION

Convention Delegates

On September 13, 1966, the citizens of Maryland voted 160,280 to 31,680 in favor of a Constitutional Convention to frame a new constitution for the State of Maryland. The General Assembly enacted a law in its 1966 session, Chapter 500 of the *1966 Laws of Maryland*, providing that in the case of such a favorable vote, a Convention of 142 delegates should be assembled on September 12, 1967.

When and how will the delegates be selected? What are the qualifications for delegates? How long will the Convention last? How will the Convention operate? What preparations are being made for the Convention? These and many other questions about the Convention are now being asked throughout Maryland.

Governor J. Millard Tawes appointed the Constitutional Convention Commission in June, 1965, to pave the way for constitutional revision. The Commission drafted, after considerable study, a Convention Enabling Act to establish procedures for the election of delegates and for the Convention. The Convention Enabling Act was amended and adopted by the General Assembly at its 1967 session on March 20. Governor Spiro T. Agnew signed the Enabling Act into law on March 24, whereupon it became Chapter 4 of the *1967 Laws of Maryland*. This fact sheet about the Convention is largely based upon the provisions of Chapter 4.

Time and Place

The General Assembly has provided that the Convention shall convene at noon on Defender's Day, September 12, 1967. The 1967 Enabling Act provides that the site of the Convention shall be the House of Delegates chamber in the State House in Annapolis and that the Convention shall continue in session no later than January 12, 1968, permitting the Convention four months to do its work. The Enabling Act, however, authorizes the Governor to assemble the delegates prior to September 12, 1967, for the limited purposes of electing officers, organizing committees and adopting rules of procedure, thereby assuring that the Convention, once convened, will be geared and ready for the hard task at hand.

Election of Delegates

Date of the Election. The Enabling Act provides for a special statewide election on June 13, 1967, for the election of delegates.

Qualifications. The Enabling Act provides that qualifications for delegates shall be the same as required of candidates for election to the House of Delegates, except that there is no specific disqualification of preachers of the Gospel, persons holding any civil office of profit or trust under this State, members of Congress, or persons holding any civil or military office under the United States. The qualifications are that a candidate be at least 21 years of age and a citizen of Maryland, and that he have been a resident of the State for three years and a resident of the county or legislative district in which he wishes to run for one year preceding the election.

The Enabling Act further requires each candidate to pay a filing fee of $50 and to make an affidavit of non-subversiveness as provided in Section 15 of Article 85A of the *Annotated Code of Maryland*. Due to the nonpartisan election for delegates to the Convention, a person employed by the United States Government is not barred by the Hatch Act from becoming a candidate or otherwise participating in the election campaign.

Basis of Representation. Representation in the Convention will parallel representation in the House of Delegates of the General Assembly as reapportioned for 1967. The Enabling Act provides that each county or legislative district of the State shall elect the same number of delegates to the Convention as it elects members of the House of Delegates. In Baltimore City, and in Baltimore, Anne Arundel, Montgomery and Prince George's Counties, which have legislative districts, election will be by legislative districts. The number of delegates from each county or legislative district is shown in the following chart.

REPRESENTATION IN THE CONVENTION

Counties and Districts	Number of Delegates	Counties and Districts	Number of Delegates
Allegany	4	Cecil	2
Anne Arundel		Charles	2
#1	3	Dorchester	1
#2	3	Frederick	3
#3	3	Garrett	1
Baltimore City		Harford	4
#1	6	Howard	2
#2	8	Kent	1
#3	8	Montgomery	
#4	7	#1	7
#5	7	#2	7
#6	7	#3	2
Baltimore County		Prince George's	
#1	3	#1	3
#2	3	#2	7
#3	3	#3	6
#4	3	Queen Anne's	1
#5	4	St. Mary's	2
#6	3	Somerset	1
#7	3	Talbot	1
Calvert	1	Washington	4
Caroline	1	Wicomico	2
Carroll	2	Worcester	1

Filing. Eligible persons may file as candidates for election during the regular office hours of the boards of supervisors of elections until and including April 21, 1967. There will be no primary election, nominating conventions, or nominating petitions.

Candidates for election may withdraw and, in such cases, shall have their filing fee refunded during regular office hours up to and including April 28, 1967. All boards of supervisors of elections are required to have their offices open between the hours of 9:00 A.M. and 9:00 P.M. on April 19, 20, 21, 26, 27 and 28, and such other dates as are already prescribed by law.

Corrupt Practices Act. Each candidate for election as delegate, upon filing as candidate or within seven days

thereafter, shall appoint a campaign treasurer and shall file the name and address of the campaign treasurer with the clerk of the circuit court of the county, or Baltimore City, in which the candidate resides. All contributions received shall be paid over to the treasurer and shall be disbursed by him.

The treasurer must keep "account books" and must file the report or statement of contributions and expenditures prescribed in the Corrupt Practices Act with the clerk of the circuit court of the county, or Baltimore City, in which the candidate resides by June 6 and July 13.

Voting. The Enabling Act requires a nonpartisan election, since under the Hatch Act a large number of federal employees who reside in Maryland would be barred from participating in a partisan election. Therefore, the names of all candidates will appear on the ballot without any party designation. Candidates' names will be arranged alphabetically on the ballot.

All legally qualified voters in each county or legislative district will be eligible to vote. No additional registration will be required.



Any qualified voter who may be unavoidably absent from the State, for whatever reason, on June 13, may vote as an absentee voter. Applications for absentee ballots must be made in writing to the board of supervisors of elections of the county, or Baltimore City, as the case may be, by civilians before May 25, and by members of the Armed Forces before June 3.

Preparation for the Convention

The Enabling Act authorizes the Governor to assemble an organization session of the delegates prior to the actual convening of the Convention. The Enabling Act also authorizes the Convention to employ a permanent secretary, parliamentarian, research staff, historian, public information director, and such other clerks, stenographers and employees as it needs for the efficient conduct of its business. It is contemplated that the delegates will assemble shortly after their election on June 13, 1967, to choose the Convention's officers, committees and staff, so that preparatory work for the Convention can be carried on during the summer.

The Convention will have the benefit of the comprehensive work products of the Constitutional Convention Commission. For the past twenty months the Commission, which is composed of twenty-seven persons broadly representative of the State, has been studying the present Constitution and preparing a revised constitution and extensive background materials for the use of the delegates to the Convention.

Referendum on the Proposed Constitution

The Convention may propose, by a final vote of a majority of the whole number of delegates, a new constitution or any changes or amendments of the existing Constitution. Its proposals will be submitted to a special referendum election on May 14, 1968. If approved by a majority of the voters of that election, the proposals will generally become effective July 1, 1968; although a new constitution will no doubt provide that the terms of present elected officials will not be shortened.

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OUR MARYLAND CONSTITUTION

The Judicial Branch

Our Nation and State have witnessed in recent years a loud and persistent cry for reform of the judicial machinery of government. The voices of dissatisfaction and the proposals for change have come from both the legal profession and the general public. There is no dispute about goals. "Equal justice under law" expresses the highest ideal of our democratic society. All institutions and activities of democratic government ultimately rest upon a foundation of respect for law, and respect for law cannot exist without an effective and impartial judicial system.

There is increasing concern that our courts do not measure up to their fundamental responsibility. Are the courts in Maryland being effectively administered? Is there speedy and uniform justice throughout the State? Are our judges qualified? Is the judicial system free from political influence? These are the kinds of basic questions that the delegates to the forthcoming Constitutional Convention must ask, and answer, in considering the framework of the judicial branch of our state government.

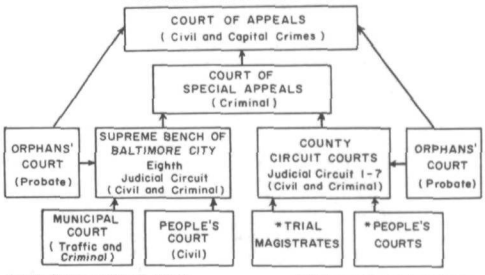
The Constitution of Maryland was last revised in 1867. The calling of a Constitutional Convention, approved by the voters of Maryland 160,280 to 31,680, follows years of unsuccessful effort to effect meaningful constitutional revision. As in the other branches of state government, movements to modernize the judicial branch have been hampered by antiquated, inflexible and detailed constitutional provisions. In particular, pressure has been building up for the reform of two major aspects of the judicial system: (1) the administration of the courts, and (2) the selection and tenure of judges. These subjects are certain to be among the most important considered by the Constitutional Convention.

Administration of the Courts

Present System. During the past 100 years, the judicial system, particularly the "lower courts," have grown like Topsy. Article IV, Section 1, of the present Constitution provides that the judicial power of the State "shall be vested in a Court of Appeals, Circuit Courts, Orphans' Courts, such courts for the City of Baltimore, as are hereafter provided for, and Justices of the Peace. . . ." From this innocent beginning, a disparate body of courts of limited jurisdiction has sprung up across the State.

Justices of the peace, trial magistrates, committing magistrates, Municipal Court judges, People's Court judges, and substitute judges are all designations of persons who perform in some aspects similar functions—but in different parts of the State. Some are full-time, others part-time. Some are required to be lawyers, others are not. The Maryland State Bar Association Committee on Judicial Administration recently reported that of the 98 trial magistrates in the State 64, or 65.3 per cent, were not lawyers. The jurisdiction of these courts differs widely. Some have civil jurisdiction only, some criminal jurisdiction only, and some both. The maximum civil jurisdiction varies from $300 in some parts of the State to $3000 in others. Similar disparities could be recited with respect to criminal jurisdiction, salaries, courtroom facilities and workloads.

PRESENT JUDICIAL SYSTEM



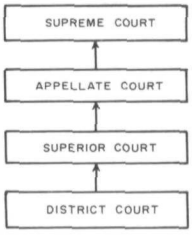
Arrows Indicate Lines of Appeal

** Civil and Criminal Jurisdictions (Including Traffic) Vary from County to County*

In the opinion of many persons and groups, this fragmentation and lack of uniformity is a formidable obstacle to the effective administration of justice. It tends to downgrade the operation of the courts and to belittle the task and image of the judges serving on them. Most recently, the Maryland State Bar Association and the Maryland Judicial Conference of Courts of Limited Jurisdiction conducted extensive studies of these problems and both reached the same conclusion: the first order of business of judicial reform must be the establishment of a uniform, centrally-administered, statewide judicial system.

Proposed System. The delegates to the Constitutional Convention must decide whether Maryland is to have such a unified court system. Its constitutional framework and features would be simple. As erected in many other states in recent years, and as proposed by the Maryland State Bar Association, the constitution would vest judicial power in a unified system composed of *all* of the courts of the State, including the appellate courts (the present Court of Appeals and Intermediate Court of Special Appeals), the circuit courts and the courts of limited jurisdiction. Responsibility for maintaining and supporting the system would be the State's, eliminating the complicated, amorphous combinations of state and local responsibility which now exist. The number of judges and jurisdiction of the respective courts would be determined by the General Assembly, except that the jurisdiction of the trial courts would be uniform in all parts of the State. There would be one administrative head of the system, the chief justice of the highest appellate court. He would regulate the assignment of judges within the system as workloads and crowded

PROPOSED JUDICIAL SYSTEM



dockets required, supervise and control the work of the numerous court employees, and administer the finances and non-judicial business of the courts.

Some Basic Differences. A unified judicial system would place in the hands of the legislature, and the judiciary itself, wide latitude in structuring and adapting the courts to the burgeoning, complex demands made upon the judicial system. Under the restrictive, detailed provisions in the present Constitution, updating the management of the courts often requires invoking the slow and cumbersome procedure of amending the Constitution.

The present Constitution provides for the election of certain court officials such as clerks of the circuit courts. Under the unified court system it is proposed that chief clerks be appointed by the judiciary, not elected. No constitutional provision has been recommended with respect to deputy clerks, and it is suggested that these officials be provided for by the acts of the legislature. Any constitutional change pertaining to the status of these or other offices would unquestionably be accompanied by transitional provisions assuring present elected officeholders the right to complete the terms for which they were elected.

Selecting Judges

The second basic aspect of the judicial branch which will probably be high on the agenda of the Constitutional Convention is the selection and tenure of judges. Obviously, the best organized system of courts will be a dismal failure unless manned by qualified judges. How should judges be selected? How long should their term of office be? Should they stand for reelection against other candidates, or against their own records as judges? Many persons both within and without Maryland have been wrestling with these questions for a long time in the hope of finding a workable procedure to assure the selection and retention of a competent, nonpolitical judiciary.

Under the present Constitution of Maryland the governor appoints all judges, most of whom serve for fifteen-year terms and stand for reelection in regular, contested primary and general elections. This system has been replaced or modified in many states in recent years by the so-called "Missouri Plan," which provides, in essence, that judges be appointed by the governor from nominees of a nominating commission and, thereafter, stand for reelection against their records in a noncompetitive election.

As advocated in Maryland over the past several years, this plan is known as the "Niles Plan." Its provisions have been widely discussed and argued. Its supporters maintain that its overall effect will be the appointment of more able judges from among outstanding members of the bar, who are now dissuaded from accepting appointments to the bench because they must run for reelection in a competitive election. Opponents of the plan claim its principal defect is its failure to give the voters the opportunity to exercise their franchise in favor of a candidate other than the "sitting judges."

There are many variations of the "Missouri" or "Niles" plan and many other constitutional problems inherent in the structure and operation of the judicial branch which will command the attention of the delegates to the Constitutional Convention. For instance, the present Constitution was amended in 1966 to provide a procedure for determining judicial disability. Under what circumstances and safeguards should a judge be temporarily or permanently suspended from performing his duties because of mental or physical disability? The question of the retirement age of judges has been the subject of conflicting opinions. Should there be mandatory retirement at a prescribed age? Should retired judges be allowed to perform special judicial duties? Qualifications for judges, procedures for removing judges for misconduct and compensation of judges are other examples of the many questions related to the judiciary which the Constitutional Convention will want to consider.

Delegates Must Answer Questions

This brief discussion can only begin to suggest the important and complex issues involved in constitutional revision of the judicial framework of our state government. However, the questions posed, while admittedly more difficult to answer than to ask, must, after 100 years, be answered. It is incumbent upon the delegates to the Constitutional Convention to provide Maryland with a judicial branch of government that will make "equal justice under law" a reality of the present and not merely a promise of the future.

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OUR MARYLAND CONSTITUTION

DECLARATION OF RIGHTS AND ELECTIVE FRANCHISE

A constitution has two fundamental purposes. One is to define the powers of the state government and to allocate those powers among the permanent institutions of the government such as the executive, legislative and judicial branches. Earlier articles in this series on "Our Maryland Constitution" have examined some of the questions inherent in erecting this framework of government.

The second basic purpose of a constitution—the protection of the people in the exercise of their individual liberties—is of equal importance. It is to effect this purpose that a constitution sets forth what a state *cannot do*. Indeed, as one writer has observed, "[I]t is no accident that a bill of rights constitutes the first article of most state constitutions." For it is in the bill of rights or declaration of rights of a constitution that the people place limitations upon the power of their government, in order to reserve and declare those individual freedoms and liberties that no government official, or government agency, or transient majority of the people, may transgress.

The people also retain their control over their state government through their right to vote. As the bill of rights is customarily found first in a state constitution, so the provisions on suffrage and elective franchise, setting forth who may vote and under what circumstances, are traditionally found second.

This article explores the present provisions of the Maryland Constitution in these vital areas and the probable issues which the delegates to the Constitutional Convention will encounter in considering them.

The Declaration of Rights

The protection of individual rights from governmental infringement is deeply engrained in the political heritage of Maryland and our nation. Almost all of the provisions of the Declaration of Rights of the present Maryland Constitution originated in the first Maryland Constitution of 1776 and were preserved in the Maryland Constitutions of 1851, 1864 and 1867. The famous Bill of Rights in the United States Constitution (the first ten amendments) was ratified in 1791. The roots of these and comparable documents in all of the states can be traced as far back as the English Bill of Rights of 1689 and the Magna Carta of 1215.

Since we are all generally familiar with the guarantees of individual freedom in the Bill of Rights of the Constitution of the United States, the first question which arises in considering a Declaration of Rights in a state constitution is: Do we need one? What function would it serve?

Need and Function. The first answer is that not all of the provisions of the Bill of Rights are applicable to state governments. Until the ratification of the Fourteenth Amendment to the United States Constitution, the Bill of Rights was construed to restrict only the federal government. Thereafter, however, the Supreme Court has held that certain of the rights protected in the Bill of Rights are so "fundamental" and "implicit in the concept of ordered liberty" that the "due process" clause of the Fourteenth Amendment mandates that state governments, as well as the federal government, obey them. Thus, for example, the First Amendment guarantees of freedom of religion, speech, press and assembly, the Fourth Amendment protection against unreasonable searches and seizures and the Sixth Amendment right to counsel have been held to regulate state, as well as federal, action.

On the other hand, the Fifth Amendment freedom from double jeopardy and right to indictment by a grand jury and the Seventh Amendment right to trial by jury in all civil cases have been held not to apply to the states. Therefore, in these latter cases, the states are free to impose their own limitations. Thus, since the present Maryland Constitution does not protect against double jeopardy, the Constitutional Convention may want to consider adding such a protection.



Similarly, in the absence of a mandatory federal standard, the Convention may want to review the present Maryland constitutional right to trial by jury in all civil cases "where the amount in controversy exceeds the sum of five dollars." There have been several proposals made in recent years, aimed at reducing the enormous backlog of cases in our courts, to amend this provision—one which would raise the minimum amount to $500 or $1000, and another which would leave the amount to be determined by the General Assembly.

State Responsibility. A second reason advanced for a strong declaration of rights in state constitutions is the responsibility of the states to enlarge upon the protections in the federal constitution. The states are closer to and more directly responsible for the protection of individual freedom and property. There have been many suggestions lately that the states can resist the expansion of federal power and revitalize their own governments by playing a more immediate and active role in providing for the welfare and security of their citizens.

So while the present Maryland Constitution prescribes generally minimal guarantees in the areas of freedom of speech, press, assembly and religion and in assuring criminal defendants fair administration of justice—guarantees which usually coincide with the protections afforded in these areas by the Fourteenth Amendment of the United

States Constitution—the Constitutional Convention may want to consider whether the changing circumstances and complexities of our times do not warrant expansion of these basic liberties. An example of this might be in the area of wiretapping and electronic eavesdropping, a subject not now encompassed in the constitutional guarantee against unreasonable searches or seizures at either the state or federal level. Another might be a guarantee of freedom from discrimination by law against persons because of race, color or national origin, a protection heretofore absent from Maryland constitutions, although applicable in Maryland under the federal constitution.

Issue. It has also been suggested that the Constitutional Convention consider reducing to concise, emphatic language many of the exhortatory provisions of our present Declaration of Rights. This idea, however, is opposed by another body of opinion which favors preserving the present traditional language as a link with our State's history. However, this is an issue of form and not of substance.

There is wide agreement that any new constitution must continue to provide all Marylanders with strong assurances of their fundamental rights of free speech, religion, press and assembly, of "due process of law" and "equal protection of the laws," and of a fair and speedy criminal trial before a jury and of their protection against unreasonable search and seizures, bills of attainder or *ex post facto* laws, excessive bail and "cruel or unusual" punishment.

Elective Franchise

Two topics concerning suffrage and elective franchise are likely to be high on the agenda of the Convention: the first, the right to vote; and the second, referendum, initiative and recall.

Right to Vote. The suffrage and elections provisions of our present Constitution prescribe age and residence qualifications for voting and the machinery for holding elections. The present voting age is twenty-one. This raises a question that is being debated widely at both the federal and state level throughout the country: Should the age limit be reduced to eighteen? The many arguments pro and con on this issue will undoubtedly be voiced in the proceedings of the Convention.

Probably the present residence requirements—one year in the State and six months in the legislative district—will also be closely scrutinized. Recommendations have been set forth that no residence requirement be applied to presidential elections, and that in state elections, the one-year requirement be reduced to six months and the six-months requirement reduced to three months. It is argued that these reductions would take into account the increased mobility of population and the heightened ability of the electorate, through mass communications media, to learn about issues and candidates.

The Convention may also want to review the detailed provisions in the present Constitution establishing the procedures for elections. In the view of modern constitutional draftsmen, such items as the mode and manner of registration, absentee balloting and the integrity of the election process are best left out of the constitution and to the discretion of the legislature which can adapt them to changing times and circumstances.

Referendum, Initiative and Recall. The right of referendum—the right of the people to petition a law enacted by the General Assembly onto the ballot for ratification or repeal by the electorate—was first granted in Maryland in 1915 by an amendment to the present Constitution. However, several proposed modifications in the present scheme may be considered by the Convention. These relate to such matters as when and under what circumstances a law takes effect if petitioned to referendum, the number of signatures sufficient to refer a law, and what kind of laws should not be subject to referendum.

Initiative—the right of the people to initiate by petition legislative proposals that would be voted upon directly by the people in a general election—and recall—the right of the people to file a petition subjecting an elected state officeholder to a public referendum on whether he should continue in office—are constitutional rights in a small number of states but have never appeared in Maryland constitutions. The majority view is that they operate generally as obstacles to, rather than safeguards of, the effective, proper conduct of the state business, and that the public has other ample means of access and redress in commanding attention of its proposals and views on legislation and officeholders.

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OUR MARYLAND CONSTITUTION

Convention Organization

On September 13, 1966, the citizens of Maryland voted 160,280 to 31,680 in favor of a Constitutional Convention to frame a new constitution for the State of Maryland. The General Assembly enacted a law in its 1966 session, Chapter 500 of the *1966 Laws of Maryland*, providing that in the case of such a favorable vote, a Convention of 142 delegates should be assembled on September 12, 1967.

How long will the Convention last? How will the Convention operate? Who will be its leaders? What preparations have been made for the Convention? These and many other questions about the Convention are now being asked throughout Maryland.

Governor J. Millard Tawes appointed the Constitutional Convention Commission in June, 1965, to pave the way for constitutional revision. The Commission drafted, after considerable study, a Convention Enabling Act to establish procedures for the election of delegates and for the Convention. The Convention Enabling Act was amended and adopted by the General Assembly at its 1967 session on March 20. Governor Spiro T. Agnew signed the Enabling Act into law on March 24, whereupon it became Chapter 4 of the *1967 Laws of Maryland*.

Time and Place

The General Assembly has provided that the Convention shall convene at noon on Defender's Day, September 12, 1967. The 1967 Enabling Act provides that the site of the Convention shall be the House of Delegates chamber in the State House in Annapolis and that the Convention shall continue in session no later than January 12, 1968, permitting the Convention four months to do its work. The Enabling Act, however, authorized the Governor to assemble the delegates prior to September 12, 1967, for the limited purposes of electing officers, organizing committees and adopting rules of procedure, thereby assuring that the Convention, once convened, will be geared and ready for the hard task at hand.

Organization Meeting

Governor Agnew convened the Convention for an organization meeting on July 11, 1967, at which time the elected delegates took the oath prescribed by the 1967 General Assembly, adopted standing rules, and elected officers.

Under the rules which the Convention adopted four principal officers were to be elected by the Convention: an honorary president, a president, a first vice president, and a second vice president. At its organization meeting the Convention elected former governor J. Millard Tawes honorary president. It elected the chairman of the Convention's preparatory commission, H. Vernon Eney, president. James Clark, Jr., state Senator from Howard County, was elected first vice president and William S. James, President of the state Senate, was elected second vice president.

The rules which were adopted prescribe that there are to be eight primary committees and three secondary or organizational committees. The primary committees are on: (1) Personal Rights and the Preamble, (2) Suffrage and Elections, (3) Legislative Branch, (4) Executive Branch, (5) Judicial Branch, (6) Local Government, (7) State Finance and Taxation, and (8) General Provisions. Each delegate will serve on one primary committee unless he declines the opportunity. The secondary committees are on: (1) Style, Drafting and Arrangement, (2) Calendar and Agenda, and (3) Rules and Credentials. These committees will hold hearings and prepare recommendations to the Convention. All meetings of the Convention and its committees will be open to the public.

The Convention's rules also authorize the Convention to employ a permanent secretary, parliamentarian, research staff, historian, public information director, and such other clerks, stenographers and employees as it needs for the efficient conduct of its business within budgetary limits.

Preparation for the Convention

The Convention will have the benefit of the comprehensive work products of the Constitutional Convention Commission. For the past two years the Commission, which is composed of twenty-seven persons broadly representative of the State, has been studying the present Constitution and preparing extensive background materials for the use of the delegates to the Convention. A draft constitution and commentary were published by the Commission on May 26, 1967, in its Interim Report.

Referendum on the Proposed Constitution

The Convention may propose, by a final vote of a majority of the whole number of delegates, a new constitution or any changes or amendments of the existing Constitution. Its proposals will be submitted to a special referendum election on May 14, 1968. If approved by a majority of the voters of that election, the proposals will generally become effective July 1, 1968, although a new constitution will no doubt provide that the terms of present elected officials will not be shortened.



Informational Materials

In addition to copies of the ten brochures in this series, three color slide presentations are available with narrated tapes. A thirty-minute presentation entitled "A General Review of Proposed Revisions," presents the salient issues in constitutional revision in Maryland. The twenty-minute programs are entitled "The Judicial Branch," a review of the proposed uniform, centrally-administered, statewide judicial system, and "Issues of Local Government," which discusses the changing concept of community and associated issues relating to local government. These presentations may be obtained from any county office of the Cooperative Extension Service (telephone numbers are under the county government listing), or from the Constitutional Convention. After September 15 there will be a thirty-minute color film, entitled "The Mighty Oak of Maryland—A Story of Constitutional Change," available from the offices of the Cooperative Extension Service or the Constitutional Convention. The use of these materials is free for the asking.

Copies of the Interim Report of the Constitutional Convention Commission have been placed in all public li-

braries in Maryland. A list of other materials relating to constitutional revision may be obtained from any county office of the Cooperative Extension Service, or from the Constitutional Convention.

Delegates

On June 13, 1967, the citizens of Maryland elected 142 delegates to the Convention. Each county or legislative district of the State elected the same number of delegates to the Convention as it elects members to the House of Delegates. Thus, representation in the Convention parallels representation in the House of Delegates of the General Assembly as re-apportioned for 1967. The roster follows.

Allegany
J. Glenn Beall, Sr.
C. William Gilchrist
John H. Mosner
Ralph R. Webster

Anne Arundel
6A Marvin I. Anderson
Vernon L. Neilson
Catherine B. Ulrich
6B William L. Henderson
Robert A. Pascal
Lee J. Sosnowski
6C Werner H. Fornos
E. Churchill Murray
C. Maurice Weidemeyer

Baltimore City
#1 Audrey Ward Cicone
Edward Dabrowski, Jr.
Joseph L. Johnson
Chester G. Kosakowski
Edward B. Rybczynski
R. Skip Siewierski
#2 Elsbeth Levy Bothe
Richard F. Cleveland
R. Samuel Jett
Addie J. Key
Henry R. Lord
Marvin I. Singer
James E. Soul
Lloyd Taylor
#3 G. Maxwell Armor, Jr.
C. Meredith Boyce
John Carroll Byrnes
Francis X. Gallagher
Charney L. Harris
Anne D. Hopkins
Herbert R. O'Conor, Jr.
Frank C. Robey, Jr.
#4 Murray Abramson
Rubye H. Gill
John R. Hargrove
Earl Koger
David T. Mason
Juanita Mitchell
John W. White, Jr.

Baltimore City (Cont.)
#5 E. Clinton Bamberger, Jr.
Harry Bard
Roy Borom
Leah S. Freedlander
M. Peter Moser
Joseph Sherbow
Charles L. Wagandt
#6 Albert F. Baumann
Frank J. Blair
George W. Della
LeRoy Frederick
Joseph P. Murphy
Vincent J. Vecera
Charles H. Wheatley

Baltimore County
#1 Walter G. Finch
Richard W. Kiefer
Thomas G. Pullen, Jr.
#2 Shoshana Cardin
Howard J. Needle
Stanley Sollins
#3 Richard W. Case
H. Vernon Eney
Clinton I. Winslow
#4 Henry B. Boyles
J. Hardin Marion
Nicholas M. Schloeder
#5 Quintin T. Eckenrode
Donald P. Hutchinson
Susan M. Kahl
William H. Peters, Jr.
#6 Gerard V. Caldwell
Perry E. Darby
William Rush
#7 Allen E. Buzzell
John F. Leitzel
Bruce K. Price

Calvert
David A. Harkness

Caroline
Marvin H. Smith

Carroll
Mary B. Bryson
William B. Dulany

Cecil
E. Ralph Hostetter
Edward D. E. Rollins, Jr.

Charles
Samuel C. Linton, Jr.
F. DeSales Mudd

Dorchester
Frederick C. Malkus, Jr.

Frederick
Samuel W. Barrick
Benjamin B. Rosenstock
Edward D. Storm

Garrett
William W. Grant

Harford
Robert J. Carson
John W. Hardwicke
William S. James
Charles W. Willis

Howard
James Clark, Jr.
C. Ferdinand Sybert

Kent
Elroy G. Boyer

Montgomery
#1 James V. Bennett
Franklin L. Burdette
Edward J. Clarke
Royce Hanson
Gerald D. Morgan
Alfred L. Scanlan
J. Hodge Smith
#2 J. Douglas Bradshaw
James P. Gleason
Helen L. Koss
Lucille Maurer
Beatrice Miller
John W. Neumann
Howard R. Penniman

Montgomery (Cont.)
#3 Herbert L. Chabot
David Macdonald

Prince George's
#1 Hal C. B. Clagett
William W. Gullett
Margaret B. Mentzer
#2 Raymond G. Boileau
Charles A. Dukes, Jr.
Ralph W. Powers
Melvin L. Schneider
Carlton R. Sickles
W. Waverly Webb
Ronald Willoner
#3 George E. Burgess
Arthur W. Kirkland
Dorothy Scott Murray
Kathleen L. Robie
Howard L. Stern
Harry E. Taylor, Jr.

Queen Anne's
Carter M. Hickman

St. Mary's
Philip H. Dorsey
Frank J. Raley, Jr.

Somerset
J. Millard Tawes

Talbot
Edward T. Miller

Washington
Catherine L. Beachley
E. Stuart Bushong
Vincent R. Groh
Richard Grumbacher

Wicomico
E. Dale Adkins, Jr.
Hamilton Fox

Worcester
Godfrey Child

Correspondence to the delegates may be addressed: Constitutional Convention, State House, Annapolis, Maryland, 21404.

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Commission

Maryland

1967