

Judge of the Orphans Court, that the said several Elections will be contested. You are aware that, where a Senator or Delegate is returned elected, he takes his seat in the Senate or the House, as the case may be, upon the return, and exercises all the privileges of membership, even during the progress of a Contest for his Seat.

This is the only analogy which the Governor can now call to mind. In practice, this can work no difficulty, because a Legislative body having full control over its members, can oust the sitting member, should the Contestant prove his right to the Seat, and enforce its decision by summary process.

But if a Clerk or Register now enter into office under the Governor's Commission, and his Election be afterwards successfully contested before the proper tribunal, it might require a tedious legal process to eject him from his Office.

The question submitted to you therefore is this; Can the Governor withhold, upon Notice filed by a Contestant, the Commission of an officer returned elected? if so, can he do it in a case where the Constitution has provided no tribunal competent to decide the Contest? The Governor wishes you to distinctly understand that he will not stretch a Construction to meet an inconvenience, and will issue Commissions in all cases unless he is satisfied clearly that he has the power to do otherwise. Rather than exercise a doubtful power, he will wait till the Legislature passes the necessary Laws.

Very Respectfully,
Your obd Serv^t
Thos. M. O'Neal
Secy of State

Baltimore Nov. 15th 1851

Dear Sir,

In reply to the communication of your Excellency under date of yesterday, I have very carefully considered the terms of Article 4, sec 30, in connexion with other clauses of the New Constitution and my opinion is very clear that the contesting of the election of Judge, Clerk, or Register, of Wills, operates as a caveat against issuing the Commission until the House of Delegates shall decide the question. I should think that you have no power to issue a Commission after such a caveat, until it is decided by a proper tribunal, nor do I see any inconvenience to the public from such a result, as
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