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REGISTRATION AND  
ELECTION LAWS  
OF MARYLAND

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1990 EDITION



RETURN TO RESOURCE CENTER  
INTERNATIONAL FOUNDATION  
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1101 15th STREET, NW 3rd FLOOR  
WASHINGTON, DC 20005

**REGISTRATION  
AND  
ELECTION LAWS  
OF  
MARYLAND  
1990**

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**WILLIAM DONALD SCHAEFER**  
*Governor*

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*Instructions by*  
**J. JOSEPH CURRAN, JR.**  
*Attorney General*

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*Published by*  
**STATE ADMINISTRATIVE BOARD OF ELECTION LAWS  
OLD ARMORY, 11 BLADEN STREET, P.O. BOX 231  
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 ANNAPOLIS, MARYLAND 21404-0231

**Registration and Election Laws  
of  
Maryland  
1990**

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**The Laws of Maryland pertaining to Elections, together  
with extracts from the Federal and State Constitutions  
and Instructions of the Attorney General.**

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## DEFINITIONS

## § 1-1. Definitions; computation of time.

(a) *Words and phrases defined.* — As used in this article the following terms shall have the meanings indicated unless a contrary meaning is clearly intended from the context in which the term appears:

(1) "Authorized candidate campaign committee" means a political committee established under § 26-4 of this article and authorized by a candidate to promote his candidacy.

(1A) "Ballot" or "ballots" means paper ballots, ballots consisting of one or more punchcards, absentee ballots, or the labels which appear on the face of voting machines, whichever in context would be appropriate.

(2) "Board" means one of the various boards of supervisors of elections in the subdivisions of the State and the members thereof.

(3) "Board of registry" means two persons of opposite party affiliation duly appointed to act as registrars.

(3A) "Campaign manager" means any person appointed or designated by any candidate, or his representative, to exercise general overall responsibility for the conduct of a political campaign.

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(4) "Candidate" means any person who files a certificate of candidacy for any public or party office. "Candidate" includes, for purposes of the fair election practices subtitle, an incumbent judge of the Court of Appeals or Court of Special Appeals at an election for continuance in office.

(4A) "Central committee" means the local or statewide governing body of a political party, as appropriate in the context.

(5) "Contributions" means the gift, transfer or promise of gift or transfer of money or other thing of value to any candidate, or his representative, or a representative of any political party or partisan organization to promote or assist in the promotion of the success or defeat of any candidate, political party, principle or proposition submitted to a vote at any election.

(6) "Election" means the process by which voters of the State, or any county or city thereof, vote for any party or public officer pursuant to the laws of this State or the United States, any constitution or constitutional amendment, public law, public act or proposition and unless otherwise indicated shall include all elections, primary, general, special, local, congressional, presidential, or statewide. It does not mean any municipal election other than in Baltimore City unless otherwise specifically provided for in this article.

(6A) "Elderly" means 65 years of age or older.

(7) "Expenditure" means any gift, transfer, disbursement or promise of money or valuable thing by any candidate, treasurer, or other agent of such candidate, political party or partisan organization to promote or assist in the promotion of the success or defeat of any candidate, political party, principle or proposition submitted to a vote at any election.

(8) "General election" means that election held on the first Tuesday after the first Monday in the month of November, at which the voters of the State vote for candidates for President of the United States or Governor and, in Baltimore City, this means the municipal election for mayor held on the Tuesday next after the first Monday in November in any year in which a municipal election is to be held in the city.

(8A) "Handicapped" means having a temporary or permanent physical disability.

(8B) "Independent" means any voter who has declined to affiliate with a political party.

(9) "Infamous crime" means any felony, treason, perjury, or any crime involving an element of deceit, fraud or corruption.

(10) "Judge" means any person designated as a judge of election and shall include book judges and machine attendants.

(11) The "majority party" means the principal political party to which the incumbent Governor belongs, if the incumbent Governor is a member of one of the two principal political parties; if the incumbent Governor is not a member of one of the two principal political parties, "majority party" means the principal political party whose candidate for Governor received the highest number of votes at the last preceding general election. The principal "minority party" means the other of the two principal political parties. The "principal political parties" means the two parties whose candidates for Governor received the

highest and second highest number of votes at the last preceding general election.

(12) "Partisan organization" means any combination of two or more persons formed for the purpose of assisting the promotion of the success or defeat of any candidate, political party, principle or proposition to be submitted to a vote at any election.

(13) "Political agent" means any person appointed by any candidate, his representative, a political party or partisan organization to promote or assist in the promotion of the success or defeat of any candidate, political party, principle or proposition submitted to a vote at any election.

(14) "Political committee" means any combination of two or more persons appointed by a candidate or any other person or formed in any other manner which assists or attempts to assist in any manner the promotion of the success or defeat of any candidate, candidates, political party, principle or proposition submitted to a vote at any election.

(15) "Party" or "political party" as used in this article means an organized group of the electorate that attempts to control government through the election of its candidates to office, and which either:

(i) Polled 3 percent or more of the entire vote cast in the State in the last general election held in the State; or

(ii) Filed a valid petition for the formation of a political party pursuant to § 4B-1 of this article. But, if any such party loses its status as a political party pursuant to the provisions of § 4C-1 of this article, then it shall cease to be a "party" or "political party" for purposes of this article.

(16) "Precinct" means an election district in a county which is not divided into precincts or an election precinct in an election district which is divided into precincts or a precinct in a ward of the City of Baltimore, as the case may be.

(16A) "Punchcard" means a standard computer tabulating card on which the voter may record his vote by punching a hole opposite his choices.

(16B) "Computer read document" means a document used as a ballot which can be tabulated by electronic computing equipment.

(17) "Registration" means the act by which a person becomes qualified to vote in any election in this State.

(18) "Treasurer" means any person appointed by a candidate, political agent, political committee, or political party or partisan organization to receive or disburse money or other things of value to promote or assist in the promotion of the success or defeat of any candidate, political party, principle or proposition submitted to a vote at any election.

(19) "Voting system" means a method of casting and tabulating ballots or votes.

(20) "Write-in candidate" means a person whose name will not appear on the ballot but who files a certificate of candidacy in accordance with § 4D-1 of this article.

(b) *Computation of time.* — In computing the times for notice to be given, or for the performing of any other act, under this article, Saturday, Sunday, or a legal holiday shall be included, except when the day on which notice should be

## Art. 33, § 1-1 REGISTRATION AND ELECTION LAWS

given or an act should be performed occurs on a Saturday, Sunday, or legal holiday, in which case the notice shall be given or the act performed on the next regular business day following such Saturday, Sunday, or legal holiday. In such computation the day of giving notice or performing any act and the day of registration or election shall be excluded. (1957, ch. 739, § 1; 1965, ch. 744; 1967, ch. 392, § 1; 1969, ch. 1; 1971, chs. 271, 354; 1972, ch. 201, §§ 1, 2; 1973, ch. 366; 1975, ch. 643, § 1; 1976, ch. 38; 1977, ch. 638, § 1; 1978, ch. 210, § 1; chs. 232, 347; 1979, ch. 185; 1984, chs. 255, 385; 1986, chs. 52, 154; ch. 184, §§ 1, 2; ch. 422; 1987, chs. 12, 398; 1988, ch. 598; 1989, chs. 277, 708.)

**Cross reference.** — As to computation of time, see Article 94, § 2.

**Effect of amendment.** — Chapters 277 and 708, both effective July 1, 1989, each reenacted (a) (2) without change.

**Editor's note.** — Section 2, ch. 708, Acts 1989, provides that "the salary of the State's Attorney for Garrett County specified in Chapter 57 of 1981 shall remain in effect for the remainder of the current term."

Section 3 of ch. 708, as amended by ch. 6, Acts 1990, approved Feb. 16, 1990, and effective from date of passage, provides that "the salaries of the County Commissioners, the County Treasurer, the judges of the Orphans' Court, the members of the Board of Education, the Sheriff, and the substitute members of the Board of Supervisors of Elections of Garrett County specified in Chapter 443 of 1985 shall remain in effect for the remainder of the current term."

Section 4 of ch. 708 provides that "pursuant to Article III, Section 35 of the Constitution of Maryland, this Act may not be construed to extend or apply to the salary or compensation of the County Commissioners of Garrett County, the County Treasurer, the judges of the Orphans' Court, the members of the Board of Education, the Sheriff, the State's Attorney and the substitute members of the Board of Supervisors of Elections of Garrett County in office on July 1, 1989, but the provisions of this Act concerning the salary or compensation of the County Commissioners of Garrett County, the County Treasurer, the judges of the Orphans' Court, the members of the Board of Education, the Sheriff, the State's Attorney and the substitute members of the Board of Supervisors of Elections of Garrett County shall take effect at the beginning of the next following term of office."

**Maryland Law Review.** — For comment, "Maryland Campaign Finance Law: A Proposal for Reform," see 47 Md. L. Rev. 524 (1988).

For article, "Survey of Developments in Maryland Law, 1986-87," see 47 Md. L. Rev. 739 (1988).

**University of Baltimore Law Review.** —

For article, "Federal Jurisdiction Over Local Vote Fraud," see 13 U. Balt. L. Rev. 1 (1983).

**Filing of certificate and fee as condition of "official" candidacy and reporting of votes deemed unconstitutional.** — Requirement that nonindigent write-in candidates for certain Baltimore City offices file certificates of candidacy and pay a filing fee of \$150 in order to become "official" candidates and to have the votes cast for them reported publicly, impermissibly infringes on rights protected by the first and fourteenth amendments to the United States Constitution. *Dixon v. Maryland State Admin. Bd.*, 878 F.2d 776 (4th Cir. 1989).

**Definition of "contributions" includes "in kind" contributions** as well as money gifts. 63 Op. Att'y Gen. 263 (1978).

**Debt or loan does not become a contribution** unless the creditor-donor intends it to become a contribution. 62 Op. Att'y Gen. 385 (1977).

**"Start-up" administrative and compliance costs considered contribution.** — Where a corporation establishes a separate, segregated and independent political committee which will continue in existence from year to year, and which will seek voluntary contributions from the corporation's employees and make contributions to candidates for nomination and election to State and local offices, "start-up" administrative and compliance costs which are incurred by the corporation would be considered "contributions" by the corporation for purposes of that term as defined in subsection (a) (5) of this section. 63 Op. Att'y Gen. 263 (1978).

**"Recurring" administrative and compliance costs not considered contributions.** — Where a corporation establishes a separate, segregated and independent political committee which will continue in existence from year to year, and which will seek voluntary contributions from the corporation's employees and make contributions to candidates for nomination and election to State and local offices, "recurring" administrative and compliance costs which are incurred by the corporation would not be considered "contributions" by the corporation for purposes of that term as defined in

subsection (a) (5) of this section. 63 Op. Att'y Gen. 263 (1978).

**Testimonials deemed contributions under subsection (a) (5).** — Where a testimonial is for the purpose of raising funds for a future or past election campaign, the funds raised are contributions under subsection (a) (5) of this section and not gifts under the public ethics law. 71 Op. Att'y Gen. 108 (1986).

**Subsection (a) (6) applicable to Fair Election Practices subtitle.** — There being no qualification of the term "election" in § 26-1 of this article, the definition intended is that which is employed in subsection (a) (6) of this section. *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272, cert. denied, 284 Md. 744 (1979).

**County elections within scope of article.** — The argument that county elections are excluded from the scope of this article because they are "municipalities," and the only municipality included is Baltimore City, is unsound in view of the definition and the references in other sections of Article 33 to county elections and local elections. *Reeder v. Board of Supvrs. of Elections*, 269 Md. 261, 305 A.2d 132 (1973).

**Local campaign finance regulation.** — This article fully occupies the field of campaign finance regulation and addresses both campaign contributions and disclosure of contributions by those doing public business; accordingly, a county may not legislate on these matters. 75 Op. Att'y Gen. — (April 4, 1990).

A prohibition against attempting to influence the vote of any member of the county council by promising future contributions, or threatening to withhold future contributions, is sufficiently distinct from the regulation of the contributions themselves to fall outside of the zone of preemption because this article does not regulate the nature of the discourse between lobbyists and officials; thus, such a county code provision would be a proper exercise of the county's power under Article 40A, § 6-301. 75 Op. Att'y Gen. — (April 4, 1990).

**Municipal elections are specifically excluded by the final sentence of subsection (a) (6) of this section.** *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272, cert. denied, 284 Md. 744 (1979).

**This article is, by definition, inapplicable to special taxing area of Friendship Heights, except when otherwise specifically provided.** *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272, cert. denied, 284 Md. 744 (1979).

**Providing false information on State tax return "infamous crime".** — Conviction for willfully providing false information on State tax return in violation of former Article 81, § 221 (now see TG § 13-1024) constitutes conviction of an "infamous crime" as defined in

subsection (a) (9) of this section so as to disqualify persons so convicted, pursuant to § 3-4 (c) of this article, from continued registration as qualified voter. 67 Op. Att'y Gen. 176 (1982).

**"Infamous crimes".** — For nonexhaustive index issued by Attorney General of offenses that are "infamous crimes," see 67 Op. Att'y Gen. 176 (1982).

**For discussion of what factors to consider in determining whether "infamous crime" has been committed, see 60 Op. Att'y Gen. 245 (1975).**

**Contributors to and members of political committees compared.** — The General Assembly intended to treat contributors to, pursuant to subsection (a) (5) of this section, and members of political committees under subsection (a) (14) of this section as separate classes, the former which may overlap the latter but would not necessarily be entirely included within it. *Phifer v. State*, 278 Md. 72, 359 A.2d 210 (1976).

**Contribution of financial support by itself does not give rise to combination to form "political committee".** — A person who contributes money to another person's political cause, knowing the nature of that cause, but who does nothing else with respect to it, does not combine with that second person to form a "political committee" as that term is defined in subsection (a) (14) of this section. *Phifer v. State*, 278 Md. 72, 359 A.2d 210 (1976).

A person's contribution of financial support to another person's political cause does not, by itself, create a sufficient nexus between the contributor and the recipient for it to be said that they combined to give birth to a "political committee" under subsection (a) (14) of this section. *Phifer v. State*, 278 Md. 72, 359 A.2d 210 (1976).

**Limitation of contributions to committees.** — Unless a contributor to a political action committee ("PAC") specifically earmarks his or her contribution for a particular candidate, or has some other reason to believe that the contribution will in fact go to only one or a handful of candidates, the \$1,000 campaign contribution limitation of Article 33, § 26-9 is inapplicable to PAC contributions. 70 Op. Att'y Gen. 96 (1985).

Nonexempt individuals or entities contributing to "political committees" are subject to the contribution limitations of Article 33, § 26-9. 70 Op. Att'y Gen. 96 (1985).

**Political action committee formed by bank trade association to solicit funds and use them to make political campaign contributions would become a political committee once it contributes or transfers the funds it collects to an announced candidate or one who has filed**

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his certificate of candidacy for State office. 62 Op. Att'y Gen. 374 (1977).

The American Party of the State of Maryland was held a "political party" within the meaning of this section. Barnhart v. Mandel, 311 F. Supp. 814 (D. Md. 1970).

Presidential nominee of the national convention of any "political party", within the meaning of this section, is entitled to appear on the general election ballot without having first filed nominating petitions pursuant to Article 33, § 7-1. 69 Op. Att'y Gen. 133 (1984).

Subsection (c) is an exception to the general law and should be strictly construed. Pumphrey v. Stockett, 187 Md. 318, 49 A.2d 804 (1946).

Applied in Wood v. Putterman, 316 F. Supp. 646 (D. Md.), aff'd, 400 U.S. 859, 91 S. Ct. 104, 27 L. Ed. 2d 99 (1970).

Quoted in Lee v. Secretary of State, 251 Md. 134, 246 A.2d 562 (1968).

Cited in Culotta v. Raimondi, 251 Md. 384, 247 A.2d 519 (1968); Dobson v. Mayor of Baltimore, 330 F. Supp. 1290 (D. Md. 1971); County Council v. Montgomery Ass'n, 274 Md. 52, 333 A.2d 596 (1975); Mandel v. Bradley, 432 U.S. 173, 97 S. Ct. 2238, 53 L. Ed. 2d 199 (1977); Mathers v. Morris, 515 F. Supp. 931 (D. Md.), aff'd, 649 F.2d 280 (4th Cir.), appeal dismissed, U.S. , 102 S. Ct. 375, 70 L. Ed. 2d 199, cert. denied, 454 U.S. 895, 102 S. Ct. 393, 70 L. Ed. 2d 210, modified, 454 U.S. 935, 102 S. Ct. 467, 70 L. Ed. 2d 241 (1981).

### STATE ADMINISTRATIVE BOARD OF ELECTION LAWS

#### § 1A-1. Creation, composition, powers, etc., of Board; State Administrator of Election Laws; meetings with election boards.

(a) *Creation and composition of Board; appointment and terms of members; qualifications; vacancies; expenses; chairman.* — There is hereby created a State Administrative Board of Election Laws consisting of five members. The members of the Board shall be appointed by the Governor with the advice and consent of the Senate of Maryland and shall be residents and voters of the State of Maryland for five years preceding their appointment and during the time of acting as a member of this Board shall not hold any public or party office or be a candidate for any public or party office. The term shall be for a period of four years. In case of a vacancy on the Board by reason of death, resignation or otherwise, occurring when the Senate is not in session, the Governor shall appoint some eligible person to fill the vacancy until the end of the next session of the General Assembly or until some other person is appointed to the office, whichever first occurs; provided that the appointee must be a member of the same political party as the individual whom he replaces. Of the five members appointed to the Board three shall be of the majority party and two shall be of the minority party. The members of the Board shall receive per diem compensation as provided in the budget for each day actually engaged in the discharge of his official duties as well as reimbursement for all necessary and proper expenses. The members of the Board shall elect one of their number as the chairman of the Board.

(b) *State Administrator of Election Laws — Appointment and term; removal; salary.* — There shall be a State Administrator of Election Laws who shall be appointed by the Governor. He shall hold office during good behavior for a term of six years and shall be removable during his term only for incompetence upon charges furnished in writing by the Board setting forth the grounds for dismissal, and he shall have ample opportunity for a hearing. A

person may be appointed to successive or additional terms. His salary shall be as provided in the annual State budget from time to time. A vacancy shall be filled by the Governor for the unexpired term.

(c) *Same — Audit of candidates' financial reports; duties generally.* — The State Administrator shall receive and may audit any financial reports of candidates required under the provisions of this article. He shall perform such duties as may be assigned to him by law or by the State Administrative Board of Election Laws.

(d) *Location of office.* — The office shall be located in Annapolis and shall consist of employees at salaries provided in the annual State budget from time to time.

(e) *Powers and duties of Board.* — The State Administrative Board of Election Laws shall have the following powers and duties, including but not limited to:

(1) Exercising supervision over the conduct of elections in the State;

(2) Adopting rules and regulations to facilitate compliance by the boards of supervisors of elections with the requirements of this article in the conduct of registrations, voting and elections in the State and in otherwise fulfilling their duties under this article;

(3) In accordance with the provisions of subtitle "Voting Systems", reviewing, approving, certifying, and decertifying voting systems, including specific models of a system, and adopting rules and regulations governing the review, approval, certification, decertification, and use of voting systems; provided, however, any voting system for which there was authorization in law immediately prior to July 1, 1978, is certified and may not be decertified by the Board;

(4) Constituting a depository for such election records and relevant information concerning elections as may be provided by law or by administrative practice;

(5) Subject to § 2-1312 of the State Government Article, making an annual report to the General Assembly including recommended changes in this article to assure its uniform administration and improvement in the procedure for the conduct of registration, voting and elections;

(6) Adopting regulations for the conduct of recounts; and

(7) Adopting regulations that require local boards to provide timely public notice of the absentee ballot process.

(f) *Meetings with boards of supervisors of elections.* — In each year preceding any year in which a primary and general election is to be held in the State, the State Administrative Board of Election Laws shall conduct meetings of the members of the boards in the State. It is mandatory for those members of the boards, substitute members, the principal administrative officers of the boards and the counsel for the boards who are designated by the State Administrative Board to attend at least one of the meetings. The meetings shall be held at a time and place and continue for such period of time as determined by the State Administrative Board. The purpose of the meetings is to instruct the members of the boards, designated employees and counsel as to their duties in the conduct of elections. Each member of the boards, substitute



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members, other employees or counsels who attend the meetings shall be reimbursed for all approved reasonable expenses for each day of the meeting attended and shall be paid mileage at the rate established for State employees from his place of residence to the place of meeting and return. (1969, ch. 555, § 1; 1970, chs. 33, 103, 107; 1971, chs. 267, 348; ch. 352, § 1; 1972, ch. 571; 1975, ch. 358; 1976, ch. 30; 1978, ch. 347; 1982, ch. 554; ch. 911, § 1; 1984, ch. 285, § 2; 1985, ch. 625; 1989, ch. 684.)

**Effect of amendment.** — The 1989 amendment, effective July 1, 1989, substituted "adopting" for "to adopt" throughout (e); substituted "Exercising" for "To exercise" in (e) (1); substituted "reviewing, approving, certifying, and decertifying" for "to review, approve, certify, and decertify" in (e) (3); substituted "constituting" for "to constitute" in (e) (4); substituted "making" for "to make" in (e) (5); substituted "adopting" for "the adoption of" in (e) (6); added (e) (7), and made minor punctuation changes throughout (e).

**Maryland Law Review.** — For comment on County Council v. Montgomery Ass'n, 274 Md. 52, 333 A.2d 596 (1975), cited in the note below, see 35 Md. L. Rev. 543 (1976).

**Legislative intent.** — The General Assembly did not intend that local governments should enact election laws, but rather intended that the conduct and regulation of elections be strictly a State function. County Council v. Montgomery Ass'n, 274 Md. 52, 333 A.2d 596 (1975).

**State employment status.** — The Deputy Administrator of the State Administrative Board of Election Laws is an unclassified State employment position. State Admin. Bd. of Election Laws v. Billhimer, 314 Md. 46, 548 A.2d 819 (1988).

**Stated in** Barnhart v. Mandel, 311 F. Supp. 814 (D. Md. 1970).

### ELECTION BOARDS AND EMPLOYEES

#### § 2-1. Appointment of boards of supervisors of elections; vacancies.

(a) *Appointment; qualifications.* — (1) Except in Prince George's County, the Governor shall appoint biennially in each county of the State and in the City of Baltimore three persons who shall constitute the board. The members of the board shall be residents and registered voters in their respective counties or in the City of Baltimore for five years preceding their appointment. Two members shall always be selected from and represent the majority party and one shall always be selected from and represent the principal minority party.

(2) (i) In Prince George's County, the Governor shall appoint once every 2 years 5 persons who shall constitute the board.

(ii) The members of the board shall be residents and registered voters in Prince George's County for 5 years preceding their appointment.

(iii) Of the board members:

1. 4 shall be selected from and represent the majority party; and
2. 1 shall be selected from and represent the principal minority party.

(b) *Substitute members.* — Except in Prince George's County, the Governor at the same time and in like manner shall appoint to each board two substitute members one of whom shall be selected from and represent the majority party and the other of whom shall be selected from and represent the principal minority party.

(c) *Death, resignation or disqualification of member.* — (1) If a member of the board dies, resigns or is disqualified, the substitute member belonging to the same political party as the member shall become the member of the board and is bound by all applicable provisions of this article as they pertain to a member of the board.

(2) If the circumstances discussed in paragraph (1) of this subsection occur, the Governor shall appoint a person to be the new substitute member. The new substitute member shall be from the same political party as his predecessor.

(d) *Member or substitute member prohibited from holding public or party office.* — A member or substitute member of any board may not hold any public or party office, including political clubs, or be a candidate for any such office.

(e) *Duties and privileges of substitute members.* — Substitute board members shall attend all meetings of the board and have all rights and privileges of a board member, except the right to vote.

(f) *Incapacitation of member.* — If a member of the board is incapacitated for any reason, the substitute member of the same political party as the incapacitated member shall:

(1) Serve in the incapacitated member's place until the incapacity has ceased;

(2) Have all the powers and authority, including the right to vote, and be subject to the duties imposed on an appointed member of the board by law.

(g) *Substitute members.* — In Prince George's County, the Governor shall appoint three substitute members to the board. Two of the members shall be selected from and shall represent the majority party and the other member shall be selected from and shall represent the principal minority party. If a vacancy occurs on the board among the majority members the Governor shall designate one of the majority substitute members to fill the vacancy. The substitute members shall be bound by all of the applicable provisions of this article as they pertain to substitute members of the board.

(h) *Vacancies.* — In case of a vacancy in the office of a substitute member, by reason of death, resignation or disqualification, occurring when the Senate or the House of Delegates, as the case may be, is not in session, the Governor shall appoint some eligible person to fill such vacancy until the end of the next session of the General Assembly or until some other person is appointed to the same office, whichever shall first occur; provided, however, that only a person belonging to the same political party shall be eligible to be the successor.

(i) *Eligible list.* — Before originally appointing any member or substitute member of a board the Governor shall request the central committees representing the majority party or the principal minority party in each county and in the City of Baltimore, as the case may be, to designate at least four eligible persons affiliated with the political party of such central committee for each position. The Governor shall appoint one of the persons so designated to fill such vacancy, unless in his judgment all of the persons shall be unfit or incompetent. In such latter event he shall file a written statement with the State Administrative Board of Election Laws, setting forth the facts and the

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grounds therefor, and shall call upon the committee for the county or city, as the case may be, for an additional list of at least four names of persons affiliated with the political party of such central committee and from such supplementary list he shall make the particular appointment. If a list or additional lists are not submitted by the central committee in accordance herewith within twenty days after a request, then the Governor may make such appointment from persons of his own selection affiliated with the political party of the central committee. In no event shall more than a total of three lists of any kind be submitted by any one central committee for any one position as a member or substitute member of a board.

(j) *Rejection by Senate or House of Delegates; special provisions for Caroline, Dorchester and Kent counties.* — In the event that the person appointed by the Governor is rejected by the Senate or the House of Delegates, as the case may be, the Governor shall appoint another person from the list of names originally submitted by the central committee. If said original list is exhausted by subsequent appointments of the Governor and Senate or House rejection of all such appointees, the Governor shall call upon the central committee for the county or city, as the case may be, for a supplemental list of at least four names as provided in subsection (i) of this section, from which list the Governor shall make successive appointments until the original and supplemental lists are entirely exhausted.

Appointments of members and substitute members of boards shall be made subject to confirmation by the Senate of Maryland, except as provided in this subsection. In Caroline, Dorchester and Kent counties, at any time when there is no Senator elected from any one of these counties who is a resident of the particular county, the confirmation in such case shall be made by the House of Delegates of Maryland. (1957, ch. 739, § 1; 1966, chs. 482, 727; 1967, ch. 392, § 1; 1970, ch. 103; 1971, ch. 348; 1977, ch. 367; ch. 638, § 4; 1982, ch. 554; 1984, chs. 25, 255; 1987, ch. 11, § 1; ch. 609; 1988, ch. 6, § 1.)

**Office of supervisor of elections is civil office within the meaning of Md. Const., article II, § 10.** *Riggin v. Lankford*, 134 Md. 146, 105 A. 172 (1919).

**But legislature may abolish office or change mode of appointment.** *Riggin v. Lankford*, 134 Md. 146, 105 A. 172 (1919).

**Power is vested in Governor to fill a vacancy in the office of supervisor of elections both by statute and by Md. Const., article II, § 11.** *Truitt v. Collins*, 122 Md. 526, 89 A. 850 (1914).

**Political club activities.** — This section

does not prevent a member of a board of supervisors of elections from being a candidate for or holding an office in a political club. 66 Op. Att'y Gen. 142 (1981).

**Appellant held to have been properly appointed by Governor when the Senate was not in session, in place of his nominee rejected by Senate.** *Riggin v. Lankford*, 134 Md. 146, 105 A. 172 (1919).

**Cited in** *Potts v. Governor of Md.*, 255 Md. 445, 258 A.2d 180 (1969); *State Admin. Bd. of Election Laws v. Billhimer*, 314 Md. 46, 548 A.2d 819 (1988).

### § 2-2. Oath; organization; tenure.

Before entering upon the duties of their office, members of the board shall each take and subscribe to the oath prescribed in Article I, § 9 of the Constitution, which oath shall be taken before and duly recorded by the clerk of the circuit court for the county. Within twenty days after their appointments

become effective, the members of the board for each county and for the City of Baltimore, respectively, shall organize as a board by electing one of their members as president. They shall each hold office until their successors are appointed and qualified, unless sooner removed for good cause shown. The Governor shall have power to remove them at any time upon written charges, after notice and hearing. Each board shall have the right and authority to procure an official seal with which to authenticate its official papers and documents. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1982, ch. 820, § 1; 1983, ch. 8.)

**Editor's note.** — Section 6, ch. 820, Acts 1982, provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

### § 2-3. Compensation of board members.

(a) *Amounts in general.* — Each member of the boards of the several political subdivisions of the State shall receive an annual salary of not less than the following amounts:

(1) Allegany County: \$1,080.

(2) Anne Arundel County: \$2,400.

(3) Baltimore City: \$8,000; these salaries shall be established in the annual ordinance of estimates but may not be less than the amount provided for in this subsection.

(4) Baltimore County: The president of the board shall receive such annual compensation as may be included in the county budget from time to time but, in no event, to be less than \$4,000. The associate members of the board shall receive such annual compensation as may be included in the budget from time to time but, in no event, to be less than \$3,000.

(5) Calvert County: \$2,500; and reimbursement for expenses in the performance of their duties.

(6) Caroline County:

(i) President \$2,000.

(ii) Associate members \$1,800.

(iii) Members may not receive additional salary or compensation for expenses related to election activities or matters occurring within the county.

(iv) If the County Commission approve and provide the necessary funds, members may be compensated for actual expenses incurred in the performance of official duties occurring outside the county.

(7) Carroll County: \$800.

(8) Cecil County:

(i) President: \$1,250.

(ii) Associate members: \$1,000 each.

(iii) Members may not be given additional salary or expenses for other compensation generated by virtue of activities or election matters which occur in the county, but may be compensated for actual expenses incurred in activities which occur out of the county.

(9) Charles County: \$800.

**Art. 33, § 2-3 REGISTRATION AND ELECTION LAWS**

(10) Dorchester County: \$2,000; and expenses as authorized by the County Commissioners.

(11) Frederick County: \$2,100.

(12) Garrett County:

(i) President: \$2,000; and

(ii) Members: \$1,700 each.

(13) Harford County: \$2,000 for president; \$1,700 for other members.

(14) Howard County: President, \$2,800; associate members, \$2,000 each.

(15) Kent County:

(i) President: \$1,250.

(ii) Associate members: \$1,000.

(16) Montgomery County: \$4,500, plus an additional sum of \$500 for the president of the board.

(17) Prince George's County: \$4,500 per member; however, the president shall receive \$5,000.

(18) Queen Anne's County:

(i) President: \$1,500.

(ii) Associate members: \$1,200.

(19) St. Mary's County: \$800.

(20) Somerset County: \$1,000.

(21) Talbot County: \$600.

(22) Washington County: \$2,300 for the president and \$2,000 for each member.

(23) Wicomico County: \$1,800 for each member of the board, plus an additional sum of \$600 for the president of the board.

(24) Worcester County:

(i) President: \$1,500.

(ii) Members: \$1,200.

(b) *Substitute members.* — (1) Except as provided in paragraphs (2) and (3) of this subsection, each substitute member of the board shall receive compensation for each day he serves as a member, in an amount determined by the county commissioners, county councils, or the Mayor and City Council of Baltimore. A substitute member shall attend all regularly scheduled meetings of the board and shall be compensated at a rate of not less than \$25 per day.

(2) In Garrett County, a substitute member of the board shall receive \$600 per year.

(3) In Wicomico County, a substitute member of the board shall receive \$1,200 per year. (1957, ch. 739, § 1; 1959, ch. 138; 1961, chs. 224, 345, 522, 759, 882; 1963, chs. 381, 672, 673, 674; 1965, chs. 678, 680, 762, 770; 1966, ch. 306, § 1; ch. 532; 1967, ch. 392, § 1; chs. 513, 521; 1969, ch. 139; ch. 144, § 1; 1970, ch. 387; 1971, chs. 62, 200, 277, 345, 347; 1972, ch. 452, § 1; ch. 482; ch. 570, § 1; ch. 604, § 1; 1975, ch. 115, § 1; ch. 737, § 1; 1976, chs. 32, 46; ch. 127, § 1; ch. 370, § 1; ch. 503, § 1; ch. 519, § 1; 1977, chs. 374, 506, 533, 554; 1978, ch. 758; 1979, ch. 222; 1980, chs. 113, 719; 1981, ch. 416; 1982, ch. 554; 1984, ch. 255; 1985, chs. 430, 443; 1986, ch. 5, § 1; chs. 273, 275, 417; 1987, chs. 102, 129, 407; 1988, chs. 169, 270, 525; 1989, chs. 92, 277, 708.)

**Effect of amendment.** — Chapter 92, Acts 1989, effective July 1, 1989, in (a) (22), substituted "\$2,300" for "\$1,800" and "\$2,000" for "\$1,500."

Chapter 277, Acts 1989, effective July 1, 1989, in (a) (18) (i), substituted "\$1,500" for "\$1,250"; and in (a) (18) (ii), substituted "\$1,200" for "\$1,000."

Chapter 708, Acts 1989, effective July 1, 1989, substituted "\$600 per year" for "\$40 for each meeting attended" in (b) (2).

**Editor's note.** — Section 2, ch. 273, Acts 1986, provides that "pursuant to Article III, § 35, of the Constitution of Maryland, this act may not be construed to extend or apply to the compensation of the members of the Board of Supervisors of Elections of Dorchester County in office on July 1, 1986, but the provisions of this act concerning the salary or compensation of the Board members shall take effect at the beginning of the next following term of office."

Section 2, ch. 417, Acts 1986, provides that "pursuant to Article III, § 35, of the Constitution of Maryland, this act may not be construed to extend or apply to the salary or compensation of the Howard County Board of Supervisors of Elections in office on July 1, 1986, but the provisions of this act concerning the salary or compensation of the Howard County Board of Supervisors of Elections shall take effect at the beginning of the next following term of office."

Section 2, ch. 102, Acts 1987, provides that "pursuant to Article III, § 35, of the Constitution of Maryland, this act may not be construed to extend or apply to the salary or compensation of the president and members of the Montgomery County Board of Supervisors of Elections in office on June 1, 1987, but the provisions of this act concerning the salary or compensation of the president and members of the Montgomery County Board of Supervisors of Elections shall take effect at the beginning of the next following term of office."

Section 2, ch. 407, Acts 1987, provides that "pursuant to Article III, § 35, of the Constitution of Maryland, this act may not be construed to extend or apply to the salary or compensation of the President and associate members in office on June 1, 1987, but the provisions of this act concerning the salary or compensation of the President and associate members shall take effect at the beginning of the next following term of office."

Section 2, ch. 92, Acts 1989, provide that "pursuant to Article III, Section 35 of the Constitution of Maryland, this Act may not be construed to extend or apply to the salary or compensation of the President and members of the Washington County Board of Supervisors of Elections in office on July 1, 1989, but the pro-

visions of this Act concerning the salary or compensation of the President and members of the Washington County Board of Supervisors of Elections shall take effect at the beginning of the next following term of office."

Section 2, ch. 277, Acts 1989, provides that "pursuant to Article III, Section 35 of the Constitution of Maryland, this Act may not be construed to extend or apply to the salary or compensation of the President and associate members of the Board of Supervisors of Elections of Queen Anne's County in office on July 1, 1989, but the provisions of this Act concerning the salary or compensation of the President and associate members of the Board of Supervisors of Elections of Queen Anne's County shall take effect at the beginning of the next following term of office."

Section 2 of ch. 708 provides that "the salary of the State's Attorney for Garrett County specified in Chapter 57 of 1981 shall remain in effect for the remainder of the current term."

Section 3 of ch. 708 provides that "the salaries of the County Commissioners, the County Treasurer, the judges of the Orphans' Court, the members of the Board of Education, the Sheriff, and the substitute members of the Board of Supervisors of Elections of Garrett County specified in Chapter 443 of 1985 shall remain in effect for the remainder of the current term."

Section 4 of ch. 708, as amended by ch. 6, Acts 1990, approved Feb. 16, 1990, and effective from date of passage, provides that "pursuant to Article III, Section 35 of the Constitution of Maryland, this Act may not be construed to extend or apply to the salary or compensation of the County Commissioners of Garrett County, the County Treasurer, the judges of the Orphans' Court, the members of the Board of Education, the Sheriff, the State's Attorney and the substitute members of the Board of Supervisors of Elections of Garrett County in office on July 1, 1989, but the provisions of this Act concerning the salary or compensation of the County Commissioners of Garrett County, the County Treasurer, the judges of the Orphans' Court, the members of the Board of Education, the Sheriff, the State's Attorney and the substitute members of the Board of Supervisors of Elections of Garrett County shall take effect at the beginning of the next following term of office."

**Constitutionality of 1981 amendment.** — Article III, § 35 of the Maryland Constitution does not prohibit the payment of the increased salary provided by Chapter 416, Acts 1981, to the members of the Garrett County board of supervisors of elections, whose term of office began June 1, 1981. 67 Op. Att'y Gen. 340 (1982).

**Art. 33, § 2-4 REGISTRATION AND ELECTION LAWS**

**§ 2-4. Offices, supplies and equipment; payment of expenses.**

(a) Each board shall have an office and shall provide all supplies and equipment necessary, not inconsistent with the provisions of this article, including that required by the State Administrative Board of Election Laws, for the proper and efficient conduct of voter registration and all elections.

(b) The expenses incurred by each board in furnishing supplies and equipment as provided in subsection (a) and all other necessary and reasonable expenses of each board shall be an expenditure of the county or Baltimore City in which the board is located, and shall be payable as other expenses are payable by the county commissioners, county councils, or the Mayor and City Council of Baltimore, as the case may be. (1957, ch. 739, § 1; 1965, ch. 420; 1967, ch. 392, § 1; 1972, ch. 571.)

County commissioners required to make levy to pay indebtedness contracted by supervisors for primary election voting booths, ballots, etc., incurred in accordance with a local law. *Kenneweg v. Allegany County Comm'rs*, 102 Md. 119, 62 A. 249 (1905).

**§ 2-4.1. Expenses in Dorchester County.**

Repealed by Acts 1987, ch. 129.

**§ 2-5. Appointment and compensation of counsel.**

(a) *Appointment in general.* — Each board may appoint as its counsel a practicing attorney of the bar of its particular subdivision, who is a resident thereof, and who shall, during the time of acting as counsel, not hold or be a candidate for any public or party office.

(b) *Salary; special provisions for Anne Arundel, Baltimore, Montgomery, Prince George's, Wicomico and Worcester Counties; additional compensation for special services.* — (1) The salary of the counsel may not exceed the salary of the members of the board.

(2) The counsel to the board in Baltimore County shall receive such annual compensation as may be included in the County budget from time to time but, in no event, to be less than \$2,000.

(3) The board in Wicomico County may employ an attorney, who shall be a member of the bar of Wicomico County and who shall also be the attorney for the judges. The attorney shall receive an annual salary of \$1,200 which shall be paid in equal quarterly installments by the County Council of Wicomico County.

(4) The counsel to the board in Montgomery County shall receive an annual salary of \$2,000.

(5) The counsel to the board in Prince George's County shall receive an annual salary of \$4,500.

(6) The annual salary for the counsel to the board in Anne Arundel County shall be as provided in the budget of Anne Arundel County, but shall not be less than the salary of a board member.

(7) The counsel to the board in Worcester County shall receive an annual salary of \$800.

(8) If the counsel to any board renders special services, the board shall allow additional compensation in an amount which the board considers commensurate with the special services rendered subject to budget limitations. (1957, ch. 739, § 1; 1959, ch. 161; 1961, chs. 224, 522; 1963, chs. 495, 672, 673, 674; 1965, chs. 680, 770; 1966, chs. 42, 123; 1967, ch. 392, § 1; 1970, ch. 307; 1971, ch. 347; 1972, ch. 604, § 2; 1975, ch. 737, § 2; 1976, ch. 503, § 1; ch. 656; 1981, ch. 292.)

**Payment for services of counsel.** — See *Anne Arundel County Comm'rs v. Melvin*, 107 Md. 533, 69 A. 256 (1908).

## **§ 2-6. Appointment and removal of employees; disqualification to hold office, etc.; maximum number of employees in Baltimore City.**

Subject to the provisions of Article 64A of the Code, or, in the case of a board covered by a local merit system as provided in Article 64A, § 9G (f), subject to the rules and regulations of the personnel officials of the county in which the board is located, each board may appoint and remove clerks, registrars, voting machine custodians, stenographers, and other employees who shall be registered voters of the State of Maryland and, with respect to any appointment after July 1, 1978, shall be a resident of the county in which the board is located and maintain such residence while so employed. During any part of his tenure in office or his employment, an employee may not hold any public or party office or be a candidate for any public or party office; use his official authority or influence for the purpose of interfering with or affecting the result of an election; or take an active part in political management or in political campaigns.

Nothing in this section shall be construed to apply to election judges, whatever their title may be, or to attorneys to the election boards. However, an election judge or an attorney to an election board may not be a candidate, a campaign manager for a candidate or a treasurer for a candidate or political committee.

In Baltimore City the board may not have more than 45 employees, or as provided hereafter by the Secretary of Personnel. (1971, ch. 351, § 2; 1973, chs. 16, 288; 1975, ch. 643, § 2; 1976, chs. 193, 419; 1978, ch. 65; 1979, ch. 267.)

**Purpose of Acts 1971, ch. 351** was to place all continuously employed permanent employees of the boards of supervisors of elections in the various subdivisions of the State in the State's classified service and, therefore, under the jurisdiction of the Secretary of Personnel.

*State Admin. Bd. of Election Laws v. Billhimer*, 72 Md. App. 578, 531 A.2d 1298 (1987), rev'd on other grounds, 314 Md. 46, 548 A.2d 819 (1988).

**Stated** in *State Admin. Bd. of Election Laws v. Billhimer*, 314 Md. 46, 548 A.2d 819 (1988).



**Art. 33, § 2-6A REGISTRATION AND ELECTION LAWS**

**§ 2-6A. Clerk-stenographers in Allegany County.**

Repealed by Acts 1971, ch. 351, § 2.

**§ 2-7. Judges of election.**

(a) *Number; political affiliation; examination.* — Each board biennially shall appoint for each precinct, at least four (4) judges. An equal number of such judges shall be selected from the majority party and the principal minority party in the State; and the board in making any such appointments shall designate the persons intended by it to represent each such political party. The board may require the attendance of these persons before it for examination with respect to their qualifications.

(b) *Qualifications.* — Each judge so appointed must be a registered voter residing in the election district or ward in which the precinct for which he is appointed is located; except that if a qualified person residing in the election district or ward cannot be found with reasonable effort, then the judge so appointed must be a registered voter residing in the county or Baltimore City in which the precinct is located. He must be able to speak, read and write the English language; and during the time of acting as a judge must not hold or be a candidate for any other public or political party office. Each board may prescribe such rules and regulations as it may deem necessary for determining the qualifications of persons proposed for appointment as judges.

(c) *Appointment.* — Each member of the board shall have a veto upon the proposed appointment of any judge. If in any instance in consequence of the use of such a veto, the board cannot agree upon an appointment, then the member or members of the board belonging to the political party entitled to be represented by such judge shall name three (3) eligible persons for the office, and from this list the other member or members of the board shall appoint the judge. If the member or members of the board belonging to the political party entitled to be represented by a judge shall file in the office of the board a statement in writing that a suitable person cannot in his or their judgment be secured in any particular district or ward to fill the position of judge, the position then may be filled by a person otherwise qualified residing in another district or ward.

(d) *Tenure.* — The judges shall be appointed not later than the Tuesday which is thirteen weeks prior to the statewide primary election in any year in which a statewide primary election is to be held; and unless excused for good cause by the board they shall be bound to serve in such position until the Tuesday which is thirteen weeks prior to the next statewide primary election.

(e) *Oath.* — Each person shall take and subscribe to the oath prescribed in Article I, § 9 of the Constitution of Maryland. The oath shall be taken and subscribed to before one of the members of the board, or any clerks especially designated by the board for this purpose, and commissions shall thereupon be issued to the judges. In the discretion of the board, the oath may be taken and subscribed to upon forms to be supplied by the board, signed under penalty of

perjury, and upon receipt of the form, duly executed, the board shall issue a commission therefor.

(f) *Compensation.* — (1) Each board shall have power to fix the compensation of judges within the limits of the amounts authorized for this purpose by the county commissioners, county council or the Mayor and City Council of Baltimore, as the case may be, provided that compensation shall not be less than \$20 per day for each day actually served.

(2) In Allegany County the compensation shall not be less than \$75 per day for each chief judge and \$55 per day for other judges for each day actually served.

(3) (i) In Baltimore City, the compensation of judges of elections shall be \$100 per day for chief judges and \$75 per day for judges for each election day.

(ii) In Baltimore City, each chief judge must be a registered voter residing in the election district or ward in which the precinct for which the chief judge is appointed is located. However, if a qualified person residing in the election district or ward cannot be found with a reasonable effort, the chief judge must be a registered voter residing in Baltimore City.

(iii) In Baltimore City, one judge each from the majority party and the principal minority party in this State appointed in each precinct shall be designated chief judge for that precinct.

(iv) All judges, except those judges appointed under emergency circumstances, shall be required to receive the course of instruction prescribed by the board of supervisors of elections.

(4) In Baltimore County, the compensation of judges of elections shall be \$135 per day for chief judges and \$100 per day for other judges for each election day.

(5) In Prince George's County, judges shall be paid \$100 per day for two chief judges and \$75 per day for judges, for each election day actually served.

(6) (i) In Washington County, chief judges shall be paid \$75 per day for each election day, plus a mileage allowance as determined by the board; judges shall be paid \$65 per day for each election day.

(ii) In Washington County, after a chief judge or judge has received a course of instruction in poll working he shall be eligible for additional compensation if approved by the board and provided in the county budget.

(g) *Course of instruction; compensation for judges taking course in Prince George's County.* — (1) Judges shall receive a course of instruction in their duties administered by the board.

(2) In Prince George's County, judges and alternate judges shall receive \$25 as compensation for taking the course of instruction, except that such compensation shall not be paid if the judge or alternate judge refuses to serve on any election day, unless excused by the board.

(h) *Removals.* — It shall be the duty of each board to examine promptly into any complaints which may be made to it with reference to the fitness or qualifications of any person appointed to be a judge; and it shall be the further duty of the board to remove from such position any judge found by it to be unfit or incompetent for such position.

## Art. 33, § 2-8 REGISTRATION AND ELECTION LAWS

(i) *Vacancies.* — Any vacancies in the position of judge shall be filled by the board in the manner hereinabove prescribed for appointments to such positions.

(j) *Badges to be worn in Baltimore City.* — In Baltimore City on any election day, while performing their duties as judges, all judges shall wear a badge which shall be in plain view for all to see and which shall identify the person as a judge and shall identify him by name and by the ward and precinct or election district of which he is a judge. (1957, ch. 739, § 1; 1961, ch. 324; 1963, ch. 560; 1965, ch. 811; 1966, ch. 142; 1967, ch. 392, § 1; 1968, chs. 379, 385; ch. 615, § 2; 1970, ch. 435; 1971, ch. 332; 1973, ch. 821; 1975, ch. 110; 1979, ch. 290; 1980, chs. 700, 719; 1982, chs. 16, 20, 192; 1984, chs. 14, 255; 1985, ch. 350, § 1; ch. 520; 1986, ch. 131; 1987, chs. 182, 537; 1989, ch. 72.)

**Effect of amendment.** — The 1989 amendment, effective July 1, 1989, in (f) (6) (i), substituted "\$75" for "\$60" and "\$65" for "\$50."

**Editor's note.** — Section 2, ch. 131, Acts 1986, provides that "pursuant to Article III, § 35, of the Constitution of Maryland, this act may not be construed to extend or apply to the salary or compensation of the Prince George's County Election Judges in office on June 1, 1986, but the provisions of this act concerning the salary or compensation of the Prince George's County Election Judges shall take effect at the beginning of the next following term of office."

Section 2, ch. 182, Acts 1987, provides that, "pursuant to Article III, § 35, of the Constitution of Maryland, this act may not be construed to extend or apply to the salary or compensation of the Baltimore County Election Judges in office on June 1, 1987, but the provisions of this act concerning the salary or compensation of Baltimore County Election Judges shall take effect at the beginning of the next following term of office."

**Effect of veto.** — The veto upon the proposed appointment, allowed to each member of the board, when exercised prevents the selec-

tion of any judge or clerk proposed for selection; thereafter the other two supervisors may not appoint a person so vetoed. When the board cannot agree upon an appointment and the two majority supervisors are to name three men to minority supervisor from whom he makes a selection, the selection of these names must be by agreement and by joint act of majority supervisors. Board of Supvrs. of Elections v. Loden, 129 Md. 279, 98 A. 709 (1916).

**Application of 1980 amendments.** — Given the dictates of article III, § 35 of the Maryland Constitution, the increased salaries authorized by Chapters 700 and 719, Acts 1980, for election judges cannot be awarded to incumbent judges as of the effective date of the legislation; however, such increases may be given effect when a judge begins a new term. 65 Op. Att'y Gen. 381 (1980).

Given the dictates of article III, § 35 of the Maryland Constitution, the salaries of the incumbent members of the Washington County board cannot be increased, as provided by Chapter 719, Acts 1980, during the balance of their term; however, a member's salary may be increased at the start of a new term. 65 Op. Att'y Gen. 381 (1980).

### § 2-8. Substitute election officials.

(a) If any judge shall not be present at the expiration of fifteen minutes after the time for the opening of the polls, the judge or judges present shall fill the place of the absent judge by appointing in his stead a person of the same political party as the absentee. One of the judges shall administer to such substitute the oath required of the judge originally appointed.

(b) (1) After the opening of the polls, a judge may not absent himself until all the ballots cast have been counted and the returns completed. In case of absolute necessity, if any judge in attendance is compelled to absent himself, he shall appoint some fit person of the same political party as himself to act in

his stead until his return, having first administered to the substitute the same oath as he himself has taken.

(2) A judge who is appointed to serve in a district, ward, or precinct other than the one in which he is registered to vote and who chooses to vote shall cast his vote by absentee ballot pursuant to § 27-1 (a).

(c) Blank forms for the appointment of the substitute judges and the oath aforesaid shall be supplied by the board, and the oath when administered shall be preserved and returned by the judges to the board.

(d) The appointment and swearing in of all such substitutes and the reason therefor and the time when such substitute began and ceased to serve shall be noted by the judges on loose-leaf pages inserted in the binders containing the precinct cards; such substitute shall cease to act whenever the judge in whose stead he was appointed shall be present. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1976, ch. 174, § 1; 1977, ch. 533; 1984, ch. 255.)

### § 2-9. Responsibility of board for elections.

(a) *General provisions.* — Each board shall have charge of and make provision for all elections to be held in its county or city, or any part thereof at any time; provided, however, that in any incorporated city or town in the State (other than the City of Baltimore) in which the municipal or charter elections are regulated by the public local laws of the State or the charter of the municipality, the conduct of municipal or charter elections shall continue to be so regulated as heretofore or may hereafter be provided by public local laws or the charter of the municipality and the same shall continue in force therein.

(b) *Rules and regulations.* — The board shall have power to make all necessary rules and regulations, not inconsistent with this article, with reference to the registration of voters and the conduct of elections. Unless otherwise expressly provided in this article, all questions arising with reference to such rules and regulations as to the registration of voters and the conduct of elections shall be decided by a majority of the board. Copies of all rules and regulations adopted by the board shall be filed with the State Administrative Board of Election Laws within 30 days from their adoption.

(c) *Summoning judges and witnesses.* — The board shall have power to summon judges and any witnesses involved and to require their appearance before them; and to administer oaths and take testimony from such judges and witnesses.

(d) *Office to be open and members available on election day.* — The office of each board shall be open on any election day, and the members of the board shall be available when needed on such day.

(e) *Offices to be opened for voter registration.* — The offices of each board shall be opened from 9 a.m. to 9 p.m. on the fifth Monday prior to any election to provide for voter registration. Registrars shall permit all qualified persons who, at the official closing time of 9 p.m., are waiting to register to do so.

(f) *Office hours on last day for filing certificate of candidacy.* — The offices of each board shall be open from 9 a.m. to 9 p.m. on the last day for the filing of a certificate of candidacy.

## Art. 33, § 2-10 REGISTRATION AND ELECTION LAWS

(g) *Garrett County*. — In Garrett County, following each decennial census of the United States, the Garrett County board shall:

(1) Evaluate the population of the county commissioner districts to determine whether the districts are of substantially equal population; and

(2) Recommend to the Garrett County delegation to the General Assembly any adjustments to the boundaries of the county commissioner districts necessary to maintain districts of substantially equal population. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1971, ch. 352, § 2; 1977, ch. 79; ch. 80, § 1; 1979, ch. 249, § 2; 1986, ch. 187; 1988, ch. 218.)

**Legislative intent.** — The General Assembly did not intend that local governments should enact election laws, but rather intended that the conduct and regulation of elections be strictly a State function. *County Council v.*

*Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

**Cited in** *State Admin. Bd. of Election Laws v. Billhimer*, 314 Md. 46, 548 A.2d 819 (1988).

### § 2-10. Notice of elections.

(a) Each board shall give public notice of the time and place of all elections in each precinct. Such notice shall be given in newspapers of general circulation; in the discretion of the board, notices may also be posted in such public places in each precinct as the board may determine. The election board of each county and Baltimore City at their discretion may mail at least one week before every election a specimen ballot to the household of each registered voter in the county or Baltimore City.

(b) *Counties*. — The board of each county, except those in which a specimen ballot is mailed pursuant to the preceding paragraph and such ballot includes the time and place of the election, shall give notice during the calendar week preceding any election of the time and place of the election by advertisements, if same can be procured at the lowest available local rate for commercial advertising, in at least two newspapers of general circulation published in the county, except that in those counties where there is only one newspaper published which is a weekly of general circulation, then in the weekly newspaper.

(c) *Baltimore City*. — In Baltimore City, unless a specimen ballot is mailed pursuant to this section and such ballot includes the time and place of the election, the board shall give notice five (5) days before the date of the election by advertisement in all the daily newspapers and may give such notice in one or more weekly or semiweekly newspapers published in Baltimore City and having a circulation of not fewer than 20,000 subscribers, which will publish the same at their lowest available local rate for commercial advertising. (1957, ch. 739, § 1; 1961, ch. 163; 1966, ch. 217; 1967, ch. 392, § 1; 1972, ch. 571; 1974, ch. 190; 1977, ch. 519; 1983, ch. 375; 1984, ch. 255.)

**Notices held sufficiently specific and definite.** — Notices of special election required by this section held specific and definite enough to give proper notice. *Lexington Park Volunteer Fire Dep't v. Robidoux*, 218 Md. 195, 146 A.2d 184 (1958).

**Notice of change.** — Failure to give notice

required as to change of place of holding election in one precinct after first notice was given did not render the election void. *Wilkinson v. McGill*, 192 Md. 387, 64 A.2d 266 (1949).

**Quoted in** *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

**§ 2-11. Polling places.**

(a) *Location; access to elderly and handicapped voters.* — (1) It is the duty of the respective boards to appoint and to provide for furnishing, heating, lighting and cleaning, a suitable polling place in each precinct, which shall be as near the center of the voting population of the precinct as practicable. Whenever all three members of any board shall file in their office a statement in writing that a suitable place cannot in their judgment be secured in any precinct, a suitable place in an adjoining precinct may be provided. Except as provided in paragraph (2) of this subsection, in no case shall an election be held in any building or part of any building used or occupied primarily as a saloon, billiard hall, or bowling alley or communicating therewith by doors or hallways except as to a building owned and occupied by a bona fide volunteer fire company, service club, veterans organization, fraternal organization, or retirement community.

(2) An election may not be held in an establishment that holds an alcoholic beverage license unless:

(i) The board determines that there is no suitable alternative place to hold an election;

(ii) The licensee agrees not to sell or dispense alcoholic beverages during the period beginning 2 hours before the polls open and ending 2 hours after the polls close; and

(iii) Where applicable, all ballots are removed from the polling place by the board immediately following the election.

(3) In Baltimore City public buildings shall be used for polling places to the greatest extent feasible. For rental of privately owned polling places in Baltimore City the board of supervisors shall pay an amount as determined from time to time in the ordinance of estimates, provided that such amount shall be uniform on a citywide basis.

(4) Every polling place, to the extent feasible, shall be structurally barrier free in order to permit reasonable access, for the purpose of voting, to elderly and handicapped voters.

(b) *Public buildings.* — Wherever possible and practicable, it shall be the duty of each board to use public buildings, such as schoolhouses and fire-engine houses, for polling places. It is the duty of all public officials having charge of such buildings to place them at the disposal of the boards without charge. Such space as needed therein for the proper conduct of elections shall be provided upon application for their use by the boards and light, heat and custodial and janitorial services for the buildings shall be provided without charge. Nothing in this subsection shall be construed to mean the volunteer fire companies or rescue squads shall not be paid for the use of their facilities.

(1) In Montgomery County, it shall be mandatory that the county Board of Education make available such space and custodial service as needed for the proper conduct of registrations and elections upon application by the board for the county.

(2) In Charles County, the board, in its discretion, shall be permitted to use private firehouses, private halls and other buildings for polling places. (1957,

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ch. 739, § 1; 1961, chs. 325, 345; 1967, ch. 392, § 1; chs. 424, 633; 1970, ch. 106; 1971, ch. 352, §§ 1, 4; 1977, ch. 306, § 1; 1984, ch. 255; 1986, ch. 184, § 2; 1989, ch. 812.)

**Effect of amendment.** — The 1989 amendment, effective July 1, 1989, inserted present (a) (2) and redesignated the remaining paragraphs accordingly; and in the third sentence

of (a) (1), added the exception at the beginning, inserted "primarily" following "or occupied" near the middle and substituted "or retirement community" for "in Alleghany County."

**§ 2-12. Creating precincts, changing boundaries, and additional polling places; maps and descriptions of precincts and districts; directory of street addresses.**

(a) *Powers of boards.* — The boards, whenever they deem it to be expedient for the convenience of the voters, may:

(1) Subdivide into precincts any election district in their respective counties or ward in Baltimore City, as the case may be;

(2) Subdivide any election precinct in the counties or Baltimore City, as the case may be;

(3) Change the boundaries of any election precinct in the counties or Baltimore City, as the case may be;

(4) Designate new polling places in any such election district, ward, or precinct as they may deem necessary, or change the location of an existing polling place; or

(5) Combine or abolish precincts as may be necessary.

(b) *Time for change.* — Except as provided in subsection (d) of this section, a precinct may not be created, nor any precinct boundary change made, nor any new polling places in any election district or precinct be created, except in emergencies, nor any precincts be combined or abolished, after the Tuesday which is 13 weeks prior to any primary election, nor shall any precinct be created, combined, or abolished between any primary and general election.

(c) *Boundaries established after July 1, 1987.* — Any precinct boundary established by a local board subsequent to July 1, 1987, shall follow visible features as defined by the Bureau of the Census, United States Department of Commerce.

(d) *Precincts created or boundary changes from December 8, 1987 through November 15, 1992.* — (1) Unless the change is approved in advance by the State Administrator of Election Laws, during the period December 8, 1987, through November 15, 1992, a new precinct may not be created and a precinct boundary may not be changed.

(2) Within 5 days of making such a change, the local board shall send to the State Administrative Board of Election Laws a written description of the new boundary and a map showing the boundary.

(3) The State Board shall immediately forward the description and the map to the Director of the Office of Planning and the Director of the Department of Legislative Reference.

(e) *Duties of board upon making change.* — Whenever the board subdivides into precincts any election district, or ward; or subdivides any election precinct, or changes the boundaries of any election precinct, or designates new polling places or changes the location of any existing polling place, or combines or abolishes any precincts in any such election district or precinct, it shall:

(1) Provide for and cause to be prepared such additional sets of cards or loose-leaf pages as may be required for transcribing the names of registered voters transferred to such newly established precinct or polling place in any election district, ward, or precinct, and to correct and transfer the registration forms or cards of the registered voters affected thereby.

(2) Except in emergencies, notify the voters affected by the change by mail within 30 days after such change. In cases of emergency, the board shall notify the voters affected by the change of polling place by whatever means are reasonable, as determined by the board. A voter's registration may not be invalidated by such alteration or transfer, nor shall the right of any voter be prejudiced by any error in filing or in making out the list of voters or in making any change or transfer.

(f) *Maps and descriptions of precincts, councilmanic districts, State House and senatorial districts and congressional districts; directory of street addresses.* — (1) Each board, at the time precinct lines are created or changed under the authority of any provision of law, shall have a reasonable number of maps prepared showing the new precinct lines and shall adopt a resolution describing the precinct lines. One copy of each of the resolutions and of the maps shall be filed with the clerk of the circuit court of the county and the State Administrative Board of Election Laws.

(2) The board of supervisors of elections in every county and Baltimore City shall provide and have available for public information and distribution maps and descriptions, which shall delineate by streets, monuments, and other appropriate geographical descriptions each precinct, councilmanic district, House of Delegates district, State senatorial district and congressional district which is within its area or of which its area is a part. The respective maps and descriptions shall provide a clear and concise delineation of boundaries which can be easily understood by laymen. The maps and descriptions provided by any board can include more than one precinct or district and will comply with this section, provided the delineation of boundaries is clear and concise and can be easily understood by laymen.

(3) If a State senatorial district or congressional district comprises portions of two or more of the political subdivisions, the two or more boards of supervisors of elections shall cooperate in providing and having the description available for public information. If an entire county is part or all of a State senatorial district or congressional district, the county boundary lines may be so referred to and need not be further described by street, monument, or geographical description.

(4) The board of supervisors of elections in every county and Baltimore City shall provide and have available for public information and distribution a directory of street addresses in said county or Baltimore City. Such directory



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shall list street address locations in alphabetical and/or numerical order appropriate for reference purposes, and shall indicate the election district or ward, precinct (if any), legislative district, congressional district, and postal zip code for each street address. The directory shall be kept current as new street addresses are created or as existing ones are changed.

(5) Any board may charge reasonable fees for such maps, descriptions, and directories. However, these fees cannot be in excess of the proportionate cost for production of each map, description, and directory. No board shall prepare any unduly expensive maps, descriptions, and directories.

(6) Each board shall file with the State Administrative Board of Election Laws all maps, descriptions, and directories required under this section. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1970, chs. 103, 108; 1971, ch. 288; 1976, ch. 381; 1982, ch. 820, § 1; 1984, ch. 255; 1987, ch. 11, § 1; ch. 224; 1989, ch. 540, § 1.)

**Effect of amendment.** — The 1989 amendment, effective July 1, 1989, in (d) (3), substituted "Director of the Office of Planning" for "Secretary of State Planning."

**Editor's note.** — Section 6, ch. 820, Acts 1982, provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

Section 3, ch. 540, Acts 1989, provides that "every person who, as of June 30, 1989, is employed by the Department of State Planning in a position authorized by the State budget and not abolished by this Act is hereby transferred, as provided in this Act, effective July 1, 1989, without any change or loss of rights, benefits, entitlements, or status, including, if any, merit system and retirement status, except as otherwise specifically provided in this Act."

Section 4 of ch. 540 provides that "every person who, as of June 30, 1989, is employed by the Department of State Planning in a position abolished by this Act and who, effective July 1, 1989, is transferred to the same or a substantially similar position with the Department of Budget and Fiscal Planning or the Office of Planning shall transfer without any change or loss of rights, benefits, entitlements, or status, including, if any, merit system and retirement status, except as otherwise specifically provided in this Act."

Section 5 of ch. 540 provides that "except as otherwise expressly provided in this Act, nothing in this Act affects the term of office of an appointed member of any board, commission, committee, or other agency or unit, and a person who is a member of such a unit on July 1, 1989, shall remain a member of that unit or, as the case may be, shall become a member of any successor unit for the balance of the term to which the person was appointed, unless the

person sooner dies, resigns, or is removed pursuant to law."

Section 6 of ch. 540 provides that "except as expressly provided to the contrary in this Act, any transaction affected by or flowing from any statute here amended, repealed, or transferred, and validly entered into before July 1, 1989 and every right, duty, or interest flowing from it remains valid after July 1, 1989 and may be terminated, completed, consummated, or enforced pursuant to law."

Section 7 of ch. 540 provides that "except as otherwise provided in this Act, all permits and licenses, applications for permits and licenses, rules and regulations, proposed rules and regulations, standards and guidelines, orders and other directives, forms, plans, memberships, special funds, appropriations, grants, applications for grants, contracts, property, investigations, administrative and judicial proceedings, rights to sue and be sued, and all other duties and responsibilities associated with those functions transferred by this Act shall continue in effect under the Secretary of Budget and Fiscal Planning or the Director of the Office of Planning or the appropriate board, council, or other unit within the Department or Office, until completed, withdrawn, canceled, modified, or otherwise changed pursuant to law."

Section 10 of ch. 540 provides that "effective July 1, 1989, the Deputy Secretary of the Department of State Planning shall become a Deputy Secretary of the Department of Budget and Fiscal Planning without any change or loss of rights, benefits, entitlements, or status, including, if any, merit system and retirement status. Upon the termination of employment of the incumbent, the position of Deputy Secretary of the Department of Budget and Fiscal Planning created by this section shall be abolished. The Deputy Secretary authorized herein serves at the pleasure of the Secretary of Bud-

get and Fiscal Planning, is entitled to the salary provided in the budget and has the duties delegated by the Secretary. Contingent upon the enactment of either Chapter — of the Acts of the General Assembly of 1989 (H.B. 1475) or Chapter — of the Acts of the General Assembly of 1989 (S.B. 865), the salary of the Deputy Secretary created by this section shall commence at the ES 6/1 level, as of July 1, 1989.” House Bill 1475 was enacted as ch. 831, Acts 1989. Senate Bill 865 failed of enactment.

**Authority to change boundaries.** — Supervisors are authorized not only to subdivide election districts by providing additional districts, but also to change the area and boundaries of those already existing, and to establish new polling places and to have new registry books prepared. This authority may be exercised from time to time as public convenience requires. *Brome v. Dorsey*, 99 Md. 602, 58 A. 1020 (1904).

### § 2-13. Record of documents transferred by board to State Archives.

When a board is required by law to transfer documents to the State Archives, the board shall make and keep a record indicating the nature of the documents and identifying the documents for retrieval purposes. A copy of this record shall be filed with the State Administrative Board of Election Laws. (1978, ch. 64; 1984, ch. 286, § 5.)

#### REGISTRATION OF VOTERS—GENERAL PROVISIONS

### § 3-1. Method of registration.

(a) *Continuous registration.* — After July 1, 1967, continuous registration of voters in the State shall be conducted continuously under the direction of the various boards, except at such times when registration is closed as required under this article. Except as otherwise expressly provided in this article, no places of registration need be provided in the respective precincts, but all matters of registration may be conducted in the office of the board.

(b) *Supplemental registration.* — Any board may provide supplemental registration in precincts designated by them in addition to the continuous registration as provided in subsection (a) of this section. Public notice of such supplemental registration shall be given as provided in § 3-2 of this article.

(c) *Registration by mail.* — A voter registration-by-mail program shall be established and administered by general rules and regulations promulgated by the State Administrative Board of Election Laws for all federal, State, and local elections, following the general registration requirements of this article. Registration forms shall be designed to require the applicant to supply information required by this article, for the registration of voters to ascertain the qualifications of the voter applying for registration by mail, and to prevent fraudulent registrations. The information required on these forms shall be supplied by the applicant under penalties of perjury. Registration by mail under this subsection may be made from and after January 1, 1974.

(d) *Voter registration request forms.* — The State Administrative Board of Election Laws shall establish a program to provide for the periodic publication of voter registration request forms. The voter registration request form shall be in the form prescribed by the State Administrative Board of Election Laws and shall be published in only daily and weekly newspapers that primarily

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circulate in those subdivisions which have adopted voter registration by mail as provided in subsection (c) of this section. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1973, ch. 425; 1974, chs. 468, 520; 1975, chs. 51, 106, 396, 802; 1976, ch. 198; 1987, ch. 11, § 1.)

**University of Baltimore Law Review.** — Cited in *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).  
For article, "Federal Jurisdiction Over Local Vote Fraud," see 13 U. Balt. L. Rev. 1 (1983).

**§ 3-2. Hours and places of registration; universal registration.**

(a) *Registration days and hours.* — Each board shall be open for registration on such days and during such hours as each board may prescribe provided that: any board where there are less than twenty thousand (20,000) registered voters in the county shall be open not less than two days per week; any board where there are more than twenty thousand (20,000) but not more than fifty thousand (50,000) registered voters in the county shall be open not less than three days per week; any board where there are more than fifty thousand (50,000) registered voters in the county shall be open five days per week during the regular business hours for the county courthouse and the county business offices or at other times for the equivalent number of hours if the board shall determine that the greater convenience of the public is served.

(b) *Notice.* — It shall be the duty of each board to give public notice of the hours and places set for registration, of any changes authorized by the board in such hours and places, and when supplemental registration is authorized, to give at least five (5) days public notice of the hours and places of such supplemental registration.

(c) *Location of places of registration.* — The location of places of registration shall be at sites which meet the requirements of polling places as provided in § 2-11 of this article except that a local board, in its discretion, may determine that the selection of other sites is necessary in order to provide greater opportunity to the public to register to vote.

(d) *Registration in county for municipal elections; universal registration.* —

(1) This subsection does not apply to a municipal corporation that:

(i) Does not require voter registration for its municipal elections;

(ii) Prior to the enactment of this subsection, has used the voter registration list supplied by the board as qualification for voting in municipal elections and continues to do so; or

(iii) Provides for the board to conduct municipal elections as provided in § 2-9 (a) of this article.

(2) Registration with a county board of elections, by a voter who resides in a municipal corporation located within the county shall be deemed registration for elections in that municipal corporation.

(3) (i) Not less than 6 months prior to its municipal election, each municipal corporation not exempted in paragraph (1) of this subsection shall submit a request to their respective county election board for the development of a plan and a schedule to implement universal registration.

(ii) The application shall include the name of the person designated as the municipal corporation liaison who is responsible for working with the board in the development of the plan and the schedule for implementation of the plan.

(4) Within 10 days after receipt of the application, the board shall respond to the municipal corporation liaison and shall designate a county liaison.

(5) At a mutually agreed upon time, the county liaison and the municipal corporation liaison shall conduct meetings with other appropriate persons, if required, for the purpose of developing a schedule and plan for implementing universal registration.

(6) The plan shall include:

(i) Procedures for identifying by geographical reference the municipal boundaries, precincts, wards, or districts and the methods for including this information in the county's voter registration system;

(ii) Information on whether the municipal corporation wants the exclusion or inclusion of political party affiliation on the voter registration list, and whether the board can provide the exclusion or inclusion;

(iii) The format of the certified voter registration list, and whether it is to be divided according to a registrant's municipal polling place;

(iv) Information on whether:

(1) The dates of birth are to be printed on the certified registration list;

(2) The names of registrants under the age of 18 years are to be included on the lists; and

(3) The board can provide these exclusions or inclusions;

(v) The timing for furnishing the certified list of registered voters for use in the municipal elections, including the deadline for accepting voter registration applications of those persons residing in the municipal corporation prior to the municipal elections;

(vi) Procedures for obtaining, updating, and maintaining in the county's files the voter history of registrants who vote in municipal elections; and

(vii) Procedures for obtaining, updating, and maintaining changes to the boundaries of the municipal corporation, the precincts, the wards, or the districts that result from annexations, subdivision development, street name changes, or street abandonments.

(7) The board shall provide to a municipal corporation at no cost a certified list of registered voters residing within the boundaries of the municipal corporation in compliance with the agreed upon timing and format referred to in paragraph (6) of this subsection.

(8) (i) On request by a municipal corporation, the board shall also provide at no cost upon a request of a municipal corporation a certified list of registered voters who reside within the boundaries of the municipal corporation 90 days prior to the municipal election. The request for this preliminary list of voters shall be made to the board before or during the negotiations authorized in paragraph (5) of this subsection.

(ii) Within 20 days after receiving the preliminary list of registered voters, a municipal corporation shall notify the county board of any potential errors in the list of registered voters, including errors in the residency of registered voters.

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(iii) If the actual residency of any person listed on the voter registration list is in doubt, the board shall notify the person in accordance with § 3-17 of this article within 10 days after receiving notification from the municipal corporation.

(9) This section may not be construed to prohibit a municipal corporation from administering and maintaining a supplemental list of those persons who are not registered with the county board but who may otherwise be qualified to register to vote with a municipal corporation.

(10) (i) Whenever the registration of any voter is removed for any reason from the supplemental voter registration list maintained by the municipal corporation, the municipal corporation shall send a notice of this action and the reason for the action to the last known address of the voter.

(ii) The voter shall be given at least 15 days to respond to indicate whether the voter wishes to remain on the municipal corporation's voter registration list.

(iii) If the voter wishes to remain on the list and continues to be qualified under the municipal corporation's voter registration requirements, the voter's name shall be reinstated to the municipal corporation's supplemental voter registration list upon written request of the voter.

(11) (i) The State shall reimburse a board or a county government for reasonable initial set-up costs of implementing the plan for universal registration, including the costs associated with:

1. The identification of the appropriate boundaries;
2. The identification of voters who are to be included in the county files for municipal or county registration; and
3. The modification of the county's registration system that is necessary to implement the universal registration plan.

(ii) The county board of elections shall request and, subject to the approval of the State Administrative Board of Election Laws, receive a reimbursement for these costs from a fund administered by the State Administrative Board of Election Laws. The initial set-up costs incurred directly by a municipal corporation may be reimbursed for circumstances authorized by the State Administrative Board of Election Laws.

(12) Upon request by the municipal corporation, the board shall provide voter registration forms to the municipal corporation.

(13) The State Administrative Board of Election Laws shall cooperate with the boards and municipal election officials to effectuate the provisions of this subsection. (1957, ch. 739, § 1; 1961, ch. 328; 1965, ch. 784; 1967, ch. 392, § 1; 1968, ch. 758; 1971, ch. 352, § 3; 1972, ch. 571; 1978, ch. 1009; 1984, ch. 255; 1985, ch. 10, § 1; ch. 635; 1986, ch. 5, § 1; 1988, chs. 308, 309.)

**Voters deemed registered.** — A voter who has been deleted from a municipal corporation's registration list pursuant to the municipal corporation's town charter provision which purges voters who failed to vote in the five preceding calendar years but who nevertheless has voted in a State or county election and thus has not been removed from the county registra-

tion list pursuant to § 3-20 of this article, that voter "shall be deemed" to be registered for elections in the municipal corporation under this section. 75 Op. Att'y Gen. (April 4, 1990).

**Effect of amendment.** — Chapters 308 and 309, Acts 1988, both effective Jan. 1, 1990,

made identical changes. Each rewrote subsection (d).

Stated in *Broadwater v. State*, 306 Md. 597, 510 A.2d 583 (1986).

Cited in *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

*(Amendment effective January 1, 1991.)*

### § 3-2. Hours and places of registration; universal registration.

(e) "Agency" defined; duties of agency. — (1) In this subsection, the term "agency" means:

- (i) Any local health department;
- (ii) Any local office of the State Social Services Administration;
- (iii) The headquarters and any regional office of the State Motor Vehicle Administration;

(iv) Any public elementary or secondary school, community college, or State institution of higher education; and

(v) Any other office of a department, administration, commission, board, or other entity of State government that is identified by the State Administrative Board of Election Laws as having significant responsibilities for providing goods or services to the public and whose day-to-day activities involve significant contact with the public in the office.

(2) Each agency shall provide, within its offices, space and appropriate shelf, rack, or similar facilities for the display and dissemination to the public of voter registration forms and written instructions relating thereto.

(3) The display space and facilities required by this subsection shall be clearly identified and readily accessible to the public.

(4) The State Administrative Board of Election Laws, after considering the geographic area to be served by each agency subject to this subsection, shall ensure that voter registration forms appropriate to each agency are made available to it in sufficient number from time to time.

(5) Each agency shall:

(i) Ensure that its voter registration display space and facilities are stocked with forms provided under paragraph (4) of this subsection; and

(ii) Notify the appropriate elections board when additional forms are required.

(6) An agency is not required to staff the voter registration display space and facilities required under this subsection.

(7) The instructions referred to in paragraph (2) of this subsection shall contain notice that the staff members of the agency are not agents of an elections board or the State Administrative Board of Election Laws and that only the following individuals are such agents:

(i) Officials or employees of a board or the State Administrative Board of Election Laws; and

(ii) Members of a board of registry, or supplemental board of registry, appointed under § 3-10 of this article.

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*(8) Regulations to carry out the requirements of this subsection, as this subsection relates to each of the executive departments, shall be adopted jointly by the State Administrative Board of Election Laws and that department.*

(1990, ch. 474.)

**Amendment effective January 1, 1991.**

The 1990 amendment, effective Jan. 1, 1991, adds (e) (1) (iv) and (v); and, in (e) (8), substitutes "executive" for "following" and deletes former (i) through (iii).

**Editor's note.** — Section 2, ch. 474, Acts 1990, provides that "the State Administrative Board of Election Laws shall establish a voter registration education program to inform the public about:

- (1) Existing voter registration requirements and procedures;
- (2) The new and expanded voter registration procedures provided by this Act;
- (3) Voter registration deadlines;
- (4) Procedures for voting by absentee ballot; and
- (5) Such other matters as the State Board or the local boards deem appropriate."

**§ 3-3. Registration to be permanent.**

A person registered on June 1, 1957, or at any time thereafter as a qualified voter in the City of Baltimore or in any county shall not be required to register again unless such registration shall be cancelled as hereinafter provided. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

Cited in *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

**§ 3-4. Qualifications.**

(a) *Qualified voters.* — Only persons, constitutionally qualified to vote in the precinct or district, as the case may be, shall be registered as qualified voters.

(b) *Constitutional qualifications.* — The qualifications of voters are the following; each one of which is applicable to every voter:

- (1) Citizen of United States;
- (2) Age of eighteen years or older;
- (3) Resident of State for thirty days preceding general election;
- (4) Resident of county or legislative district of Baltimore City, in which he may offer to vote, as of the time for closing of registration, next preceding the election;
- (5) Not constitutionally regulated or prohibited by subsection (c) or subsection (d) of this section;
- (6) Not convicted of buying or selling votes.

(c) *Conviction of crime.* — No person shall be registered as a qualified voter if he has been convicted of theft or other infamous crime, unless he has been pardoned, or, in connection with his first such conviction only, he has completed any sentence imposed pursuant to that conviction, including any period of probation imposed by virtue of parole or otherwise in lieu of a sentence or part of a sentence.

(d) *Persons under guardianship.* — No person shall be registered as a qualified voter if he is under guardianship for mental disability. (1957, ch. 739, § 1;

1965, ch. 784; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1971, ch. 216; 1972, ch. 10; ch. 570, § 1; ch. 667, § 1; 1973, ch. 230; 1974, ch. 299; 1978, ch. 849, § 4; 1984, ch. 255.)

**University of Baltimore Law Review.** — For comment, "Rights of the Maryland Probationer: A Primer for the Practitioner," see 11 U. Balt. L. Rev. 272 (1982).

**Section does not unreasonably discriminate.** — The requirements of this section are not so unreasonable that they amount to an irrational or unreasonable discrimination. *Drueding v. Devlin*, 234 F. Supp. 721 (D. Md. 1964), aff'd, 380 U.S. 125, 85 S. Ct. 807, 13 L. Ed. 2d 792 (1965).

**Purposes of this section are:** (1) Identifying the voter, and as a protection against fraud; and (2) to ensure that the voter will become in fact a member of the community, and as such have a common interest in all matters pertaining to its government. *Drueding v. Devlin*, 234 F. Supp. 721 (D. Md. 1964), aff'd, 380 U.S. 125, 85 S. Ct. 807, 13 L. Ed. 2d 792 (1965).

**Purpose of 1974 amendment.** — The purpose of the 1974 amendment of this section was to prevent multiple restorations of voting privileges following completion of sentences imposed in a series of convictions for infamous crimes, as contrasted with the purpose being to prevent restoration of voting privileges upon completion of sentence imposed for two or more infamous crimes charged, tried to guilty verdicts and sentenced in one criminal proceeding. *State v. Broadwater*, 317 Md. 342, 563 A.2d 420 (1989).

**Privilege to vote in a state is within jurisdiction of state itself,** to be exercised as the state may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals, in violation of the federal Constitution. *Drueding v. Devlin*, 234 F. Supp. 721 (D. Md. 1964), aff'd, 380 U.S. 125, 85 S. Ct. 807, 13 L. Ed. 2d 792 (1965).

The several states may impose age, residence and other requirements, so long as such requirements do not discriminate against any class of citizens by reason of race, color or other invidious ground and are not so unreasonable as to violate the equal protection clause of the Fourteenth Amendment. *Drueding v. Devlin*, 234 F. Supp. 721 (D. Md. 1964), aff'd, 380 U.S. 125, 85 S. Ct. 807, 13 L. Ed. 2d 792 (1965).

**Disenfranchisement.** — The penalty of disenfranchisement is one specifically recognized by the Fourteenth Amendment. *Thiess v. State Admin. Bd. of Election Laws*, 387 F. Supp. 1038 (D. Md. 1974).

**Defining resident as domiciliary for registration purposes constitutional.** — Defin-

ing a resident as a domiciliary for registration purposes excludes a mere property owner and is not unconstitutional. *Reeder v. Board of Supvrs. of Elections*, 269 Md. 261, 305 A.2d 132 (1973).

**Residence.** — There is no intrinsic reason why a person may not maintain a fixed, present domicile in a place without a conventional dwelling and such a residence, however unconventional it may be, satisfies the purposes of the constitutional residency requirement; it deters fraud by linking the person to a particular locale, and a person who really does maintain a fixed domicile in an out-of-doors location is as much a member of the community as the citizens of the community who are fortunate enough to have housing. 69 Op. Att'y Gen. 138 (1984).

Requirement of a residential address in order to register to vote would effectively be imposing an additional qualification for voting; occupancy of a dwelling with mail service; the Maryland Constitution does not require that particular form of residence; and the General Assembly may not enlarge upon constitutional qualifications. 69 Op. Att'y Gen. 138 (1984).

Homeless citizen must provide a mailing address as a prerequisite to registration; however, the address of an institution at which the voter regularly picks up mail would suffice. 69 Op. Att'y Gen. 138 (1984).

An unmarried man, a clerk on a steamboat, who sleeps on the boat, is not entitled to register in home port of vessel. *Howard v. Skinner*, 87 Md. 556, 40 A. 379 (1898).

Person claiming place where he conducted saloon and restaurant, and slept in room above same, as his residence was held to be resident of precinct where saloon was located within meaning of election laws. *Hill v. Board of Registry*, 171 Md. 653, 187 A. 869 (1937).

A person who once lived in a ward is entitled to register and vote there until he acquires a residence in another place. *Jones v. Skinner*, 87 Md. 560, 40 A. 381 (1898).

Appellant, as a nonresident of a county, was not entitled to register as a voter for local issues or offices there or otherwise. *Reeder v. Board of Supvrs. of Elections*, 269 Md. 261, 305 A.2d 132 (1973).

**Residents on grounds of National Institutes of Health, federal enclave in Montgomery County, are qualified to vote in Maryland elections,** and it violates the Fourteenth Amendment to the Constitution of the United States to deny them that right. *Evans*



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v. Cornman, 398 U.S. 419, 90 S. Ct. 1752, 26 L. Ed. 2d 370 (1970).

**"Conviction".** — The criminal proceeding in which there is adjudication of guilt and sentencing is the "conviction" for purposes of subsection (c). *State v. Broadwater*, 317 Md. 342, 563 A.2d 420 (1989).

**Providing false information on State tax return "infamous crime".** — Conviction for willfully providing false information on State tax return in violation of former Article 81, § 221 (now see TG § 13-1024) constitutes conviction of an "infamous crime" within the meaning of subsection (c) of this section so as to disqualify person so convicted from continued registration as a qualified voter. 67 Op. Att'y Gen. 176 (1982).

**"Infamous crimes".** — In view of the currently existing "laundry list" of infamous crimes issued by the Attorney General of Maryland, the phrase "infamous crimes" is not so vague as to offend notions of fair notice, nor does it fail to provide reasonably clear guidelines for law enforcement officials and triers of fact. *Thiess v. State Admin. Bd. of Election Laws*, 387 F. Supp. 1038 (D. Md. 1974).

All felonies are to be considered infamous for purposes of subsection (c) of this section. 58 Op. Att'y Gen. 301 (1973).

For discussion of what factors to consider in determining whether an "infamous crime" has been committed, see 60 Op. Att'y Gen. 245 (1975).

For nonexhaustive index issued by Attorney General of offenses that, under Maryland law, are "infamous crimes," see 67 Op. Att'y Gen. 176 (1982).

**Perjury is infamous crime subjecting one to disenfranchisement.** *Hourie v. State*, 53 Md. App. 62, 452 A.2d 440 (1982), aff'd, 298 Md. 50, 467 A.2d 1016 (1983).

**Suspended sentence pending outcome of appeal.** — A voter should not be disqualified

during a period in which the sentence is suspended pending the outcome of an appeal. 60 Op. Att'y Gen. 245 (1975).

**Registration is not one of the qualifications for voting** but is a mechanism for evidencing which voters have the requisite qualifications. *Board of Supvrs. of Elections v. Goodsell*, 284 Md. 279, 396 A.2d 1033 (1979).

**Registration requirement for county executive in Prince George's County charter held unconstitutional.** — Because the five-year registration requirement for county executive set forth in the Prince George's County charter fails to withstand the applicable strict scrutiny standard, it discriminates against those county residents who are registered for a lesser period of time, in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution and the due process clause, article 24 of the Maryland Declaration of Rights. *Board of Supvrs. of Elections v. Goodsell*, 284 Md. 279, 396 A.2d 1033 (1979).

**Attempt to register by ex-convict.** — There is no basis in this section for concluding that any ex-convict who merely attempts to register will put himself in jeopardy of prosecution. *Thiess v. State Admin. Bd. of Election Laws*, 387 F. Supp. 1038 (D. Md. 1974).

**Applied in** *Hayes v. Mandel*, 367 F. Supp. 566 (D. Md. 1973); *Francis v. Maryland*, 459 F. Supp. 163 (D. Md. 1978); *Ogburn v. State*, 71 Md. App. 496, 526 A.2d 614 (1987).

**Quoted in** *Wicks v. State*, 311 Md. 376, 535 A.2d 459 (1988).

**Stated in** *Broadwater v. State*, 306 Md. 597, 510 A.2d 583 (1986).

**Cited in** *Stein v. State Admin. Bd. of Election Laws*, 432 F.2d 1003 (4th Cir. 1970); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979); *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

### § 3-5. Registration for persons becoming eighteen years of age.

Any person who will be eighteen years of age on or before the day of the next succeeding general or special election shall be entitled to vote at such general or special election, and shall also be entitled to vote at the primary election preceding such general or special election, if otherwise entitled to be registered as a qualified voter. Any such person shall be entitled to register to vote at any time provided for registration of voters. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1971, ch. 216; 1972, ch. 10; 1973, ch. 91; 1984, chs. 29, 255.)

Cited in *Stein v. State Admin. Bd. of Election Laws*, 432 F.2d 1003 (4th Cir. 1970); *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

### § 3-5A. Requiring proof of date of birth.

(a) *Requiring satisfactory evidence.* — Any person who seeks to be registered to vote may be required by the local board to submit satisfactory evidence of proof of his date of birth. If the person fails to submit the requisite evidence of proof, he shall not be registered to vote.

(b) *Prescribing what evidence is satisfactory.* — The State Administrator of Election Laws shall prescribe what evidence shall be deemed satisfactory as proof of a person's age. (1972, ch. 613.)

### § 3-6. Oath for registrants.

One of the officers of registration shall administer to all persons who shall personally apply to register the following oath or affirmation: "You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, name, place of birth, any criminal conviction, your qualifications as a voter, and your right as such to register and vote under the laws of this State." (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

**Residence.** — Requirement of a residential address in order to register to vote would effectively be imposing an additional qualification for voting: occupancy of a dwelling with mail service; the Maryland Constitution does not require that particular form of residence; and the General Assembly may not enlarge upon constitutional qualifications. 69 Op. Att'y Gen. 138 (1984).

Homeless citizen must provide a mailing ad-

dress as a prerequisite to registration; however, the address of an institution at which the voter regularly picks up mail would suffice. 69 Op. Att'y Gen. 138 (1984).

Cited in *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

### § 3-7. Registration by absentee voters.

(a) Any qualified voter whose physical disability confines him to a hospital or causes him to be confined to bed and permanently prevents him from being present to register or reregister at the office of any board or with any board of registry shall be allowed to register or reregister by casting his absentee ballot.

(b) Any constitutionally qualified voter in the following categories shall be allowed to register and reregister by casting his absentee ballot. Unless otherwise provided, all applications for absentee ballots must be received within the time prescribed in § 27-4 of this article:

(1) A member of any branch of the armed forces of the United States or any component thereof, including those honorably discharged therefrom during the period beginning thirty (30) days prior to the last registration day prior to an election and continuing up to and including the date of the election, and including his spouse or dependents, and his application for absentee ballot may be received by the board in his county or city of residence no later than 8 p.m. on the day of the election;

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(2) A person as an officer or member of the crew of any vessel documented under the laws of the United States or enrolled for such employment with the federal government, and his spouse or dependents;

(3) A civilian employee of the United States in all categories serving outside the United States, whether or not subject to the civil service laws, and whether or not paid from funds appropriated by Congress, and his spouse or dependents;

(4) Any person serving with the American Red Cross, the Society of Friends, and Women's Auxiliary Service Pilots, and the United Service Organization who is attached to or serving with the armed forces of the United States outside the United States, and his spouse or dependents;

(5) Any citizen and resident who is continuously absent from his county of residence, or, in the case of a resident of the City of Baltimore, from Baltimore City for the thirty (30) days prior to the closing of registration before any election, either of whom may apply for registration and voting during those thirty (30) days, providing his application is received by the board in his county or city of residence no later than the fifth Monday which is four weeks before the election for which he applies for voting; and

(6) Any otherwise qualified voter whose confinement in or restriction to an institution prevents him from being present to register or reregister at the office of any board or with any board of registry.

(c) For purposes of this section, a voter shall be deemed and held to have resided continuously in the precinct in which he resided at the time he first left to become absent or engaged in such service for the entire period he has been so absent or engaged.

(d) When properly registered under this section, a person shall continue as a registered voter to the same extent and for the same period that he would be registered had he appeared in person and been registered under the provisions of the election laws of Maryland, exclusive of this section. (1957, ch. 739, § 1; 1966, ch. 140; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1971, ch. 287; 1972, ch. 10; 1973, ch. 421; 1984, ch. 255; 1987, ch. 11, § 1.)

Cited in *Pickett v. Prince George's County*,  
291 Md. 648, 436 A.2d 449 (1981).

**§ 3-8. When to register or change registration.**

(a) *Registering or changing name or address.* — (1) Except as provided in § 2-9 (e) of this article and paragraph (2) of this subsection, no person may register:

(i) Between 9 p.m. on the 5th Monday preceding a primary or special primary election and the 11th day after that election; or

(ii) Between 9 p.m. on the 5th Monday preceding a general or special election and the 16th day following that election.

(2) (i) A voter registration application which is received by mail by any local board or by the State Administrative Board of Election Laws shall be considered as received timely for registration for the next election provided:

1. It is received prior to the deadline for registration established in subsection (a) (1) of this section; or

2. A. It was either mailed on or before the 5th Monday preceding a primary, special primary, or general election or, if that Monday is a legal public holiday as set out in 5 U.S.C. § 6103 (a), on or before the 4th Tuesday preceding a primary, special primary, or general election;

B. The United States Postal Service, or the postal service of any other country, has provided verification of that fact by affixing a mark so indicating on the covering envelope; and

C. The application is received by 4 p.m. on the fourth Wednesday preceding the election involved.

(ii) An application received after the applicable deadline shall be accepted, but the registration of the applicant may not become effective until the registration records are next open pursuant to subsection (a) of this section.

(iii) For the purposes of paragraph (2) (i) 2. of this subsection as it applies to applications received from outside the United States, as defined in § 27-9 (d) (4) of this article, the applicant's affidavit that the application was completed and mailed before the applicable deadline shall suffice to establish that the application was timely mailed if:

1. The postal service of the country from which the application was mailed does not provide a postmark; or

2. The application is received from a private mail service.

(3) Any registered voter who moves from the address specified in the voter's registration or changes his name, within 30 days thereafter, shall notify the board of the voter's former and new addresses or former and new names, as the case may be.

(4) Timely receipt of a voter registration application by any local board or by the State Administrative Board of Election Laws shall be deemed timely receipt by the local board in the county in which the applicant's residence is located.

(5) Any voter registration application received by the State Administrative Board of Election Laws shall be forwarded immediately to the local board in the county in which the applicant's residence is located.

(6) Any voter registration application received by a local board for a county in which the applicant does not reside shall, if the applicant resides in the State, be forwarded immediately to the local board in the county in which the applicant's residence is located.

(b) *Changing party affiliation.* — (1) Except as provided in paragraph (4) of this subsection, a registered voter may change his party affiliation, or change to or from a decline, at any time except:

(i) When registration is closed;

(ii) As provided in paragraph (2) of this subsection for the time immediately preceding a regular primary election; or

(iii) As provided in paragraph (3) of this subsection for the time immediately preceding a special primary election under § 22-1 (b) of this article.

(2) (i) Prior to any regular primary election, a registered voter may not change party affiliation from 9 p.m. on the Monday which is 12 weeks or 84

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days before the day on which the primary election should be held under the primary election law until and including the day on which the primary election is held.

(ii) If the deadline established by subparagraph (2) (i) of this subsection occurs on a legal holiday, the deadline is extended until 9 p.m. on the next regular business day which is not a legal holiday.

(3) (i) Prior to any special primary election under § 22-1 (b) of this article, a registered voter in the district involved may not change party affiliation from and including the day of issuance of a gubernatorial proclamation calling a special election until and including the day on which that special election is held.

(ii) If the deadline established by subparagraph (3) (i) of this subsection occurs on a legal holiday, the deadline is extended until 5 p.m. on the next regular business day which is not a legal holiday.

(4) If a registered voter changes his residence from one county to another within the State, he may change his party affiliation or change to or from a decline at any time when registration is open when he registers in the county of his new residence.

(5) An individual whose registration has been canceled upon his request within a period closed to changes in party affiliation under paragraphs (2) and (3) of this subsection may not reregister in the same county during the same period with a party affiliation or nonaffiliation different from his previous registration. (1957, ch. 739, § 1; 1960, ch. 28; 1963, ch. 865; 1965, chs. 430, 584, 784; 1966, chs. 142, 208; 1967, ch. 392, § 1; 1971, ch. 2, § 1; 1973, ch. 705; 1974, ch. 333; 1976, ch. 382; 1979, ch. 249; 1983, ch. 415; 1984, chs. 255, 319; 1986, ch. 187; 1987, ch. 11, § 1; 1989, ch. 169.)

**Effect of amendment.** — The 1989 amendment, effective July 1, 1989, rewrote (a) (2) (i) 2. A. and in (a) (2) (ii) and (a) (2) (iii), inserted "applicable" and deleted "established in subsection (a) (1) of this section" following "deadline."

**Validity.** — A provision in the election laws that a person may not change his party affiliation within a certain number of months preceding a primary election does not violate article 7 of the Declaration of Rights, which provides that every citizen shall have the right of suffrage, if he has the constitutional qualifications of article I, § 1 of the Constitution, which provides that any citizen having such qualifications shall be entitled to vote "at all elections hereafter to be held in this State." *Hennegan v. Geartner*, 186 Md. 551, 47 A.2d 393 (1946).

**Words of this section are plain and precise and leave no room for ambiguity or doubt.**

*Lee v. Secretary of State*, 251 Md. 134, 246 A.2d 562 (1968).

**Primary elections are party matter.** *State Admin. Bd. of Election Laws v. Calvert*, 272 Md. 659, 327 A.2d 290 (1974), cert. denied, 419 U.S. 1110, 95 S. Ct. 784, 42 L. Ed. 2d 807 (1975).

**Mailing address other than residence.** — Other methods of verifying continued residence (e.g. Article 33, § 3-24 (b)) and the severe penalty for false registration (Article 33, § 24-1), indicate that the General Assembly did not intend to disenfranchise all voters whose mailing address is at a place other than their residences. 69 Op. Att'y Gen. 138 (1984).

**Stated in** *Barnhart v. Mandel*, 311 F. Supp. 814 (D. Md. 1970).

**Cited in** *Barthelmes v. Morris*, 342 F. Supp. 153 (D. Md. 1972); *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

### § 3-9. Procedure for change of address, change of name, or change of party affiliation.

(a) *Notice or request.* — (1) Subject to the provisions of § 3-8 of this article, notification of a move within or without another ward, district or precinct within the city or county, as the case may be, or of a change of name, or a request for designation or change of party affiliation, may be made either by written notice sent by mail, or by making application in person at the office of the board or other place of registration, or by written notice to the board signed by the voter requesting that the proper form for providing such written notification be mailed to the voter.

(2) If notification of a change of address or name is received after the fifth Monday preceding a primary or special primary election, the board may not process the change on the voter's registration records until after the tenth day following that election; and if such notification is received after the fifth Monday preceding a general or special election, the board may not process the change until after the fifteenth day following that election.

(b) *Comparison of signature; action of board where signature appears genuine.* — Upon receiving such written notice, the board shall cause the signature to be compared with the original registration records of such applicant, and if such signature appears to be the same, such change of residence, name, or affiliation shall be made on the original and duplicate registration records and the registrant shall be immediately notified by mail of the change so made.

(c) *When board may direct applicant to appear.* — If the board is not satisfied as to the signature on the written notice or that the change should be made, notice shall be sent to the applicant by mail directing him to appear at the office of the board to answer such questions under oath as may be deemed necessary. If an applicant so notified fails to appear at the office of the board as directed no such entry of change of residence, or name, or affiliation shall be made. (1957, ch. 739, § 1; 1960, ch. 28; 1963, ch. 865; 1965, chs. 430, 584, 784; 1966, chs. 142, 208; 1967, ch. 392, § 1; 1973, ch. 251; 1974, ch. 333.)

**Mailing address other than residence.** — Other methods of verifying continued residence (e.g. Article 33, § 3-24 (b)) and the severe penalty for false registration (Article 33, § 24-1), indicate that the General Assembly

did not intend to disenfranchise all voters whose mailing address is at a place other than their residences. 69 Op. Att'y Gen. 138 (1984).

Cited in *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

### § 3-9A. Reports of registration by boards; statement of registration by State Administrative Board of Election Laws.

(a) *Reports of registration.* — Within fifteen days after the commencement of the period before a primary election in which voters already registered shall not be allowed to affiliate with a party or change party affiliation for purposes of this article, pursuant to § 3-8 (b) of this article, and at other times as directed by the State Administrative Board of Election Laws, the board for

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each county of the State and for the City of Baltimore shall submit to the State Administrative Board of Election Laws a report of registration setting forth the following information, as shown on the books of the respective board as of the date of the commencement of the period:

(1) The name of each political party with which one or more registered voters in their respective county or in the City of Baltimore are then affiliated; and

(2) The total number of registered voters affiliated with each such political party.

(b) *Statement of registration.* — Within five days after the receipt of all reports of registration from the several boards, the State Administrative Board of Election Laws shall determine and issue a statement of registration setting forth, on the basis of the reports of registration received from the board for each county and the City of Baltimore, the following:

(1) The name of each political party with which one or more registered voters in the State are affiliated;

(2) The total number of registered voters affiliated with each such political party;

(3) The total number of registered voters in the State; and

(4) The percentage of the total number of registered voters in the State that are affiliated with each such political party, such percentage to be carried out to two or more decimal places.

(c) *Duty to provide reports and other registration data.* — Each board shall provide reports of registration and other registration related activity as may be required by the State Administrative Board of Election Laws.

(d) *Retention of statements in office of State Administrative Board of Election Laws.* — The statements of registration shall be retained in the office of the State Administrative Board of Election Laws for a period of at least six years and shall be available for inspection during normal working hours by any interested person. (1971, ch. 354; 1973, ch. 705; 1977, ch. 80, § 1; 1984, ch. 319.)

Cited in *Barthelmes v. Morris*, 342 F. Supp. 153 (D. Md. 1972).

**REGISTRATION OF VOTERS—HOW AND BY WHOM CONDUCTED**

**§ 3-10. Appointment of registrars; powers and duties; boards of registry appointed by State Administrative Board of Election Laws; distributors of voter registration forms.**

(a) *Appointment of registrars and supplemental boards of registry; boards of registry appointed by State Administrative Board of Election Laws.* — The members of the board from the majority party shall appoint one registrar, and the member of the board from the principal minority party shall appoint the other registrar. These two registrars shall comprise the board of registry, and

they are subject to the provisions of Article 64A as provided for in § 2-6 of this article. Each board in its discretion may also set up supplemental boards of registry as from time to time may be deemed necessary to aid and expedite the work of the board of registry; such supplemental boards of registry shall consist of at least two members, each of opposite political parties and shall be appointed one by the board member representing the majority party and one by the board member representing the principal minority party.

(1) The State Administrative Board of Election Laws may from time to time appoint boards of registry to conduct registration of qualified voters at such places within the State of Maryland where large numbers of citizens from various counties temporarily reside, including but not limited to, institutions of higher learning, and these boards of registry shall be empowered to register residents of any county or the City of Baltimore as voters therein. These boards of registry shall consist of two members each of opposite political parties and one member shall be appointed by the State Board members representing the majority party and one by the State Board members representing the principal minority party. These boards of registry shall be regularly employed supplemental boards of registry of the county or city in which the registration is to be conducted and shall be under the supervision of the local board or the State Administrator of Election Laws.

(2) Except as provided in paragraph (1) of this subsection, boards of registry appointed by the State Administrative Board of Election Laws shall not be substituted for boards of registry conducting registration for the boards of the counties or the City of Baltimore.

(b) *Powers of supplemental boards of registry.* — The supplemental boards of registry shall have, in the performance of their duties, authority to keep the peace and to preserve order and enforce obedience to their lawful command at and around their places of registration; to keep access to such places open and unobstructed; to prevent and suppress riots, tumult, violence, and disorder; and to prevent any improper practices at and around their places of registration. They may compel by summons the presence of witnesses before them for any purposes connected with the duties of their office.

(c) *Process.* — They shall have the power to issue any summons to the sheriff of any county or Baltimore City or to any police officer thereof; and such process shall be served by said officers in the same manner as if issued by a court of record having jurisdiction of the subject matter; the said officers serving any of said process to receive the same fees as in other State cases.

(d) *Police authorities.* — The police authorities for the respective counties and Baltimore City shall detail such number of peace officers as may be required to preserve order at the places of registration in the counties and Baltimore City.

(e) *When distributors of voter registration forms deemed agents of a board or the State Administrative Board of Election Laws.* — Individuals who distribute voter registration forms or otherwise engage in registering others to vote may not be deemed agents of a board or the State Administrative Board of Election Laws unless the individuals are:



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(1) Officials or employees of a board or the State Administrative Board of Election Laws;

(2) Members of a board of registry appointed under this section; or

(3) Members of a supplemental board of registry appointed under this section. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1971, ch. 351, § 3; 1972, ch. 11; ch. 181, § 32; 1978, ch. 211; 1985, ch. 594; 1987, ch. 11, § 1.)

Cited in *Pickett v. Prince George's County*,  
291 Md. 648, 436 A.2d 449 (1981).

### § 3-11. Form of permanent registration.

(a) *Cards or loose-leaf pages; binders; records open to inspection; removal.* — The registration of voters shall be conducted as herein provided on cards or loose-leaf pages. When the cards or loose-leaf pages have been duly filled out, and both the original and duplicate registration forms have been signed by the applicant for registration and returned by the registrars or other designated persons to the board, the duplicate forms shall be filed in filing cases or loose-leaf binders arranged for the entire city or county, as the case may be, in alphabetical order, and shall constitute the permanent office record of the board. Except when an electronically reproduced precinct register is used, in accordance with subsection (b), the original forms shall be filed in different filing cases or loose-leaf binders, arranged by precincts in alphabetical order, and shall constitute the precinct register for use in polling places on election days. The registration records shall be open to public inspection under reasonable regulations at all times when the office of the board is open for the registration of voters except upon the special order of the board. The registration records may not be removed from the office of the board except on the order of a court and except for temporary removal solely for purposes of data processing, provided that in any removal for data processing, one duplicate copy is always retained in the office of the board.

(b) *Compilation of voters electronically reproduced through data processing.* — At the option of each board, and subject to such procedures and safeguards as may be required by the State Administrative Board of Election Laws, the precinct register for use in polling places on election days may consist of an alphabetical compilation or list of registered voters, electronically reproduced through data processing, containing the same voter registration information as is contained on the original registration forms signed by the voters.

(c) *Sealing or locking registers, binders and cabinets.* — All electronically reproduced precinct registers, and all binders or filing cases containing precinct registers shall be securely sealed or locked and the keys safely kept by the board. The cabinets containing the duplicate forms shall be securely locked, and neither the binders nor the cabinets may be unsealed or unlocked except by a clerk or other employee of the board upon its authorization. (1967, ch. 392, § 1; 1974, ch. 380.)

**Registration records are "public records".** — Registration records open to public inspection pursuant to subsection (a) of this section are clearly "public records," as defined in Maryland's Public Information Act, and not privileged or made confidential by law. 62 Op. Att'y Gen. 396 (1977).

**Any member of public entitled to inspect and copy registration records.** — In the absence of a "special order of the board" or a "rea-

sonable regulation" by the board so providing, any member of the public is entitled to inspect and copy registration records of the board pursuant to subsection (a) of this section, without any of the restrictions set forth in § 3-22 of this article. 62 Op. Att'y Gen. 396 (1977).

Cited in *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

### § 3-12. Registration forms and cards.

(a) *Style, color, etc., of forms, cards and records; cabinets, binders and other equipment.* — Subject to the requirements of subsections (c) and (d) of this section, the boards shall prescribe the style, color, quality and dimensions of all forms, cards and records required for the continuous registration of voters as herein provided and shall prescribe the requirements of the cabinets, binders, and other equipment needed for filing the original and duplicate registration cards. No particular design or make shall be prescribed for such cabinets, binders, or other equipment. These registration forms or cards shall consist of an equal number of original cards or loose-leaf pages of one color, and duplicate cards or loose-leaf pages of another color, or a size adequate to contain the information required. Two separate registration cards shall be utilized at all registrations by the registrars, and carbonized registration forms may be substituted for the two separate registration cards. Except as provided in subsection (b) of this section, provisions shall be made on the cards or loose-leaf pages for recording the fact that registered voters have or have not voted at each election. Space shall be provided for such recording for a period of not less than 12 years. The fact of voting shall be indicated by writing the letter "V" in the proper space. Provision shall also be made on the cards or loose-leaf pages for showing subsequent changes of address or party affiliation. This subsection does not apply if registration-by-mail forms are used for all voter registrations.

(b) *Exception for automated voting systems.* — Whenever the fact of voting is recorded in an automated or computerized system, recording of the fact of voting on the registration card or loose-leaf pages as provided in subsection (a) of this section is not required, provided:

(1) The voting record information maintained in the automated or computerized system is maintained on a current basis for a period covering the 5 preceding years and can be updated or corrected where appropriate; and

(2) That information, in printed form, can be made readily available for public inspection or informational purposes and, after each election, can be utilized for purposes of cancellation from the registry in accordance with § 3-20 of this article.

(c) *Form.* — The cards or loose-leaf pages shall be in a form as prescribed by the State Administrative Board of Election Laws.

(d) *Purpose of forms; perjury; acceptance of form as valid application; regulations.* — (1) The State Administrative Board of Election Laws shall produce and distribute a statewide voter registration form designed to:

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(i) Require the applicant for registration to supply the information required by law;

(ii) Ascertain the qualifications of the applicant;

(iii) Prevent fraudulent registration; and

(iv) Notify the applicant that submission of the form to an individual other than an official, employee, or agent of a board does not assure that the form will be filed or filed in a timely manner.

(2) The information required by the form shall be supplied by the applicant under penalty of perjury.

(3) The form shall be accepted by the appropriate board as a valid application for registration. If after examination of the form the board determines that the applicant is qualified to be registered and the form was filed in a timely manner, the board shall register the voter.

(4) The State Administrative Board of Election Laws shall adopt regulations, consistent with this article, for carrying out the provisions of this subsection and governing the distribution and use of the statewide form. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1971, ch. 352, § 1; 1973, ch. 779; 1976, ch. 33; 1984, ch. 156; 1985, ch. 594.)

**Disenfranchisement.** — Other methods of verifying continued residence (e.g. Article 33, § 3-24 (b)) and the severe penalty for false registration (Article 33, § 24-1), indicate that the General Assembly did not intend to disenfran-

chise all voters whose mailing address is at a place other than their residences. 69 Op. Att'y Gen. 138 (1984).

Cited in *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

### § 3-13. Completion of registration forms; comparison of records.

(a) *Section inapplicable to registration by mail.* — This section does not apply in cases of registration by mail as provided in § 3-1 (c).

(b) *Answers.* — The applicant shall be required to answer in the presence of the registrars all questions required on the registration forms. If it shall be determined that he is not qualified to be a voter, the applicant shall be advised of his right of appeal as set forth in this subtitle and an entry signed by the registrars shall be made on the reverse side of the registration forms stating the reason the applicant is not qualified. If the applicant is qualified and the answers of the applicant to all questions have been properly entered on the forms, the applicant shall sign his full legal name in the place on the forms for his signature, if he can do so. If he shall be unable to do so, the registrars shall make the entry "cannot sign" on the forms in the place of his signature, and shall note on the forms the applicant's height, color of eyes and any distinguishing physical marks.

(c) *Original and duplicate forms compared.* — At the end of each registration session, the original and duplicate registration forms shall be compared, verified and conformed. If any person is found to have registered more than once, the additional registration forms shall be cancelled. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1974, ch. 191; 1975, ch. 57.)

**Finality of entries.** — The entries of the officers of registration on their books are findings of officers charged with duty of ascertaining their correctness, and should not be disturbed until their falsity is established. *Langhammer v. Munter*, 80 Md. 518, 31 A. 300 (1895).

**Failure to question registrant.** — A party applying for registration should be questioned in accordance with the statute. If, however, he is not so questioned, upon a petition to strike his name off the list, he may prove that he is entitled to be registered. *Davis v. O'Berry*, 93 Md. 708, 50 A. 273 (1901).

**Mandamus.** — It has been held that mandamus will not be granted to compel officers of registration to enter on their books the facts that an applicant cannot read or write.

*Summerson v. Schilling*, 94 Md. 582, 51 A. 610 (1902).

**Residence.** — Requirement of a residential address in order to register to vote would effectively be imposing an additional qualification for voting: occupancy of a dwelling with mail service; the Maryland Constitution does not require that particular form of residence; and the General Assembly may not enlarge upon constitutional qualifications. 69 Op. Att'y Gen. 138 (1984).

Homeless citizen must provide a mailing address as a prerequisite to registration; however, the address of an institution at which the voter regularly picks up mail would suffice. 69 Op. Att'y Gen. 138 (1984).

Cited in *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

### § 3-13A. Address of apartment resident to include apartment number.

Any person residing in an apartment shall give the apartment number as well as the street number of the apartment when registering to vote. (1975, ch. 53.)

### § 3-14. Old registration forms; cancelled registration records.

(a) *Transfer of information from old forms to new; voter to sign new binder form.* — Whenever in the opinion of any board the registration forms have become filled in and can no longer be used, the information contained thereon shall be transcribed on new forms under the supervision and direction of the board. When new forms are prepared in accordance with this subsection the judges of election, after determining that the person offering to vote is in fact the duly registered voter transcribed thereon, shall require the voter to sign the new binder form before issuing a voter authority card.

(b) *Retention of old registration books or forms.* — The boards shall retain all old registration books or forms which have been transcribed onto new forms under this section for a period of at least five years. At the expiration of the five-year period, the boards shall transfer old registration books or forms to the State Administrative Board of Election Laws for delivery to the State Archives.

(c) *Retention of cancelled registration records.* — Each board shall retain cancelled registration records in its office for a period of five years, open to public inspection, and may microfilm these records at any time. At the expiration of the five-year period, the original records shall be forwarded to the State Administrative Board of Election Laws for delivery to the State Archives. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1972, ch. 571; 1977, ch. 80, §§ 1, 2; 1984, ch. 286, § 5.)

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**§ 3-15. Temporary certificates of registration.**

(a) *When issued.* — If at any election, it appears that the original registration form of, or the listed voter registration information for, any person presenting himself as a voter is not among the cards or on the electronically reproduced compilation or list, as the case may be, constituting the precinct register for use on election day, that person may apply to the board, or a majority of its members on forms to be provided by the board, for a certificate entitling him to cast his ballot in spite of the absence of the registration form or listed information. Upon receipt of any application for this certificate accompanied by proof of the identity of the applicant, a majority of the board shall inspect the duplicate registration forms retained in the office of the board and if inspection discloses that the applicant is a duly registered voter, a majority of the board shall make a reasonable effort to locate the applicant's original registration form or the appropriate listed voter information, as the case may be. If the original form or the listed information is not found and if a majority of the board is satisfied that its absence is not due to fraud or malfeasance, the board or a majority of its members shall issue its certification, to the judges of the precinct in which the applicant is found to be a registered voter. The certificate shall be marked "Temporary Certificate of Registration," shall be in the form prescribed in accordance with subsection (c) of this section, and shall be sufficient authority to permit the voter to cast his ballot in his precinct as though his original registration form or listed information were present. The certificate, when completed by the judges, shall be retained by the judges and returned to the board at the time prescribed for the return of the precinct register.

(b) *New original registration form.* — At the same time a voter receives a temporary certificate he shall sign a new original registration form containing the same information shown by the voter's duplicate registration form. The new original registration form shall entitle the voter, subject to the provisions of this article, to vote at any subsequent election.

(c) *Form of temporary certificate.* — The form of the temporary certificate of registration shall be as prescribed by the State Administrative Board of Election Laws. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1970, ch. 439; 1972, ch. 571; 1973, ch. 779; 1974, ch. 380; 1984, ch. 255.)

**§ 3-16. Challenges of voters and correction of lists; how made; forms.**

(a) *Correction of clerical errors.* — (1) Whenever a board or board of registry determines that, as the result of a clerical error, a registration record is erroneous, the board shall correct the error as soon as practicable and notify the person whose record has been corrected. Notification shall be by first class mail.

(2) If a board or board of registry determines that there is reason to believe that, other than as a result of a clerical error, any person is required by law to be added to or deleted from the registration list, it shall initiate a proceeding

to determine whether the person should be added to or deleted from the list. To the extent applicable, the proceeding shall be conducted in accordance with the provisions of subsections (b) through (e) of this section.

(b) *Who may file challenge or application for correction of list; when and where filed.* — (1) Any qualified voter may file with the board or with the board of registry:

(i) An objection to the registration of any person the voter has reason to believe is not eligible to vote; or

(ii) An application for the addition of any person whose name has been erroneously omitted or dropped from the registration list of any precinct.

(2) The application or challenge may be made at the office of the board at any time except during the 45 days prior to any election.

(3) An application or challenge shall be made on a form approved by the State Administrative Board of Election Laws and provided by the board for that purpose. The voter shall state thereon, under oath and of the voter's own personal knowledge, the legal basis for the application or challenge.

(c) *Notice of hearing.* — Within 10 days of a determination pursuant to subsection (a) (2) of this section or the receipt of an application or challenge pursuant to subsection (b) of this section, the board shall:

(1) Schedule a hearing that shall be held no sooner than 15 days and no later than 30 days after the determination or receipt;

(2) If applicable, send notice of the hearing by certified mail to the applicant or challenger and advise that the applicant or challenger is required to appear at the hearing to substantiate the application or challenge by affirmative proof; and

(3) By certified mail send the notice of the hearing and reason therefor to the person whose right to register has been challenged or whose name is alleged to have been erroneously omitted or dropped from the registration list. This notice shall be addressed to the person's most recent address as reflected by the registration records. Any person so notified may appear in person or by counsel.

(d) *Conduct of hearing.* — (1) The board or board of registry shall conduct the hearing on each application and challenge.

(2) The willful failure of the applicant or challenger to appear at a hearing under this section shall be punishable by the penalties provided in § 24-27 of this article.

(3) At the request of either party, or on its own motion, the board shall issue subpoenas to witnesses to appear and testify at the hearings.

(4) Witnesses at the hearings shall be sworn.

(e) *Action of board after hearing.* — (1) All cases shall be decided promptly after hearing.

(2) No person shall be removed from the registration lists unless the person's ineligibility is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the person is properly registered.

(3) Whenever a board or board of registry determines, after a hearing pursuant to this section, that a person should be added to or removed from the

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registration lists, the board immediately shall add or remove the person and notify the person, by first class mail, of the board's action.

(4) If the board is satisfied that the person challenged:

(i) Has moved to another precinct;

(ii) Is presently residing within that other precinct; and

(iii) Is otherwise eligible, the board shall transfer that person to the registration list of the precinct in which he presently resides. (1957, ch. 739, § 1; 1959, ch. 11; 1961, ch. 555; 1965, ch. 784; 1966, ch. 142; 1967, ch. 392, § 1; 1973, ch. 779; 1987, ch. 437.)

**Correction to be sought by way of this section.** — One who asserts that there is listed on the registration lists something that should not be or that there is not listed something that should be must seek correction by way of this section. *Lee v. Secretary of State*, 251 Md. 134, 246 A.2d 562 (1968).

**Exclusiveness of statutory remedy.** — Where a statutory remedy is available to challenge the qualifications of voters on the registration lists, that statutory remedy is the ex-

clusive method for challenging the qualifications of registered voters. *DuBois v. City of College Park*, 280 Md. 525, 375 A.2d 1098 (1977).

**Registration lists as conclusive evidence.** — Registration lists, in the absence of allegations of fraud on the part of election officials, are conclusive evidence of the qualifications of voters. *DuBois v. City of College Park*, 280 Md. 525, 375 A.2d 1098 (1977).

**§ 3-17. Removal because of change of name or address; forms.**

(a) (1) If the board learns that a registered voter has changed his name or has moved within or without the ward, election district or precinct in which he is registered and, within 30 days from the date of such change, has not applied to the board to change his registration records, the board shall notify the voter by first-class mail sent to his address as it appears on the board's registration records, and to his new address, if it is known, that if he does not advise the board by a signed writing of his correct address or name within two weeks of the date appearing on the notice, his name will be removed from the registration records, and he will have to reregister before he can vote in future elections.

(2) Any board, upon receipt of a signed authorization from a voter to cancel his registration, shall remove that registration from the registration records.

(b) (1) Where any voter has removed from the county or Baltimore City, in which he is registered to vote, to another county or Baltimore City he may apply to the board of the county or Baltimore City to which he has removed, for registration. He shall be registered in the manner provided in this article, and shall state the fact of his removal from such other county or Baltimore City. The board, prior to registering a voter who has removed from the county or Baltimore City in which he is registered to vote, shall require that the voter shall sign an authorization to cancel his previous registration.

(2) The board shall mail all such cancellation authorizations to the State Administrative Board of Election Laws which shall forward them to the proper election board. Upon receipt of this authorization, the board, upon a comparison of the voter's signature with his signature as it appears on the

registration records, shall remove the voter's registration from the records and retain the cancellation authorization in the records of the board.

(c) The cancellation authorization required by subsections (a) (2) and (b) (1) of this section shall be on a form prescribed by the State Administrative Board of Election Laws. (1957, ch. 739, § 1; 1959, ch. 533; 1967, ch. 392, § 1; 1971, ch. 272; 1972, ch. 4; 1973, chs. 251, 779; 1975, ch. 97; 1976, chs. 28, 382.)

Stated in *DuBois v. City of College Park*,  
280 Md. 525, 375 A.2d 1098 (1977).

### § 3-18. Correction of registration lists; reports from public agencies.

(a) *Reports to be made by certain public agencies.* — Reports shall be made by the several officials in the counties and in Baltimore City at least once each month, except as provided in paragraph (3), as follows:

(1) The Commissioner of Health of Baltimore City and the health officers of the counties shall file with the State Administrative Board of Election Laws a list of the names and residence addresses (if known) of all persons at least 16 years of age reported deceased within the city or county since the date of the last such report.

(2) The clerk of the circuit court and the clerk of the District Court for each county shall file with the State Administrative Board of Election Laws the full names and addresses of all persons convicted in the respective courts of theft or infamous crimes since the date of the last such report. The State Administrative Board of Election Laws shall make similar arrangements with the clerk of the United States District Court for the District of Maryland to receive lists of those convicted of crimes in that court.

(3) The clerk of the circuit court for each county shall give notice to any registered voter who changes his name that he must notify his election board of the change.

(4) The clerk of the circuit court for each county shall file with the State Administrative Board of Election Laws the former and present names and residence addresses (if known) of all persons whose names have been changed by decree or order of court since the date of the last such report.

(5) Every agency or instrumentality of any county in the State or in the City of Baltimore which acquires or condemns or razes or causes to be condemned or razed any building used as a residence within the county or city shall promptly report such fact and the location of such building to the board in the county or city.

(b) *Form prescribed.* — The reports required by paragraphs (1), (2), (3), and (4) of subsection (a) shall be on a form prescribed by the State Administrative Board of Election Laws.

(c) *Changes of addresses.* — The boards may also in their discretion make such arrangements as seem practicable with the postal authorities in said city or counties, respectively, and with the water department and public service companies serving persons therein, to receive notices of changes in addresses



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of persons receiving mail or using such services in said city or county. The boards are authorized to pay a reasonable compensation for the necessary clerical service involved.

(d) *Notification to show cause before cancellation.* — Whenever the death, conviction of infamous crime, or change of name by decree of any registered voter is reported as above provided, the board or the State Administrative Board of Election Laws shall mail to the address of such voter, as it appears on the registration books or records, a notification that the death, or conviction of infamous crime, or change of name by decree has been reported to the board, and shall require the voter to show cause within two weeks after the mailing of the notification why his registration should not be cancelled. If no sufficient cause is shown, the registration of the voter shall be cancelled by removing the registration cards or forms of the voter from the original and duplicate files and placing them in a transfer file. Whenever the board has actual knowledge of the death of any registered voter, or if the death is established beyond a reasonable doubt, and it files in its office a statement to that effect, it is not necessary to mail a notice to the address of the voter, and his registration may be cancelled, as hereinafter provided, by removing the registration cards or forms of the voter from the original and duplicate files and placing the same in a transfer file. (1957, ch. 739, § 1; 1959, ch. 287; 1966, chs. 181, 490, 657; 1967, ch. 392, § 1; 1972, ch. 10; ch. 570, § 1; 1973, ch. 440; 1976, ch. 382; 1978, ch. 849; 1982, ch. 820, § 1; 1984, ch. 24; 1985, ch. 10, § 1; 1986, ch. 43.)

**Editor's note.** — Section 6, ch. 820, Acts 1982, provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

**The election laws do not compel all married women to register to vote in their husbands' surname.** *Stuart v. Board of Supvrs. of Elections*, 266 Md. 440, 295 A.2d 223 (1972).

Nothing in the language of paragraph (3) of subsection (a) of this section or subsection (c) of this section purports to compel all married women to register to vote in their husbands' surname. *Stuart v. Board of Supvrs. of Elections*, 266 Md. 440, 295 A.2d 223 (1972).

While a married woman may choose to adopt the surname of her husband — this being the long-standing custom and tradition which has resulted in the vast majority of married women adopting their husbands' surnames as their own — the mere fact of the marriage does not, as a matter of law, operate to establish the custom and tradition of the majority as a rule of law binding upon all. This rule is founded upon the English common law incorporated into the laws of Maryland. *Stuart v. Board of Supvrs. of Elections*, 266 Md. 440, 295 A.2d 223 (1972).

**Unless her name has been changed by legal proceedings.** — The provisions of subsections (a) (3) and (c) of this section do not

require that a married woman register to vote in the surname of her husband unless her name has been changed by legal proceedings. *Stuart v. Board of Supvrs. of Elections*, 266 Md. 440, 295 A.2d 223 (1972).

**Section does not effect derogation of common law.** — This section, even with the aid of a long-standing and uniform administrative practice, does not effect a derogation of the common law that a married woman's surname is not changed by operation of law to that of her husband's solely by reason of her marriage to him. *Stuart v. Board of Supvrs. of Elections*, 266 Md. 440, 295 A.2d 223 (1972).

**Section merely requires showing of consistent and nonfraudulent use of birth given name.** — Where married woman did not undergo a "change of name by marriage," this section merely requires her to show cause to the board of supervisors of elections that she consistently and nonfraudulently used her birth given name rather than her husband's surname following marriage. *Stuart v. Board of Supvrs. of Elections*, 266 Md. 440, 295 A.2d 223 (1972).

Where a married woman exclusively, consistently and nonfraudulently uses her maiden name, she is entitled to use that name unless there is a statute to the contrary. *Stuart v. Board of Supvrs. of Elections*, 266 Md. 440, 295 A.2d 223 (1972).

**But board may make cross-reference notation to fact of marriage.** — In restoring the maiden name of a married woman to the voter registry, the board of supervisors of elections may make whatever cross-reference notation

to the fact of her marriage that it thinks administratively feasible to meet the avowed needs of voter identification and prevention of dual registrations. *Stuart v. Board of Supvrs. of Elections*, 266 Md. 440, 295 A.2d 223 (1972).

### § 3-19. Removal of voters in service or voting as absentee.

Repealed by Acts 1972, ch. 570, § 1.

### § 3-20. Cancellation of registration for failure to vote.

(a) (1) If a registered voter has been registered but has not voted at least once at a primary, general or special election within the five preceding calendar years, it shall be the duty of the board, unless cause to the contrary be shown, to cause the registration of that voter to be cancelled by removing the registration cards or forms of the voter from the original and duplicate files and placing them in a transfer file. Voting in any municipal election during this period will satisfy the requirements of this section, if voter registration for the municipal election is conducted by the board for the county in which the municipality is located and if the municipality promptly furnished a listing of all voters casting votes in that election. A notice of this action and the reason therefor shall be sent to the last known address of the voter, notifying him to appear before the board at a date specified in the notice not earlier than one week or later than two weeks from the date of mailing of the notice, and to show cause why his name should not be removed from the registry.

(2) Lists containing the names and last known street addresses of those voters whose registration is to be cancelled shall be made available on request 30 days prior to the date of removal. Any board may charge reasonable fees for such lists but the rate may not exceed  $\frac{1}{2}$  cent per name and address.

(b) A voter whose registration has been cancelled under this section shall not thereafter be eligible to vote except by registering again as in this article provided.

(c) Annually the board shall determine which persons have not voted at least once at a primary, general, or special election within the five calendar years immediately preceding January 1 of the current year and send those persons the notice required in subsection (a) of this section. The notice shall be in a form prescribed by the State Administrative Board of Election Laws. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 296; 1973, ch. 779; 1974, ch. 192; 1976, ch. 312; 1977, ch. 896; 1978, chs. 2, 446, 471; 1984, ch. 255.)

**Purge of municipal corporation registration lists.** — This section does not apply to registration lists maintained by municipalities and does not preclude a town's application of its separate purge provision. Nevertheless, if a resident of a municipality remains on the county's registration list, that voter may vote

in municipal elections even if the voter has been removed from the town's registration list as a result of a purge provision in the municipal charter. 75 Op. Att'y Gen. — (April 4, 1990).

Cited in *Bradley v. Mandel*, 449 F. Supp. 983 (D. Md. 1978).

§ 3-21. Registration appeals.

(a) *Petition for appeal.* — Any person who feels aggrieved at any action of a board or of a board of registry shall have the right of appeal from a refusal to register him as a qualified voter, the removal or misspelling of his or of any other person's name, or the registration or nonregistration of any fictitious, deceased or disqualified person. Such appeal may be brought at any time, except that it may not be later than the third Tuesday preceding the election. The appeal shall be taken by filing a petition, verified by affidavit, in the circuit court for the county setting forth the ground of the application and asking to have the registry corrected.

(b) *Action of court on petition.* — The court may, upon the presentation of evidence satisfactory to it, in its discretion dispose of the matter summarily or in its discretion otherwise set the matter for hearing and direct summons to be issued. Upon appropriate order of court the board shall make the required corrections indicating that such changes have been made pursuant to order of court.

(c) *Presumption of residence.* — In determining whether any person is or is not a resident of any precinct, it shall be presumed that if a person is shown to have acquired a residence in one locality, he retains the same until it is affirmatively shown that he has acquired a residence elsewhere.

(d) *Appeals to Court of Special Appeals.* — An appeal may be taken from any ruling of such court to the Court of Special Appeals. Any such appeal shall be taken within five days from the date of the decision complained of and the appeal shall be heard and decided by the Court of Special Appeals as soon after the transmission of the record as practicable. (1957, ch. 739, § 1; 1958, ch. 38; 1967, ch. 392, § 1; 1976, ch. 472, § 8; 1982, ch. 820, § 1; 1984, ch. 255.)

**Editor's note.** — Section 6, ch. 820, Acts 1982, provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

**Nature and extent of jurisdiction conferred upon courts.** — See *Collier v. Carter*, 100 Md. 381, 60 A. 104 (1905); *Wilson v. Carter*, 103 Md. 120, 63 A. 369 (1906); *Smith v. McCormick*, 105 Md. 224, 65 A. 929 (1907); *Hanson v. Daly*, 129 Md. 287, 99 A. 375 (1916).

Where there is a statutory appeal from administrative or official decisions, jurisdiction of the courts on appeal is limited to that conferred by the statute. *Lee v. Secretary of State*, 251 Md. 134, 246 A.2d 562 (1968).

**Remedy exclusive.** — A declaratory judgment as to whether complainants are entitled to vote in local and State elections is not proper because this article prescribes the method by which contested cases involving the right to vote may be heard. *Tanner v. McKeldin*, 202 Md. 569, 97 A.2d 449 (1953).

**Petition cannot be filed until after board**

**has acted.** — The petition, being in the nature of an appeal, cannot be filed until after board of registry has acted upon application. *Collier v. Carter*, 100 Md. 381, 60 A. 104 (1905); *Wilson v. Carter*, 103 Md. 120, 63 A. 369 (1906); *Smith v. McCormick*, 105 Md. 224, 65 A. 929 (1907); *Hanson v. Daly*, 129 Md. 287, 99 A. 375 (1916).

Under Acts 1890, ch. 573, an appeal could only be taken to circuit court after final sitting of officers of registration. *Ticer v. Thomas*, 74 Md. 342, 22 A. 402 (1891).

**An appeal must be taken within time prescribed by statute**, and neither an agreement of counsel nor an order of court can confer jurisdiction where the appeal is taken thereafter. *Plummer v. Wilson*, 73 Md. 472, 21 A. 322 (1891); *Cox v. Bryan*, 81 Md. 287, 31 A. 447, aff'd, 81 Md. 287, 31 A. 852 (1895).

**Appellate court is not limited to a review of matters passed on below.** *Shaeffer v. Gilbert*, 73 Md. 66, 20 A. 434 (1890).

**Stated in DuBois v. City of College Park**, 280 Md. 525, 375 A.2d 1098 (1977).

### § 3-21A. Alternate polling place for elderly or handicapped voter.

(a) (1) Upon the request of an elderly or handicapped voter whose polling place is not structurally barrier free, the board shall either:

(i) Assign the voter to an election district, ward, or precinct whose polling place is structurally barrier free; or

(ii) Notwithstanding other provisions of law regarding eligibility for an absentee ballot, issue the voter an absentee ballot in accordance with the procedures established under this article.

(2) In order to qualify for assignment to an alternate polling place, the voter shall apply for a change in polling place on a form prescribed by the State Administrative Board of Election Laws no later than the closing of registration for any election.

(3) An elderly or handicapped voter who is assigned to another polling place under this subsection shall be provided with the same ballot as that used at the voter's original polling place.

(b) The alternate polling place shall be located in the same county or Baltimore City as the polling place where the voter resides and must be one in which the ballot used is identical to the ballot in the polling place where the voter resides.

(c) This section applies only if a structurally barrier free alternate polling place meeting the provisions of subsection (b) is available. (1977, ch. 306, § 2; 1986, ch. 184, § 2.)

### § 3-22. Copies of registration lists.

(a) *List of all persons registered.* — (1) Within 10 days of receipt of a written application from any person registered to vote in Maryland, the board shall furnish to such person a certified copy of a registration list of the name, address, and party affiliation of each person registered to vote in any precinct. The board shall also furnish supplements to these lists upon written application as provided below.

(2) The State Administrative Board of Election Laws shall furnish a registration list, and any supplement to the list, at the request of a local board.

(3) The method and cost of reproduction of these registration lists and supplements shall be determined jointly by the State Administrative Board of Election Laws and the boards.

(b) *Application for list; certification by board.* — (1) Any application for a registration list shall be filed at least 30 days prior to any election and shall be accompanied by cash or certified check to cover the cost of the list and, if applied for, the supplement. If an applicant applies for a supplement, that application shall be made at the same time that the applicant applies for a registration list. These supplements shall include the names, addresses, and party affiliations of all registrants in any precinct who have registered from such date as the board deems proper through the deadline for registration for

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the applicable election. The board shall furnish these supplements within a timely period after the applicable deadline for voter registration.

(2) Each registration list, and any supplement to the list, shall be certified by the board or the State Administrative Board of Election Laws as correct.

(c) *Commercial use of list prohibited; sworn statement; penalty.* — (1) Each application for a registration list or a supplement shall be accompanied by a statement, under oath, by the individual filing the application, that the list or supplement is not intended to be used for purposes of commercial solicitation or any other business purpose.

(2) Any person who, knowingly, allows a registration list, and any supplement to the list, or supplement under his or her control to be used for commercial solicitation or any other business purpose is guilty of a misdemeanor and shall be punished under the provisions of § 24-27 of this article.

(d) *List of new registrants.* — The boards may also furnish a list of the names, addresses, and party affiliations of all new registrants in any precinct in any current year. The method and cost of reproduction of these lists shall be determined jointly by the State Administrative Board of Election Laws and the boards. (1957, ch. 739, § 1; 1965, ch. 930; 1966, ch. 658; 1967, ch. 392, § 1; 1970, ch. 379; 1971, ch. 352, § 1; ch. 392; 1976, ch. 34; 1979, ch. 259; 1984, ch. 465.)

**Any member of public entitled to inspect and copy registration records.** — In the absence of a "special order of the board" or a "reasonable regulation" by the board so providing, any member of the public is entitled to inspect and copy registration records of the board pursuant to § 3-11 (a) of this article, without any of the restrictions set forth in this section. 62 Op. Att'y Gen. 396 (1977).

**Representative of charitable institution.** — A board should furnish voter registration lists to a representative of a charitable institu-

tion, properly registered, provided that the representative is a registered voter in the State of Maryland and makes proper written application for, and affidavit as to the use of, such lists. 62 Op. Att'y Gen. 396 (1977).

**Nonprofit, noncharitable organization.** — Unless a nonprofit, noncharitable organization provides the sworn statement required by this section, the board should refuse to furnish the list of that institution. 62 Op. Att'y Gen. 396 (1977).

**§ 3-23. Voters' notification or information cards.**

(a) *Issuance of cards; replacement or new cards.* — Upon the registration of a voter by a local board, the board shall issue to the voter a voter notification and identification card containing the name and address of the voter, the date of issue, and the ward (or election district) and precinct of the voter. The card is evidence that the person to whom it is issued is a registered voter on the date appearing on the card. The board shall issue a replacement card on request of the voter and a new card when a relevant change is made in the voter's registration record.

(b) *Reproduction, etc., unlawful.* — Except for the purpose of filing as an exhibit in a court proceeding or for the use of any election board, it is unlawful to reproduce or copy in any manner for any purpose a voter's notification or information card. Violation of this subsection is a misdemeanor and upon conviction is punishable by a fine not to exceed \$100, or imprisonment not to exceed six months, or both. (1957, ch. 739, § 1; 1959, ch. 513; 1967, ch. 392, § 1; 1976, ch. 29; 1986, ch. 186; 1987, ch. 11, § 1.)

**§ 3-24. Precinct check of registered voters.**

(a) *List of voters.* — Whenever the board determines that any precinct or portion of a precinct is in need of a detailed check for the purpose of correcting the registration lists of the precinct, it shall deliver to one or more of its clerks a copy of the registration list of all voters registered in the precinct or portion of the precinct. The board, at the same time, shall furnish to each of the clerks a sufficient number of change of residence cards on which registrants who have changed their residence may apply to the board for a transfer of registration, and a sufficient number of cards to be handed to nonregistered voters indicating when and where to register.

(b) *Duty of clerks.* — The clerk or clerks shall visit the place of residence of every registered voter on the list and after diligent inquiry shall check the names on the registration lists, indicating on the margin (1) by the word "present" after the name of each voter, all such who still reside at the same address; (2) by the word "moved" after the name of each voter who removed from or within the precinct; and (3) by the word "deceased" after the name of each voter who has died. He shall also leave change of residence cards with registered voters who have moved into the precinct and cards with all persons over 18 years of age who have not registered, giving information as to when and where to register.

(c) *Notifications.* — Within thirty days after the completion of such checking, the board shall cause to be mailed to each person before whose name appears the word "moved" or "deceased" a notification to affirm or deny the change of address or report of death by filling in and signing the necessary blank and returning it by mail; or to appear at the office of the board and fill out such blank affirming or denying the change of address or report of death and stating the address to which such person shall have moved. Upon the return of such blanks duly filled in with the required information, the board shall proceed as in other cases of change of address in accordance with the provisions of § 3-17 of this article. Failure to return such blanks or make affirmation or denial, within two weeks from the time when such notification shall have been mailed, shall be sufficient cause for the cancellation of the registration of such person, and his original and duplicate registration card and entry of his name, in the precinct book, shall be dealt with as in other cases of cancellation. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1972, ch. 10; 1976, ch. 44; 1977, ch. 533; 1984, ch. 255.)

**§ 3-25. Preservation of cancelled registration records.**

Repealed by Acts 1977, ch. 80, § 3, effective July 1, 1977.

*Cross reference.* — As to present provisions relating to retention of cancelled registration records, see § 3-14 of this article.

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**METHOD OF NOMINATION**

**§ 4-1. In general.**

(a) Nominations for offices which are filled by elections under the provisions of this article may be made by primary election or petition.

(b) No certificate of nomination shall contain the name of more than one nominee for each office to be filled.

(c) No person shall be a candidate for nomination for more than one office in any primary election, nor shall a person be a candidate for election to more than one office in any general election.

(d) No person shall file as a candidate for more than one public office at any primary election.

(e) No person shall file as a candidate for more than one party office at any primary election.

(f) Nothing in this section shall prohibit a person from simultaneously being a candidate for a political party's nomination to a public office and also a candidate for election to an office in his political party.

(g) Each candidate for public office under this article shall attest by oath in writing on the certificate of candidacy that he is not a candidate for any other public office. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1971, chs. 269, 354; 1975, ch. 283.)

Stated in *Lee v. Secretary of State*, 251 Md. 134, 246 A.2d 562 (1968).

**CERTIFICATE OF CANDIDACY**

**§ 4A-1. Requirements for persons seeking nomination; listing and use of names, nicknames, titles, etc.**

(a) Each person seeking nomination to any public or party office at a primary election shall file a certificate of candidacy for nomination in the manner and at the time provided in this subtitle. Such person who is a candidate for any State, local, or party office must be a registered voter of the particular county or district in which he seeks to be nominated. A candidate for any federal, State, local or party office shall be affiliated with the party whose nomination or office he seeks. Before finally placing the name of such a candidate on the ballot at the succeeding primary election, the board shall determine that the candidate meets the registration and affiliation requirements of this section. The requirements of this section shall not apply to the party affiliation of any candidate for judicial office for which candidates are permitted to be listed on the ballot without party designation; but the requirements shall be applicable to the filling of any vacancy in any public or party office.

(b) The use of nicknames, titles, degrees, or other professional designations on the certificate of candidacy is prohibited.

(c) Certificates of candidacy shall include a space in which candidates are to designate the listing of their name as they wish it to appear on the ballot by

designation of any given name or names, plus the initial letter of other given name or names, if any, and surname.

(d) Write-in candidates shall file certificates of candidacy as provided in § 4D-1 of this article.

(e) An incumbent judge of the Court of Appeals or Court of Special Appeals does not file a certificate of candidacy for an election for continuance in office. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1971, chs. 264, 354; 1975, ch. 52; ch. 723, § 2; 1978, ch. 210, § 1; 1984, ch. 255.)

Stated in *Lee v. Secretary of State*, 251 Md. 134, 246 A.2d 562 (1968); *Barnhart v. Mandel*, 311 F. Supp. 814 (D. Md. 1970); *Barthelmes v. Morris*, 342 F. Supp. 153 (D. Md. 1972).

### § 4A-2. Where filed.

(a) *Members of Congress and statewide offices.* — Certificates of candidacy shall be filed under oath with the State Administrative Board of Election Laws for the nomination of members of Congress or of candidates for offices to be filled by the voters of the entire State or of any division of a greater extent than one county. Certificate of candidacy for the nomination of members of the State Senate and the House of Delegates shall also be filed with the State Administrative Board of Election Laws.

(b) *Judges.* — Each candidate for nomination for judge of the circuit court for a county shall file his certificate under oath with the State Administrative Board of Election Laws.

(c) *Local offices.* — For all other nominations to public office certificates of candidacy shall be filed under oath with the board of the respective counties or of Baltimore City, wherein the offices are to be filled by the voters.

(d) *Manner of filing.* — All persons except write-in candidates shall file their certificates of candidacy in person within the time specified by § 4A-3 of this article and at the place specified in this section. In the event that any person wishing to file a certificate of candidacy is unable to do so in person by reason of illness, military service or temporary absence from the State of Maryland, such person shall file an affidavit setting out fully such facts as prevent him from personally filing his certificate of candidacy and such affidavit must be filed with the certificate of candidacy.

(e) *Delegates to national convention.* — Certificates of candidacy shall be filed under oath with the State Administrative Board of Election Laws for candidates for election as delegates to a national convention.

(f) *Same — How filed.* — Repealed by Acts 1987, ch. 674, effective July 1, 1987. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1969, ch. 560; 1970, ch. 103; 1972, ch. 571; 1973, ch. 439; 1975, ch. 723, § 1; ch. 783; 1976, ch. 193; 1978, ch. 210, § 1; 1982, ch. 820, § 1; 1983, ch. 671; 1987, ch. 674.)

**Editor's note.** — Section 6, ch. 820, Acts 1982, provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."



## Art. 33, § 4A-3 REGISTRATION AND ELECTION LAWS

### § 4A-3. When filed.

(a) *In general.* — (1) Except for certificates of candidacy filed by petition or write-in candidates and as otherwise provided herein, certificates of candidacy shall be received and filed in the office of the appropriate board:

(i) For candidates for offices other than delegate to the Democratic national convention, not later than 9 p.m. on the Monday which is ten weeks or seventy days before the day on which the primary election should be held under the primary election law.

(ii) For candidates for delegate to the Democratic national convention, between 9 a.m. on the first regular business day of the year in which the President of the United States is elected and 9 p.m. on the day which is one week later than that first regular business day.

(2) If the filing date should occur on a legal holiday, the certificates must be received and filed not later than nine p.m. on the next regular business day which is not a legal holiday.

(b) *Special election.* — (1) Certificates of candidacy for an office to be filled by a special election pursuant to § 22-1 (b) of this article shall be received and filed in the office of the appropriate board not later than five p.m. on the Monday which is three weeks or twenty-one days prior to the special primary election which is to be held under the Governor's proclamation setting the date for the special primary election.

(2) If the filing date should occur on a legal holiday, the certificates must be received and filed not later than five p.m. on the next regular business day which is not a legal holiday. (1957, ch. 739, § 1; 1966, ch. 142; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1971, ch. 2, § 1; 1975, ch. 723, § 1; 1982, ch. 446; 1983, ch. 374; 1984, chs. 255, 319; 1987, ch. 674.)

**Fixing of deadline for filing of certificates of candidacy is not unreasonable or an unconstitutional restriction, in view of the necessity for making timely preparations for elections.** *Andrews v. Secretary of State*, 235 Md. 106, 200 A.2d 650 (1964).

**And provisions of this section are mandatory and not directory.** *Andrews v. Secretary of State*, 235 Md. 106, 200 A.2d 650 (1964).

The provisions of this section, setting a time within which a certificate of candidacy is to be filed, are mandatory and leave no discretion in either the election officials or the courts. *McGinnis v. Board of Supvrs. of Elections*, 244 Md. 65, 222 A.2d 391 (1966).

Where the election statutes fix a date for filing petitions or certificates of candidacy, such documents must be filed before the expiration of the time fixed, and the election officials may not exercise any discretion in the matter. *Andrews v. Secretary of State*, 235 Md. 106, 200 A.2d 650 (1964).

**Constitutionality of early filing deadlines for independent Presidential candi-**

**dates.** — An early deadline for filing a certificate of candidacy imposed on independent candidates for President is unconstitutional in that it could require independent candidates to file their candidacies months before the parties designate their nominees, and no compelling State interest has been shown to justify such an additional burden on independent candidates. *Anderson v. Morris*, 500 F. Supp. 1095 (D. Md.), *aff'd*, 636 F.2d 55 (4th Cir. 1980).

Because an early deadline for filing the certificate of candidacy is unconstitutional, an early deadline for filing a portion of petitions by independent Presidential candidates must also fall. *Anderson v. Morris*, 500 F. Supp. 1095 (D. Md.), *aff'd*, 636 F.2d 55 (4th Cir. 1980).

Requiring the total number of signatures from nonmajor party candidates at the same time that major political party candidates are only required to submit a certificate of candidacy would impose harsher restrictions upon the former which simply could not be justified under a statutory scheme for special elections; for this reason, such a deadline for filing the

total number of signatures is constitutionally invalid. *Mathers v. Morris*, 515 F. Supp. 931 (D. Md.), aff'd, 649 F.2d 280 (4th Cir.), appeal dismissed, 454 U.S. 884, 102 S. Ct. 375, 70 L. Ed. 2d 199, cert. denied, 454 U.S. 895, 102 S. Ct. 393, 70 L. Ed. 2d 210, modified, 454 U.S. 934, 102 S. Ct. 467, 70 L. Ed. 2d 241 (1981).

**State may properly conclude that intraparty disputes should be settled in party primaries**, that the general election ballot is reserved for major political struggles, that it should not be the forum for continuing intraparty feuds and that losers in primaries should not be permitted to continue the strug-

gle, all to the end that the general election ballot shall present the electorate with understandable choices and the winner shall have sufficient support to govern effectively. *Anderson v. Morris*, 636 F.2d 55 (4th Cir. 1980).

**Applied in Maryland Citizens for a Representative Gen. Ass'y v. Governor of Md.**, 429 F.2d 606 (4th Cir. 1970); *Wood v. Putterman*, 316 F. Supp. 646 (D. Md.), aff'd, 400 U.S. 859, 91 S. Ct. 104, 27 L. Ed. 2d 99 (1970).

**Stated in Barnhart v. Mandel**, 311 F. Supp. 814 (D. Md. 1970); *Shapiro v. Maryland*, 336 F. Supp. 1205 (D. Md. 1972).

### § 4A-4. Vacancy in nomination by reason of there being no candidate to file — How filled.

(a) *Officers elected by voters of more than one county, except State Senator or Delegate.* — In case of any vacancy which may exist in respect to a candidate for any office elected by the voters of more than one county except State Senator or member of the House of Delegates, by reason of there being no candidate of a political party to file for the same in any such primary election, such vacancy shall be filled by the State central committee, or governing body, of the political party of the State.

(b) *State Senator or Delegate for district comprising more than one county.* — In a State legislative district comprising more than one county, or in a State delegate district comprising more than one county, any vacancy occurring because there is no candidate of a political party to file for the office shall be filled by vote of the central committee in each of those counties in the district. The central committee of each county involved shall cast a vote proportionate to its share of the population of the district where the vacancy exists. Such population shall be based on the most recent decennial United States census. If one person fails to receive a majority of the votes or if there is a tie vote between or among the central committees, the vacancy shall be filled by the State central committee of the party.

(c) *Other officers.* — All other such vacancies shall be filled by the central committee of the political subdivision.

(d) *Exceptions.* — The provisions of this section shall not apply to the filling of vacancies, as specified in § 9-2 of this article, nor to special elections held to fill vacancies in office caused by death, resignation or otherwise, nor to political parties which are not required to nominate candidates by means of primary elections. (1957, ch. 739, § 1; 1966, ch. 142; 1967, ch. 392, § 1; 1971, ch. 354; 1973, ch. 439; 1974, ch. 318; 1977, ch. 638, § 4; 1985, ch. 45.)

**Vacancy in Baltimore City shall be filled by State committee.** — This section says that a vacancy in Baltimore City, in case no candi-

date files in a primary, shall be filled by the State committee. *Valle v. Pressman*, 229 Md. 591, 185 A.2d 368 (1962).

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**§ 4A-5. Same — Filing certificate of candidacy.**

In case of any vacancy which may exist in respect to a candidate for any office elected by the voters by reason of there being no candidate of a political party to file for the same in the primary election, the central committee authorized to fill such vacancy shall file the certificate of nomination with the State Administrative Board of Election Laws, or the board, as the case may be, not later than the fifth day after the date on which candidates may withdraw their candidacy before the primary election. (1957, ch. 739, § 1; 1966, ch. 142; 1967, ch. 392, § 1; 1970, ch. 103; 1974, ch. 188; 1977, ch. 638, § 4; 1987, ch. 11, § 1.)

**§ 4A-6. Fees — Filing fees.**

(a) *General provisions.* — Each candidate for nomination to public office at a primary election shall pay the sum of twenty-five dollars (\$25) for the county or Baltimore City in which his name appears upon the ballot, except as may be otherwise provided in this section. In any county where the salary of the office for which nomination is sought is three hundred dollars (\$300) or less, the payment shall be ten dollars (\$10). All payments shall be made to the person with whom the certificate is filed and shall accompany the certificate. At a primary election each candidate for election as a member of the central committee, executive committee of any party, or other party committee shall pay the sum of ten dollars (\$10.00) upon filing his certificate with the board or State Administrative Board of Election Laws.

(b) *President and statewide offices.* — Candidates for President of the United States, Governor and Lieutenant Governor, the United States Senate, Comptroller, Attorney General or other offices for which the voters of the entire State may vote, upon filing their respective certificates with the State Administrative Board of Election Laws, shall each pay to it the sum of two hundred and ninety dollars (\$290). Nothing in this section shall apply to candidates for President of the United States qualifying under § 12-6 (a) (1).

(c) *House of Representatives.* — Candidates for the House of Representatives of the Congress of the United States shall each pay to the State Administrative Board of Election Laws the sum of one hundred dollars (\$100) upon filing their certificates.

(d) *State Senators and Delegates.* — Candidates for State Senator and member of the House of Delegates shall each pay to the State Administrative Board of Election Laws the sum of fifty dollars (\$50) upon filing their certificates.

(e) *Baltimore City offices.* — Candidates for mayor of Baltimore City, comptroller of Baltimore City, president of the city council of Baltimore or other offices which are elected by the voters of the entire City of Baltimore, upon filing their respective certificates, shall each pay the sum of one hundred and fifty dollars (\$150). Candidates for the Baltimore City council shall each pay the sum of fifty dollars (\$50) for the councilmanic district in which his name appears upon the ballot.

(f) *Candidates nominated by primary meeting, petition, committee, etc.* — Candidates nominated by primary meeting, petition, a political party's committee or otherwise, whether or not their names appear on the primary ballot, must pay the filing fee for the respective office which they seek in accordance with the foregoing conditions.

(g) *Inability to pay fee.* — Each filing fee required by this section or by § 7-1 is mandatory unless the candidate establishes his inability to pay the fee. The fee shall be waived if the candidate establishes his inability to pay by attaching to the certificate of candidacy, at the time and place of filing the certificate, a sworn statement of inability to pay which shall set forth the nature, extent and liquidity of the candidate's assets and the disposable net income of the candidate. The board with which the certificate of candidacy is filed may conduct an investigation of the candidate's financial status if the circumstances so warrant.

(h) *Write-in candidates.* — Repealed. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1969, ch. 560; 1970, ch. 103; 1971, ch. 352, § 1; chs. 354, 391; 1973, ch. 85, § 439; 1974, ch. 3; 1975, ch. 399; ch. 723, § 2; 1977, ch. 638, § 4; 1983, ch. 671; 1984, ch. 255; 1985, ch. 10, § 1; 1987, ch. 11, § 1; 1990, ch. 90.)

**Effect of amendment.** — The 1990 amendment, effective July 1, 1990, repealed (h).

**This section vitiates the legitimate State interest, in discouraging frivolous candidacies.** *Dixon v. Maryland State Admin. Bd. of Election Laws*, 686 F. Supp. 539 (D. Md. 1988).

**Filing of certificate and fees as condition of "official" candidacy and reporting of votes deemed unconstitutional.** — Requirement that nonindigent write-in candidates for certain Baltimore City offices file certificates of candidacy and pay a filing fee of \$150 in order to become "official" candidates and to have the votes cast for them reported publicly impermissibly infringes on rights protected by

the first and fourteenth amendments to the United States Constitution. *Dixon v. Maryland State Admin. Bd.*, 878 F.2d 776 (4th Cir. 1989).

The State may not condition the reporting of the results of write-in voting on candidate certification, whether or not accompanied by a fee. *Dixon v. Maryland State Admin. Bd.*, 878 F.2d 776 (4th Cir. 1989).

**Stated in** *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

**Cited in** *Reeder v. Board of Supvrs. of Elections*, 269 Md. 261, 305 A.2d 132 (1973); *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

## § 4A-7. Same—Return of filing fees.

(a) *General provisions.* — In the event that the name of any candidate who has paid a filing fee to any board or to the State Administrative Board of Election Laws as hereinabove provided shall not appear on the official ballot at the primary election by reason of there being no opposing candidate, such candidate shall not be entitled to a return of his filing fee. These sums shall be retained by the State Administrative Board of Election Laws, the Mayor and City Council of Baltimore, or in the case of the counties, by the county commissioners or the county council to which the same shall have been paid by the board.

(b) *Members of armed services.* — In the event that any candidate who has paid a filing fee to any board or the State Administrative Board of Election Laws, as hereinabove provided, enters into active duty with the armed services of the United States in the period between the last date allowed for withdrawal of his name as a candidate and the printing of the ballots or the

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voting machine ballot labels, he shall be entitled upon withdrawing as such a candidate and upon his request to a return of the filing fee.

(c) *Good cause.* — Filing fees may be returned as provided in subsection (b) of this section or for good cause shown and subject to the approval of State Administrative Board of Election Laws. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1970, ch. 103; 1975, ch. 658; 1984, ch. 255; 1987, ch. 11, § 1.)

**§ 4A-8. Same — Disposition of filing fees.**

(a) *Fees received by boards in counties and Baltimore City.* — The board in Baltimore City shall pay over all amounts received from filing fees to the Mayor and City Council of Baltimore; and the board for each county shall pay over the amount so received to the county commissioners or county council of each county, respectively.

(b) *Statewide offices.* — The State Administrative Board of Election Laws shall divide and transmit the fees received by it from candidates for statewide offices, in the sums of ten dollars (\$10) each to the board of each county of the State, and the sums of sixty dollars (\$60) thereof to the board in Baltimore City.

(c) *House of Representatives.* — The State Administrative Board of Election Laws shall divide and transmit the fees received by it from candidates for the House of Representatives of the United States Congress, the State Senate, the Maryland House of Delegates, and judicial offices, in equal amounts to the board of each county within the respective congressional or legislative districts and to the board in Baltimore City for any legislative district wholly or partly therein.

(d) *Delegates to national convention.* — The State Administrative Board of Election Laws shall divide and transmit the fees received by it from candidates for election as delegates to a national convention in equal amounts to the board of each county within the respective congressional district and to the board in Baltimore City for any congressional district wholly or partly therein. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1969, ch. 560; 1970, ch. 103; 1976, ch. 36; 1983, ch. 671.)

Cited in *Dixon v. Maryland State Admin. Bd.*, 878 F.2d 776 (4th Cir. 1989).

**NEW POLITICAL PARTIES**

**§ 4B-1. New political parties.**

(a) *Formation.* — Any group of voters wishing to form a new political party shall do so by filing with the State Administrative Board of Election Laws a petition for formation of a political party which shall declare their intention of organizing a State political party, the name of which shall be stated in the petition together with the name, address, telephone number, and signature of the State chairman thereof and the names and addresses of at least twenty-five persons who shall be designated as constituting the governing body of the

party. A petition shall be accompanied by an affidavit signed by the State chairman which states that the listed names constitute those persons on the governing body. Appended to the petition in the manner hereinafter provided shall be papers bearing the signatures of at least ten thousand registered voters of the State. If, after verification as required by this section, the total required number of signatures of registered voters is not properly appended to the petition, additional signatures may be filed. However, all of the signatures, including any added after the initial filing, must have been affixed to the appended papers not more than two years prior to the filing date of the last qualifying signature, and no voter's signature may be counted more than once.

(a-1) *Filing petition for formation.* — (1) Except as provided in paragraph (2) of this subsection, a petition for formation of a new political party, or any additional signatures to a petition, may be filed at any time.

(2) A petition for formation of a new political party, or any additional signatures to a petition, may not be filed:

(i) After the 5th Monday preceding or during the 10 days following a primary or special primary election;

(ii) After the 1st Monday in August preceding or during the 15 days following a general election; or

(iii) After the 5th Monday preceding or during the 15 days following a special election.

(b) *Form of petition; affidavit.* — The State Administrative Board of Election Laws shall prescribe the form of petitions filed under the provisions of this subtitle. The signatures shall be on separate papers, bearing one or more signatures, and being no more than 8½ inches in width and 14 inches in length. Each paper shall contain the names of persons residing only in one county or only in the City of Baltimore. Each signer shall append to his signature his residence, the date of signing and the name of the county or city where he is registered as a voter, and immediately below the signature of any signer there shall be either printed or typed the name of the signer. Every paper shall be accompanied by an affidavit or affidavits which state that the signers, to the best knowledge and belief of the affiant or affiants, are registered voters of the county or city as set forth in the petition and that the affiant or affiants witnessed the application of each signature to the paper on the date noted opposite his signature. The affiant or affiants shall be 18 years of age or older. The affidavits shall be signed under penalty of perjury.

(c) *Restrictions on signers.* — No person shall sign more than one petition for the formation of a new political party between each general election in the State; nor shall any person sign more than once on any petition for the formation of a new political party.

(d) *Verification of signatures; endorsement; return of petitions; notice that petition meets requirements of section.* — All papers containing signatures which are appended to a petition for formation of a political party shall be sorted by county and be filed with the State Administrative Board of Election Laws. All petition papers shall be submitted by the State Administrative Board of Election Laws to the board for the county or the City of Baltimore in

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which the signers on the paper are alleged to reside, within fifteen days after the receipt of the petition and appended papers by the State Administrative Board of Election Laws. It shall be the duty of the several boards in the jurisdiction in which the signers are alleged to be registered voters to verify the number of legitimate signatures of persons who are registered voters. On any petition submitted to the board any question concerning the invalidity of the signature of any person on the petition shall affect that signature only and shall not affect or impair any other portion of the petition. Following the verification, a duly authorized employee of the board shall endorse on each paper the number of signatures verified by the employee and shall endorse and sign the paper. For the purpose of the endorsement, each paper shall contain a blank space for the endorsement. After verification and endorsement as herein required, which shall be completed within fifteen days after receipt of the papers by the board, all papers delivered to the board pursuant to this subsection shall be mailed or returned to the State Administrative Board of Election Laws. If the total required number of signatures is properly appended to the petition for formation of a political party, and the petition is otherwise in proper form and meets all of the requirements of this section, the party shall be promptly notified. Upon the filing of an interim constitution and bylaws with the State Administrative Board of Election Laws in the manner and within the time hereinafter provided, the political party designated in the petition shall be considered a political party for the purposes of this article.

(e) *Effect of insufficient number of signatures.* — If the total required number of signatures is not properly appended to the petition for formation of a political party within the time period allowed by subsection (a), it shall be declared insufficient by the State Administrative Board of Election Laws, and the party shall not be deemed a political party for the purposes of this article, and the applicant shall be promptly notified.

(f) *Organizational meeting.* — If the petition for the formation of a political party is properly drawn and filed, as in this section provided, then, within ninety days after the filing of the petition and appended papers, the persons designated in the petition as constituting the governing body of the party shall hold an organizational meeting and shall adopt for the conduct of the affairs of the party an interim constitution and bylaws, which shall be filed with the State Administrative Board of Election Laws within thirty days after adoption. Any amendments to the interim constitution and bylaws shall likewise be filed with the State Administrative Board of Election Laws within thirty days after adoption. The said organizational meeting shall be convened by the person designated in the petition as the State chairman of the party, who shall preside as president pro tem of the meeting until such time as party officers are elected.

(g) *Interim constitution and bylaws.* — The interim constitution and bylaws shall provide for such meetings as in the opinion of the governing body of the new political party shall be necessary for the proper conduct of party affairs, and shall specifically provide for the selection of a State central committee for the party, the selection of party central committees for the several

counties and Baltimore City, and for the selection of chairmen for the State and local party central committees, in the numbers required in § 11-2 (b) of this article. The interim constitution and bylaws shall also provide for the manner of calling all meetings and for advance notification thereof; for rules governing the conduct of all meetings, including the attendance required for a quorum; for a procedure for selecting party nominees for public office, subject to the provisions of this article; and for the manner and method of amending the interim constitution and bylaws of the political party. The interim constitution and bylaws shall also provide that no meeting of the political party or the governing body of the political party shall be called unless ten days written notice thereof shall be given, by regular mail, to each person entitled under the interim constitution and bylaws to attend, addressed to the residence of such person as disclosed by the records of the board of the county or Baltimore City in which such person is a voter. In the event that it is necessary to call a meeting to fill a vacancy in a party nomination for public or party office, it shall be sufficient if five days notice shall be given in a manner to be provided by the interim constitution and bylaws.

(h) *Nomination by petition.* — Unless the party is required to select its nominees for public office by primary election pursuant to § 5-1 of this article, the nominees for public office of the party shall be selected in the manner provided in the interim constitution and bylaws of the party, but no such nominee shall appear upon the ballot at any general election unless the nominee has complied with all the requirements of the provisions of the subtitle "Nomination by Petition" of this article, including the filing of petitions with the election board or the several boards of the State, which shall bear in addition to the name of the nominee, the name of the party, signed by not less than three percent (3%) of the registered voters who are eligible to vote for the office for which election at the general election is sought. If a nominee of a party has filed a valid petition for nomination in compliance with all the requirements of the subtitle "Nomination by Petition" of this article, but dies or declines the nomination before election day, the central committee of the political party with which said nominee is affiliated, may fill the vacancy in the nomination of the party in the manner provided in §§ 9-2 through 9-5, inclusive, of this article. The political party shall not nominate more than one candidate for each public or party office to be filled at the succeeding general election, except to fill a vacancy in a prior nomination. (1971, ch. 354; 1977, ch. 115, § 5; ch. 638, § 4; 1978, ch. 135; 1984, ch. 255; 1985, ch. 281.)

**Signatures and three percent polling requirements serve substantial State interest.** — The Maryland requirements that a political organization gather 10,000 signatures for initial qualification as a political party and that such a party poll at least three percent of the statewide vote in order to maintain such status serve a substantial State interest. *Mathers v. Morris*, 515 F. Supp. 931 (D. Md.), *aff'd*, 649 F.2d 280 (4th Cir.), *appeal dismissed*, 454 U.S. 884, 102 S. Ct. 375, 70 L. Ed. 2d 199, *cert. denied*, 454 U.S. 895, 102 S. Ct. 393, 70 L.

Ed. 2d 210, modified, 454 U.S. 935, 102 S. Ct. 467, 70 L. Ed. 2d 241 (1981).

**Placement of nominees on ballot.** — If a party (i) fully complies with the requirements for new party formation in this section and (ii) thereafter selects its presidential and vice presidential nominees at a national convention, those properly certified nominees should be placed on the general election ballot in Maryland. 69 Op. Att'y Gen. 133 (1984).

**When candidate may designate affiliated party on ballot.** — If all of the requirements



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in this section are met by a group of voters and they have successfully formed a political party, then a properly nominated candidate may des-

ignate that party on the ballot as the party with which he is affiliated. 62 Op. Att'y Gen. 411 (1977).

### LOSS OF STATUS AS POLITICAL PARTY

#### § 4C-1. Loss of status as political party; revival.

(a) *Party polling less than three per centum of vote.* — If in any general election at which the voters of the State vote for candidates for President of the United States or Governor of the State, any political party polls less than three per centum of the entire vote cast in the State, as determined in subsection (b) of this section, such party shall cease to be a political party for purposes of this article, and shall be so advised by the State Administrative Board of Election Laws.

(b) *Determination of per centum of entire vote cast.* — The determination of whether a political party polled three per centum or less of the entire vote cast in the State in any general election for purposes of subsection (a) of this section, shall be made as follows:

(i) In any general election at which the voters of the State vote for candidates for President of the United States, the total number of votes cast for the party's nominees for the offices of President of the United States, and United States Senator (if a United States Senator from this State was elected at such general election), must equal or exceed three per centum of the total number of votes cast at such general election for all candidates for all such offices; or

(ii) In any general election at which the voters of the State vote for candidates for Governor of this State, the total number of votes cast for the party's nominees for the offices of United States Senator (if a United States Senator from this State was elected at such general election), Governor of this State, Comptroller of this State, and Attorney General of this State, must equal or exceed three per centum of the total number of votes cast at the general election for all candidates for all such offices.

(c) *Revival of party.* — If a party loses its status as a political party for purposes of this article pursuant to subsection (a) of this section, such party may at any time regain its status as a political party for purposes of this article by filing a valid petition for formation of a political party pursuant to the provisions of § 4B-1 of this article. (1971, ch. 354; 1972, ch. 570, § 1.)

**Automatic denial of party status is unconstitutional burden on fundamental rights.** — Given all the facets of the statutory scheme for determining political party status, the automatic denial of party status to an organization failing to comply with this section represents an unconstitutional burden on fundamental rights. *Mathers v. Morris*, 515 F. Supp. 931 (D. Md.), aff'd, 649 F.2d 280 (4th Cir.), appeal dismissed, 454 U.S. 884, 102 S. Ct. 375, 70 L. Ed. 2d 199, cert. denied, 454 U.S. 895, 102 S. Ct. 393, 70 L. Ed. 2d 210, modified, 454 U.S. 935, 102 S. Ct. 467, 70 L. Ed. 2d 241 (1981).

**Political party failing to run candidates for statewide office ceases to be "political party".** — Because the plain words of this section clearly make no provision or exception for a party that chooses not to nominate any candidates for statewide office, but only to participate in local races, if a political party fails to run candidates for statewide office, it automatically ceases to be a "political party" pursuant to this section following the election. 62 Op. Att'y Gen. 411 (1977).

**Signatures and three percent polling requirements serve substantial State inter-**

est. — The Maryland requirements that a political organization gather 10,000 signatures for initial qualification as a political party and that such a party poll at least three percent of the statewide vote in order to maintain such status serve a substantial State interest.

*Mathers v. Morris*, 515 F. Supp. 931 (D. Md.), aff'd, 649 F.2d 280 (4th Cir.), appeal dismissed, 454 U.S. 884, 102 S. Ct. 375, 70 L. Ed. 2d 199, cert. denied, 454 U.S. 895, 102 S. Ct. 393, 70 L. Ed. 2d 210, modified, 454 U.S. 935, 102 S. Ct. 467, 70 L. Ed. 2d 241 (1981).

#### WRITE-IN CANDIDATES

##### § 4D-1. Write-in campaigns.

(a) Any person or combination of two or more persons who expends \$51 or more to organize, promote, or assist in any manner the success of any person or persons seeking to obtain write-in votes for any public office to be filled at a general election is a political committee for the purposes of this article.

(b) A write-in candidate is required to file a certificate of candidacy for election. The certificate shall be filed with the same agency as if the write-in candidate were filing for office under § 4A-2 of this article. The certificate may be filed without payment of a filing fee.

(c) The certificate of candidacy for election of a write-in candidate shall be filed no later than 7 days after a total expenditure of \$51 is made by him or in his behalf by a committee authorized by him to promote his candidacy, but shall not be filed later than 5:00 p.m. on the day preceding the day of the election for which the certificate is filed. (1975, ch. 723, § 2; 1982, ch. 446; 1984, chs. 255, 385; 1990, ch. 90.)

**Effect of amendment.** — The 1990 amendment, effective July 1, 1990, in (a), substituted "success" for "write-in candidacy" and inserted "seeking to obtain write-in votes"; and added the last sentence in (b).

**Filing of certificate and fees as condition of "official" candidacy and reporting of results deemed unconstitutional.** — Requirement that nonindigent write-in candidates for certain Baltimore City offices file certificates of candidacy and pay a filing fee of \$150 in order to become "official" candidates and to

have the votes cast for them reported publicly impermissibly infringes on rights protected by the first and fourteenth amendments to the United States Constitution. *Dixon v. Maryland State Admin. Bd.*, 878 F.2d 776 (4th Cir. 1989).

The State may not condition the reporting of the results of write-in voting on candidate certification, whether or not accompanied by a fee. *Dixon v. Maryland State Admin. Bd.*, 878 F.2d 776 (4th Cir. 1989).

Quoted in *Phifer v. State*, 278 Md. 72, 359 A.2d 210 (1976).

#### PRIMARY ELECTIONS

##### § 5-1. Parties using; election to select national convention delegates not required.

(a) Any political party with which ten per centum or more of the registered voters of this State are affiliated, as shown by the most recent statement of registration of the State Administrative Board of Election Laws compiled pursuant to § 3-9A (b) of this article, shall at the next succeeding primary election conducted under the provisions of this subtitle: (1) nominate all its candidates for public office; (2) elect all members of the local central committees in said political party; and (3) elect the appropriate number of delegates

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to a national convention as provided in this article. The several boards shall not print on the official ballot to be voted at any general or special election to be hereafter held the name or names of any such candidate or candidates for election in Baltimore City or any of the counties of the State of any of said parties who shall not be so nominated and whose nomination shall not be certified to them or to the State Administrative Board of Election Laws as having been so nominated.

(b) This subtitle may not be construed to mean that a political party is required to conduct elections to select delegates to a national convention. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1969, ch. 560; 1970, ch. 103; 1971, ch. 2, § 1; ch. 354; 1978, ch. 9; 1979, ch. 127, § 3; 1984, ch. 255.)

**Direct primary is creature of legislature,** designed for the purpose of permitting the members of a party to select their candidates under official supervision and control. *Hennegan v. Geartner*, 186 Md. 551, 47 A.2d 393 (1946).

**And there is no right to participate in primary or convention of another party.** — There is no fundamental right in any voter to participate in the primaries or conventions of parties other than the one to which he belongs. Neither article 7 of the Declaration of Rights nor Md. Const., article I, § 1, has any such im-

plication. *Hennegan v. Geartner*, 186 Md. 551, 47 A.2d 393 (1946).

**Candidates of new party cannot be nominated at primary election or by a convention.** *Iverson v. Jones*, 171 Md. 649, 187 A. 863 (1937).

**Availability of primary election machinery.** — The primary election machinery of this section is only available to a political party if it complies with § 11-1 (a) of this article. *Barnhart v. Mandel*, 311 F. Supp. 814 (D. Md. 1970).

**Quoted in** *Dorf v. Skolnik*, 280 Md. 101, 371 A.2d 1094 (1977).

**§ 5-2. Date.**

(a) *In general.* — The primary elections by the political parties for candidates for State offices and central committee shall be held throughout this State on the second Tuesday after the first Monday in September. The primary elections by the political parties in each year in which a national convention is held for the nomination of candidates for President and Vice-President shall be held throughout this State on the second Tuesday in March. A special primary election to fill a vacancy in the office of Representative in Congress shall be held on such date as the Governor shall specify pursuant to § 22-1 (b) of this article.

(b) *Municipal offices in Baltimore City.* — (1) The day for holding primary elections for municipal offices in Baltimore City shall be on the second Tuesday after the first Monday in September of the year in which the municipal elections in the City of Baltimore are to be held.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the day for holding primary elections for municipal offices in Baltimore City in 1991 shall be on the second Thursday after the first Monday in September, 1991. (1957, ch. 739, § 1; 1965, chs. 97, 784; 1967, ch. 392, § 1; 1969, ch. 560; 1971, ch. 2, § 1; 1977, ch. 638, § 4; 1979, ch. 126; 1986, ch. 846; 1989, ch. 5, § 3.)

**Effect of amendment.** — The 1989 amendment, approved Mar. 9, 1989, and effective from date of passage, added (b) (2).

**Editor's note.** — Section 1, ch. 229, Acts 1988, effective July 1, 1988, provides that "notwithstanding the provisions of Article 33, § 5-2 (b) of the Annotated Code of Maryland, the day for holding primary elections for municipal offices in Baltimore City in 1991 shall be on the second Thursday after the first Monday in September, 1991."

Section 23, ch. 5, Acts 1989, provides that "§ 3 of this Act shall remain effective until October 1, 1991. At the end of October 1, 1991,

and with no further action required by the General Assembly, § 3 of this Act shall be abrogated and of no further force and effect."

**Applied in Maryland Citizens for a Representative Gen. Ass'y v. Governor of Md.**, 429 F.2d 606 (4th Cir. 1970); **Bradley v. Mandel**, 449 F. Supp. 983 (D. Md. 1978).

**Stated in Shapiro v. Maryland**, 336 F. Supp. 1205 (D. Md. 1972); **Anderson v. Morris**, 500 F. Supp. 1095 (D. Md.), *aff'd*, 636 F.2d 55 (4th Cir. 1980).

**Cited in Mandel v. Bradley**, 432 U.S. 173, 97 S. Ct. 2238, 53 L. Ed. 2d 199 (1977).

### § 5-3. Conduct.

(a) *In general.* — Primary elections shall be held and conducted and determined in the manner and form provided by this article for general elections and subject to all regulations, requirements and provisions as prescribed by this article for general elections, insofar as the same are or may be applicable to primary elections, except as may be herein otherwise provided.

(b) *Certification of candidate.* — Not less than 30 days before any primary election, the State Administrative Board of Election Laws shall certify to the board of each county and of Baltimore City, the name, party affiliation and residence, as specified in the certificates of candidacy, of those candidates filed with the State Administrative Board of Election Laws, qualified to appear on the primary election ballot and for whom the voters are, by law, entitled to cast their ballots.

(c) *Same — Special primary election.* — Certification of candidates for a special primary election called pursuant to § 22-1 (b) of this article shall be made in accordance with the provisions of § 22-1 (c) (1) of this article.

(d) *Canvass.* — The ballots in such election shall be cast, counted and canvassed, and the result of the election announced and certified as now provided in this article for general elections held hereunder.

(e) *One candidate.* — Whenever only one candidate of any such political party for such public office or position has so qualified to have his name so placed upon the official primary election ballot at the expiration of the time allowed, his name and the name of the position for which he is a candidate shall be omitted from the said official ballot, so that the official ballot of such political party shall contain only the names of such candidates for positions, offices, or delegates where there are qualified contestants for such positions.

(f) *Write-in votes prohibited.* — There shall be no names of candidates written in at primary elections. (1957, ch. 739, § 1; 1958, ch. 38; 1967, ch. 392, § 1; 1984, ch. 155.)

**Primary election defined.** — A primary election is merely an officially supervised party nominating procedure. *State Admin. Bd. of Election Laws v. Calvert*, 272 Md. 659, 327 A.2d 290 (1974), *cert. denied*, 419 U.S. 1110, 95 S. Ct. 784, 42 L. Ed. 2d 807 (1975).

**Word "position," as used in subsection (e), includes party positions** such as a member of a State central committee. 58 Op. Att'y Gen. 297 (1973).

**Primary elections are a party matter.** *State Admin. Bd. of Election Laws v. Calvert*,

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272 Md. 659, 327 A.2d 290 (1974), cert. denied, 419 U.S. 1110, 95 S. Ct. 784, 42 L. Ed. 2d 807 (1975).

**Voting machines** must be so constructed and arranged as to permit an individual to cast a vote for a candidate whose name did not appear on the official ballot, but this right is not applicable to primary elections. State Admin. Bd. of Election Laws v. Calvert, 272 Md. 659, 327 A.2d 290 (1974), cert. denied, 419 U.S. 1110, 95 S. Ct. 784, 42 L. Ed. 2d 807 (1975).

**Write-in privilege** was never applicable to primary elections and, indeed, is inconsistent with the whole theory of primary elections. State Admin. Bd. of Election Laws v. Calvert, 272 Md. 659, 327 A.2d 290 (1974), cert. denied, 419 U.S. 1110, 95 S. Ct. 784, 42 L. Ed. 2d 807 (1975).

**Name of individual who is sole candidate from his county for nomination by his party** to the House of Delegates in a three-county district need not be printed upon the primary election ballot of that party. State Admin. Bd. of Election Laws v. Calvert, 272 Md. 659, 327 A.2d 290 (1974), cert. denied, 419 U.S. 1110, 95 S. Ct. 784, 42 L. Ed. 2d 807 (1975).

**Candidates for member of a party State central committee who have no opposition** at a primary election may be omitted from the ballot and declared elected. 58 Op. Att'y Gen. 297 (1973).

**Applied in** Wood v. Putterman, 316 F. Supp. 646 (D. Md.), aff'd, 400 U.S. 859, 91 S. Ct. 104, 27 L. Ed. 2d 99 (1970).

### CANDIDATES FOR GOVERNOR AND LIEUTENANT GOVERNOR

#### § 6-1. Candidates for nomination to be considered unit.

Each candidate for nomination for Governor, at the time of filing for that office, shall designate a candidate for Lieutenant Governor in accordance with Article II of the Constitution of Maryland. The names of the candidates for Governor and Lieutenant Governor shall be listed jointly on the election ballot, and a vote cast for the candidate for Governor shall be also a vote cast for the candidate for Lieutenant Governor. The candidates shall file for nomination jointly and shall be considered a unit for nomination of a party to the offices of Governor and Lieutenant Governor. The name of a candidate for Governor or Lieutenant Governor may not be listed on the ballot without being listed jointly with the name of a candidate for the other office. (1976, ch. 706.)

#### § 6-2. Death, withdrawal or disqualification of candidate for nomination — Prior to filing deadline.

If either of the candidates of a Governor-Lieutenant Governor unit dies or withdraws or becomes disqualified for any reason prior to the filing deadline set forth in § 4A-3, the remaining candidate may designate a successor who shall file his certificate of candidacy prior to the filing deadline or the sixth day following the day of the death, withdrawal, or disqualification, whichever is later. The remaining candidate may also withdraw his candidacy in accordance with § 9-1 (a) and form a new unit for candidacy for the offices of Governor and Lieutenant Governor. Both candidates shall file jointly as a new unit prior to the filing deadline for a primary election or the sixth day following the day of the death, withdrawal, or disqualification, whichever is later. (1976, ch. 706.)

**§ 6-3. Same — Candidate for Lieutenant Governor after filing deadline.**

(a) Except as hereinafter provided, if a candidate for Lieutenant Governor dies, withdraws, or becomes disqualified for any reason after the filing deadline set forth in § 4A-3, the remaining candidate for Governor of that unit may designate a successor candidate for Lieutenant Governor whose name shall be listed jointly on the primary election ballot with the name of the candidate for Governor. This section applies even if only one Governor-Lieutenant Governor unit has filed for the nomination of a party for those offices in a primary election.

(b) The successor candidate for Lieutenant Governor shall file his certificate of candidacy with the State Administrative Board of Election Laws as follows:

(1) If the former candidate withdrew in accordance with § 9-1 (a) or died or was disqualified at least 45 days before the day of the primary, the certificate shall be filed not later than 40 days before the day of the primary.

(2) If the former candidate died or was disqualified less than 45 days before the day of the primary, the certificate shall be filed prior to the sixth day following the day of the death or disqualification. However, a certificate may not be filed less than five days prior to the day of the election. If the death or disqualification occurred less than ten days prior to the day of the election and if a certificate is not filed, the unit shall remain on the ballot and, if nominated, the vacancy in the position of candidate for Lieutenant Governor shall be filled as if the death or disqualification had occurred after the primary election. (1976, ch. 706.)

**§ 6-4. Same — Candidate for Governor after filing deadline.**

(a) Except as hereinafter provided, if a candidate for Governor dies, withdraws, or becomes disqualified for any reason after the filing deadline set forth in § 4A-3, the remaining candidate for Lieutenant Governor of that unit shall have the option to either designate himself as a candidate for Governor and appoint a successor candidate for Lieutenant Governor or designate a successor candidate for Governor. Under either option the names shall be listed jointly on the primary election ballot. This section does not apply if only one Governor-Lieutenant Governor unit has filed for the nomination of a party to those offices in a primary election.

(b) The successor candidate for Governor designated by the candidate for Lieutenant Governor or the candidate for Lieutenant Governor exercising his option to designate himself as the candidate for Governor and the candidate appointed by him for Lieutenant Governor shall file either his certificate of candidacy or his change of candidacy with the State Administrative Board of Election Laws as follows:

(1) If the former candidate withdrew in accordance with § 9-1 (a) or died or was disqualified at least 45 days before the day of the primary, the filing

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required by this subsection shall be completed not later than 40 days before the day of the primary.

(2) If the former candidate died or was disqualified less than 45 days before the day of the primary, the filing required by this subsection shall be completed prior to the sixth day following the day of the death or disqualification. However, a filing required by this subparagraph may not be completed less than five days prior to the day of the election. If the death or disqualification occurred less than ten days prior to the day of the election and if no filing required by this subparagraph is completed, the unit shall remain on the ballot and, if nominated, the position of candidate for Governor shall be filled as if the death or disqualification had occurred after the primary election. (1976, ch. 706; 1987, ch. 11, § 1.)

**§ 6-5. Same — Same — Only one unit filing for nomination.**

(a) If only one Governor-Lieutenant Governor unit has filed for the nomination of a party, and the gubernatorial candidate dies, withdraws, or becomes disqualified for any reason after the filing deadline of § 4A-3, whether or not certificates of nomination have been issued, the remaining candidate for Lieutenant Governor is disqualified as a candidate, and the State central committee of the political party to which the candidates belong shall select a successor candidate for Governor, prior to the eleventh day following the death, withdrawal or disqualification. The disqualified candidate for Lieutenant Governor shall be eligible to be chosen as the successor candidate for Governor.

(b) The successor nominee for Governor immediately shall select a successor nominee for Lieutenant Governor. The former nominee for Lieutenant Governor, if he is not selected as the successor nominee for Governor, is eligible to be selected as the nominee for Lieutenant Governor. Prior to the sixth day following the day of the selection of the candidate for Governor, both nominees shall file their certificates of candidacy and the State central committee making the designation shall file the certificates of nomination with the State Administrative Board of Election Laws. (1976, ch. 706.)

**§ 6-6. Death, declination or disqualification of nominee after primary election.**

(a) Except as provided in subsection (c) of this section, if, after the primary election, and whether or not a certificate of nomination has been issued, a nominee for Lieutenant Governor dies, declines the nomination in accordance with § 9-1 (b), or becomes disqualified for any reason, the remaining nominee for Governor, prior to the sixth day after the death, declination or disqualification, may designate a successor nominee for Lieutenant Governor. Prior to the sixth day following the day of the designation the certificate of candidacy and the certificate of nomination by the party for the successor candidate shall be filed with the State Administrative Board of Election Laws.

(b) Except as provided in subsection (c) of this section, if, after the primary election, and whether or not a certificate of nomination has been issued, a nominee for Governor dies, declines the nomination in accordance with § 9-1 (b), or becomes disqualified for any reason, the remaining nominee for Lieutenant Governor is disqualified, and the State central committee of the political party to which the nominees belong prior to the sixth day after the death, declination or disqualification shall select a successor nominee for Governor. The disqualified nominee for Lieutenant Governor is eligible to be chosen as the successor nominee for Governor. The successor nominee for Governor immediately shall select a successor nominee for Lieutenant Governor. The former nominee for Lieutenant Governor, if he is not selected as the successor nominee for Governor, is eligible to be selected as the nominee for Lieutenant Governor. Prior to the sixth day following the day of the selection of the candidate for Governor, both nominees shall file their certificates of candidacy and the State central committee making the designation shall file a certificate of nomination with the State Administrative Board of Election Laws.

(c) A certificate of nomination of a successor candidate may not be filed under the provisions of this section within ten days of the day of the election. If a death or disqualification occurs less than 20 days prior to the day of the election, and if a certificate of nomination of a successor is not filed, the unit shall remain on the ballot and, if elected, the vacancy resulting from the death or disqualification shall be filled as if it had occurred after the election. (1976, ch. 706; 1987, ch. 11, § 1.)

### **§ 6-7. Death, withdrawal or disqualification of candidate nominated by petition.**

(a) If either of the candidates of a Governor-Lieutenant Governor unit nominated by petition under the terms of § 7-1 of this article dies or withdraws or becomes disqualified for any reason prior to the filing deadline set forth in § 4A-3, the remaining candidate may designate a successor who shall file his certificate of candidacy prior to the filing deadline or the sixth day following the day of death, withdrawal, or disqualification, whichever is later. The remaining candidate may also withdraw his candidacy in accordance with § 9-1 (a) and form a new unit for candidacy for the offices of Governor and Lieutenant Governor. Both candidates shall file jointly as a new unit prior to the filing deadline for the primary election or the sixth day following the day of the death, withdrawal, or disqualification, whichever is later.

(b) Except as provided in subsection (c) of this section, if either of the candidates of a Governor-Lieutenant Governor unit nominated by petition under the terms of § 7-1 of this article dies or withdraws or becomes disqualified after the filing deadline, the remaining candidate, prior to the sixth day after the death, withdrawal, or disqualification, may either designate another as the successor candidate for the vacancy thus created or, in the alternative, designate himself as the successor candidate and designate a successor candidate for the vacancy resulting from his succession to the initial vacancy. Under either alternative, the names shall be listed jointly on the ballot.



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(c) The successor candidate or the remaining candidate exercising his option to designate himself and the successor candidate he designates to succeed himself shall file, as the case may be, either his certificate of candidacy or his change of candidacy with the State Administrative Board of Election Laws prior to the sixth day following the designation. A certificate of candidacy required by this subsection may not be filed within ten days of the day of the general election. If the death or disqualification occurs less than 20 days before the day of the general election and if the certificate or certificates of candidacy required by this subsection are not filed, the unit shall remain on the ballot and if elected, the vacancy resulting from the death or disqualification shall be filled as if it had occurred after the election.

(d) Certificates of nomination for successor candidates shall be filed in accordance with § 7-1 (b), but additional petitions shall not be required if one of the members of the original unit remains a candidate of the successor unit. (1976, ch. 706; 1984, ch. 255; 1987, ch. 11, § 1.)

**§ 6-8. Effect of failure to designate successor candidate and file certificates.**

Except as provided in §§ 6-3 (b) (2), 6-4 (b) (2), 6-6 (c), and 6-7 (c), if either member of any Governor-Lieutenant Governor unit dies, withdraws, declines the nomination, or is disqualified, and no successor candidate is designated or selected in accordance with this subtitle and the certificates of candidacy of nomination required hereunder are not timely filed, the remaining candidate shall cease to be a candidate and his name shall not appear on the ballot. (1976, ch. 706.)

**§ 6-9. State Administrative Board of Election Laws to act in accordance with §§ 9-2 and 9-5.**

With respect to any certificate of candidacy for a successor candidate filed pursuant to §§ 6-2 through 6-6, the State Administrative Board of Election Laws shall proceed in accordance with §§ 9-2 (c) and 9-5, if applicable. (1976, ch. 706.)

**§ 6-10. Death, declination or disqualification before issuance of certificates of nomination or declaration of results.**

If the death, declination or disqualification of a candidate for Governor or Lieutenant Governor after a primary, or the death or disqualification of a nominee for Governor or Lieutenant Governor after a general election occurs before certificates of nomination or the declaration of the results of the election are issued, the State Administrative Board of Election Laws and the board of canvassers shall proceed with the canvass and the issuance of certificates of nomination or the declaration of the results of the election as if the

event had not occurred and any vacancies created by such event shall be filled as hereinabove provided. (1976, ch. 706.)

#### NOMINATION BY PETITION

### § 7-1. General provisions.

(a) *Who may be nominated by petition.* — Except as otherwise provided for a candidate for a county board of education, a candidate for any public office who is registered as an independent or who is a member of or affiliated with a partisan organization which is not a political party as defined in this article or who is not a member of a political party whose nominees must be nominated by means of primary elections may be nominated by petition, as in this section provided.

(b) *Filing certificate of candidacy; petitions required to be filed.* — (1) A candidate for public office seeking nomination by petition shall file:

(i) A declaration of his intent to seek nomination by petition, in a form prescribed by the State Administrative Board of Election Laws, at the time and place provided in Subtitle 4A of this article for filing, by other candidates, of certificates of candidacy. A candidate seeking nomination by petition may not be charged a fee for filing a declaration of intent. A declaration of intent is not required of any candidate for public office in a year in which the President of the United States is elected.

(ii) A certificate of candidacy not later than 5 p.m. on the first Monday in August in the year in which the general election is to be held at the place and in the manner provided in Subtitle 4A of this article and shall comply with all other applicable provisions of the subtitle, in the same manner as candidates for nomination at a primary election.

(2) In order to have the name of a proposed candidate placed on the ballot under this section, the candidate shall file with the appropriate board petitions signed by not less than 3 percent of the registered voters who are eligible to vote for the office for which the nomination by petition is sought. Petitions shall be filed as required by subsection (c) of this section.

(3) For purposes of this subsection, the number of registered voters shall be determined as of the commencement of the period, specified in § 3-8 (b) (2) of this article, before the primary election for which the nomination is sought.

(c) *Time of filing petitions.* — (1) The petition that contains the required number of signatures shall be filed with the appropriate board by not later than 5 p.m. on the first Monday in August in the year in which the general election is to be held.

(2) In the case of a candidate for an office to be filed pursuant to § 22-1 (b) of this article, a petition that contains the total required number of signatures shall be filed with the appropriate board not later than 5 p.m. on the day of the special primary election.

(d) *Form of petition; affidavit.* — The State Administrative Board of Election Laws shall prescribe the form of petitions filed under this section. The signatures required under subsection (c) of this section shall be on separate

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papers, bearing one or more signatures and being no more than 8½ inches in width or 14 inches in length. Such paper shall not contain the names of persons residing in more than one county or in any county and in the City of Baltimore. Each signer shall append to his signature his residence, and the name of the county or city where he is registered as a voter, and immediately below the signature of any signer there shall be either printed or typed the name of the signer. Every paper shall be accompanied by an affidavit or affidavits signed under penalty of perjury, to the effect that the signers are, to the best knowledge and belief of the affiant or affiants, registered voters of the county or city as set forth in the petition, and that the affiant or affiants personally saw the signers, in regard to whom he or they make oaths, sign the paper.

(e) *Restrictions on signers.* — A person may not sign more than once for the same nominee for an office.

(f) *Submission of papers to county board.* — Any paper which is to form a part of a petition filed pursuant to subsection (c) of this section shall be submitted to the board for the county or the City of Baltimore in which the signers on the paper are alleged to reside. The board shall give to anyone submitting any such paper a signed receipt stating that the paper is on file with the board.

(g) *Verification of signatures.* — (1) The board shall verify all legitimate signatures of persons who are registered voters and who have signed a petition pursuant to subsection (c) of this section. The local board or State Board, as the case may be, immediately on completion of the verification process, shall notify the candidate of the number of signatures verified.

(2) For an office to be filled by the voters of the entire State or of any subdivision of a greater extent than one county, the board shall verify all legitimate signatures of persons who are registered and who have signed any petition filed pursuant to subsection (c) of this section.

(3) For an office to be filled by the voters of one county or the City of Baltimore, the board shall verify any legitimate signatures of persons who are registered to vote and who have signed any petition filed pursuant to subsection (c) of this section, up to a number equal to 110 percent of the total number of signatures required by subsection (b) (2) of this section for nomination to the office sought. The board may verify additional signatures as it considers advisable.

(h) *Effect of question concerning signature's validity.* — On any petition, including an associated or included set of petitions, submitted to the board, any question concerning the invalidity of the signature of any person on the petition affects that signature only and does not affect or impair any other portion of the petition or petitions.

(i) *Endorsement.* — Following the verification, a duly authorized employee of the board shall endorse on each paper the number of signatures verified by the employee and shall endorse and sign the paper. For the purpose of the endorsement, each paper shall contain a blank space for the endorsement.

(j) *Delivery to State Administrative Board of Election Laws.* — (1) All papers delivered to a board pursuant to subsection (c) of this section and re-

quired to be filed with the State Administrative Board of Election Laws pursuant to § 4A-2 of this article, after verification and endorsement as required, shall be mailed or delivered to the State Administrative Board of Election Laws within 3 weeks or 21 days after the deadline for receipt of the papers by the board pursuant to subsection (c) (1) of this section.

(2) All papers delivered to a board pursuant to subsection (c) (2) of this section, after verification and endorsement, shall be mailed or delivered to the State Administrative Board of Election Laws on or before the Monday that is 4 weeks or 28 days before the day on which the special election is to be held under the proclamation of the Governor.

(3) All papers delivered to the board pursuant to subsection (c) (1) of this section that are not required to be filed with the State Administrative Board of Election Laws pursuant to § 4A-2 of this article, on behalf of a candidate who is not required to file with the State Board a certificate of candidacy shall be verified and endorsed in the manner and at the time required by this section. The State Board shall be notified by the boards of the results of the verification.

(k) *Determination of sufficiency of signers.* — The State Administrative Board of Election Laws shall determine the sufficiency of the percentage of registered voters signing petitions in those cases in which candidates file certificates of nomination or of candidacy in its office. In all other instances, the determination shall be made by the local boards.

(l) *Petition lacking required number of signatures.* — If the required number of signatures is not properly appended to a petition required to be filed by subsection (c) of this section, it shall be declared insufficient, and the name of the proposed candidate may not be placed on the ballot.

(m) *Application to county board of education election.* — Repealed. (1957, ch. 739, § 1; 1961, ch. 357; 1963, ch. 876; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1969, ch. 554; 1970, chs. 103, 436; 1971, ch. 2, § 1; ch. 354; 1972, ch. 181, § 32; 1973, ch. 705; 1974, ch. 193; 1976, ch. 48; 1979, ch. 108; 1982, chs. 338, 446; 1984, chs. 255, 319; 1987, ch. 11, § 1.)

**Cross reference.** — As to provisions regarding the nomination and election of candidates for an elected county board of education, see §§ 32-1 through 32-6 of this article.

**Maryland Law Review.** — For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 297 (1985).

**Election board must count names on petition and determine that they are those of registered voters of appropriate jurisdiction.** *Burroughs v. Raynor*, 56 Md. App. 432, 468 A.2d 141 (1983).

**Candidates of new party may be nominated as provided in this section.** *Iverson v. Jones*, 171 Md. 649, 187 A. 863 (1937).

**Constitutional standards for determining whether independent candidate's access to ballot unconstitutionally burdened.** — Whether filing dates for the nominating petitions needed to qualify for a position on the

general election ballot as an independent are unconstitutionally burdensome on the independent candidate's access to the ballot should be decided under the constitutional standards announced in *Storer v. Brown*, 415 U.S. 724, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974). *Mandel v. Bradley*, 432 U.S. 173, 97 S. Ct. 2238, 53 L. Ed. 2d 199 (1977).

**Constitutionality of early filing deadlines for independent presidential candidates.** — An early deadline for filing a certificate of candidacy imposed on independent candidates for President is unconstitutional in that it could require independent candidates to file their candidacies months before the parties designate their nominees, and no compelling State interest has been shown to justify such an additional burden on independent candidates. *Anderson v. Morris*, 500 F. Supp. 1095 (D. Md.), *aff'd*, 636 F.2d 55 (4th Cir. 1980).

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Because an early deadline for filing the certificate of candidacy is unconstitutional, an early deadline for filing a portion of the petitions must also fall. *Anderson v. Morris*, 500 F. Supp. 1095 (D. Md.), *aff'd*, 636 F.2d 55 (4th Cir. 1980).

Requiring the total number of signatures from nonmajor party candidates at the same time that major political party candidates are only required to submit a certificate of candidacy would impose harsher restrictions upon the former which simply could not be justified under a statutory scheme for special elections; for this reason, such a deadline for filing the total number of signatures is constitutionally invalid. *Mathers v. Morris*, 515 F. Supp. 931 (D. Md.), *aff'd*, 649 F.2d 280 (4th Cir.), appeal dismissed, 454 U.S. 884, 102 S. Ct. 375, 70 L. Ed. 2d 199, cert. denied, 454 U.S. 895, 102 S. Ct. 393, 70 L. Ed. 2d 210, modified, 454 U.S. 935, 102 S. Ct. 467, 70 L. Ed. 2d 241 (1981).

**Early filing date for independent candidates not justified.** — There is no validating State interest to justify an early filing date for independent candidates for statewide office in a presidential election year. *Bradley v. Mandel*, 449 F. Supp. 983 (D. Md. 1978).

Past experience of independent candidates for statewide office tends to prove that an early filing date for nominating petitions substantially hindered access to the ballot. *Bradley v. Mandel*, 449 F. Supp. 983 (D. Md. 1978).

**Petition or certificate of candidacy must be filed before expiration of time fixed.** — Where the election statutes fix a date for filing petitions or certificates of candidacy, such documents must be filed before the expiration of the time fixed, and the election officials may not exercise any discretion in the matter. The fixing of a deadline is not an unreasonable or unconstitutional restriction, in view of the necessity of making timely preparations for the election. *Chamberlain v. Board of Supvrs. of Elections*, 212 Md. 342, 129 A.2d 121 (1957); *Andrews v. Secretary of State*, 235 Md. 106, 200 A.2d 650 (1964).

**And affidavits regarding signers of petition must likewise be filed before deadline.** — Since the affidavits regarding signers of a petition for nomination required by this section to "accompany" such petitions are an integral part of them, they must likewise be filed by them before the deadline. *Chamberlain v. Board of Supvrs. of Elections*, 212 Md. 342, 129 A.2d 121 (1957).

**State may properly conclude that intraparty disputes should be settled in party primaries,** that the general election ballot is reserved for major political struggles, that it should not be the forum for continuing intraparty feuds and that losers in primaries should not be permitted to continue the strug-

gle, all to the end that the general election ballot shall present the electorate with understandable choices and the winner shall have sufficient support to govern effectively. *Anderson v. Morris*, 636 F.2d 55 (4th Cir. 1980).

**Placement of nominees on ballot.** — If a party (i) fully complies with the requirements for new party formation in § 4B-1 of the Code and (ii) thereafter selects its presidential and vice presidential nominees at a national convention, those properly certified nominees should be placed on the general election ballot in Maryland. 69 Op. Att'y Gen. 133 (1984).

**When nominees may designate affiliated party on ballot.** — If a party has been properly formed and so is considered a party for purposes of this article, and its nominees have been properly nominated, pursuant to this section, then its nominees may designate the party as the political party with which they are affiliated and, if they do so, the party's name will appear on the ballot, at both statewide and local elections, next to that of its nominees. 62 Op. Att'y Gen. 411 (1977).

**Questions as to adequacy of petitions limited to reasonable time after filing.** — While this section does not contain a time limitation in which to question the adequacy of nominating petitions, it is implicit that such questioning must be done within a reasonable time after the filing of the petitions. *Parker v. Board of Election Supvrs.*, 230 Md. 126, 186 A.2d 195 (1962).

Suit alleging that certain nominating petitions were defective held to be barred by laches where not brought within a reasonable time. *Parker v. Board of Election Supvrs.*, 230 Md. 126, 186 A.2d 195 (1962).

**Examination and verification.** — All signatures on all nominating petitions filed pursuant to this section should be examined and verified. 58 Op. Att'y Gen. 313 (1973).

**Supervisors of elections and Secretary of State are not required to pass on qualifications of signers.** *Tawney v. Board of Supvrs. of Elections*, 198 Md. 120, 80 A.2d 267, 81 A.2d 209 (1951).

**Withdrawal of signatures.** — After a certificate has been once presented in due form, signatures cannot be withdrawn so as to make it invalid. *Sterling v. Jones*, 87 Md. 141, 39 A. 424 (1898).

**Mandamus lies to compel supervisors to place name of a nominee by certificate upon ballot.** *Sterling v. Jones*, 87 Md. 141, 39 A. 424 (1898).

Mandamus will not issue to compel the board of supervisors to treat a certificate of nomination as void and to omit name of nominee from ballot. *Duvall v. Swann*, 94 Md. 608, 51 A. 617 (1902).

Stated in *Lee v. Secretary of State*, 251 Md. 134, 246 A.2d 562 (1968).

### § 7-2. Prohibited act.

As to any petition under this subtitle, it is unlawful for any person to:

(1) Refer to the State Administrative Board of Election Laws or a local board a petition to which is attached, appended, or subscribed any signature which the person knows to be false or fraudulent or not the genuine signature of the person purporting to sign the petition or of the person whose name is attached, appended, or subscribed to the petition;

(2) Make a false affidavit;

(3) Give, pay, or receive any money or other valuable consideration or inducement for signing the petition;

(4) Circulate or cause to be circulated a petition, knowing it to contain false, forged, or fictitious names;

(5) Knowingly sign his name as a petitioner more than once; or

(6) Sign a petition, knowing at the time he is not qualified to sign it. (1982, ch. 446; 1984, ch. 255.)

### § 7-3. Penalty.

With respect to §§ 7-1 and 7-2 of this subtitle, each violation is a separate offense and a misdemeanor, punishable under the penalties provided in § 24-27 of this article. (1982, ch. 446; 1984, ch. 255.)

## CERTIFICATES OF NOMINATION

### § 8-1. Required; how attested.

(a) All nominations shall be attested to by a certificate of nomination in accordance with the provisions of this section.

(b) (1) If the nomination is by means of a primary election, the certificate shall be signed and acknowledged by the persons whose duty it may be, by party usage, to declare the result of such election in the manner prescribed for a nomination by a convention, but no party emblem or device of any kind shall be added to said certificate, and if any such emblem or device should be added, it shall not be printed upon the ballot by the State Administrative Board of Election Laws or any of the boards.

(2) Whenever only one candidate of any such political party has qualified to have his name placed upon the official primary election ballot at the expiration of time allowed, for any public office or position, a certificate of nomination or selection shall be issued to him forthwith.

(3) If after the expiration of time allowed by this article for candidates for public office, delegates to conventions, members of State or local central committees to qualify for the purpose of having their names placed upon the official primary election ballot in any legislative district of Baltimore City or in any county of the State, it shall appear that only one set, or less than one

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set, of candidates of any such political party have so qualified certificates of nomination or selection shall be issued to the candidates so qualified in a similar manner to that herein provided for candidates nominated at primary elections.

(c) The certificate of nomination of any person nominated by petition shall contain the name of the person so nominated, the address of his residence, and the name of the office to which he has been nominated. (1957, ch. 739, § 1; 1958, ch. 38; 1967, ch. 392, § 1; 1970, ch. 103; 1971, ch. 354; 1978, ch. 244; 1987, ch. 11, § 1.)

State may properly conclude that intraparty disputes should be settled in party primaries, that the general election ballot is reserved for major political struggles, that it should not be the forum for continuing intraparty feuds and that losers in primaries should not be permitted to continue the struggle, all to the end that the general election ballot shall present the electorate with understandable choices and the winner shall have

sufficient support to govern effectively. *Anderson v. Morris*, 636 F.2d 55 (4th Cir. 1980).

**But major party presidential candidate may appear on ballot if nominated.** — A major party presidential candidate who does not choose to campaign in the Maryland primary or loses the primary may still appear on the Maryland ballot in November if he is nominated by the party convention. *Anderson v. Morris*, 636 F.2d 55 (4th Cir. 1980).

**§ 8-2. Name of defeated primary candidate not to be printed on general election ballot.**

(a) No person who has been defeated for the nomination for any office in a primary election, except a candidate for the office of judge, and except as provided in subsection (b) of this section, shall have his name printed on the ballot at the succeeding general election as a candidate for any office. Nothing in this subsection shall be interpreted as being applicable to candidates for nomination of their party for President of the United States who have been defeated in a Presidential preference primary election.

(b) If a vacancy occurs in the party nomination of which he was a candidate in the primary election, his name may be printed on the ballot for the general election as a candidate of that party if he has been duly made such party nominee after a vacancy occurs in the manner provided by this article. (1964, ch. 42; 1967, ch. 392, § 1; 1972, ch. 571; 1987, ch. 11, § 1.)

Quoted in *Anderson v. Morris*, 500 F. Supp. 1095 (D. Md.), *aff'd*, 636 F.2d 55 (4th Cir. 1980).

**§ 8-3. Preservation; inspection; certified copies.**

The State Administrative Board of Election Laws and the several boards shall receive, file and preserve all certificates of candidacy and of nomination which are filed with them under the provisions of this article. These certificates of candidacy and of nomination shall be kept as part of the records of the board for a period not to exceed five years or for at least one year beyond the length of the term of the public or party office for which every candidate to whom these certificates of candidacy and of nomination apply has offered

himself for nomination or election, regardless if the candidate is successful, unsuccessful, or resigns, or for a longer period if ordered by a court of competent jurisdiction. These certificates of candidacy and of nomination shall be subject and open to inspection by any citizen of this State during the hours in which the office in which the certificates of candidacy and of nomination are kept is open. Thereafter the certificates of candidacy and of nomination shall be transferred to the State Archives. Copies of these certificates of candidacy and of nomination certified by the principal administrative officer in whose office they are kept under the seal of his office shall be evidence in any court to the same extent as the original certificate of candidacy and of nomination would be if produced and proved. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1970, ch. 103; 1976, ch. 699; 1977, ch. 533; 1984, ch. 285, § 1; ch. 286, § 5.)

#### § 8-4. Certification to boards.

(a) *General provisions.* — Not less than sixty-five days before a general election at which the voters elect the president of the United States, the State Administrative Board of Election Laws shall certify to the board of each county and of the City of Baltimore, the name, party affiliation and residence of each person nominated for the office, as specified in the certificates of nominations issued by the State Administrative Board of Election Laws and the name and residence of each appellate judge at an election for his continuance in office.

(b) *Certifications of candidates.* — Not less than 30 days before a general election at which the voters elect the Governor of the State, the State Administrative Board of Election Laws shall certify to the board of each county and of Baltimore City, the name, party affiliation and residence of each person nominated for office, as specified in the certificates of nomination issued by the State Administrative Board of Election Laws and the name and residence of each appellate judge at an election for his continuance in office.

(c) *Same — Special elections.* — Certification of candidates for a special election called pursuant to § 22-1 (b) of this article shall be made in accordance with the provisions of § 22-1 (c) (2) of this article. (1957, ch. 739, § 1; 1966, ch. 142; 1967, ch. 392, § 1; 1970, ch. 103; 1971, ch. 2, § 1; 1974, ch. 189; 1978, ch. 210, § 1; 1984, ch. 155.)

**Major party presidential candidate may appear on ballot if nominated.** — A major party presidential candidate who does not choose to campaign in the Maryland primary or loses the primary may still appear on the

Maryland ballot in November if he is nominated by the party convention. *Anderson v. Morris*, 636 F.2d 55 (4th Cir. 1980).

Cited in *Bachur v. Democratic Nat'l Party*, 666 F. Supp. 763 (D. Md. 1987).

#### § 8-5. Publication of nominations.

(a) *General provisions; exceptions.* — At the time of giving the notice of election required by § 2-10 of this article, each board shall cause to be published by one insertion in two or more newspapers published within each county, and in all the daily papers published in Baltimore City which will publish the same at the lowest available local rate of commercial advertising,



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the nominations to office which have been filed with or certified to them under the provisions of this article. If in any county there be but one newspaper published, publication in such one newspaper shall be sufficient. Such publication shall be made in newspapers devoted to the dissemination of general news; and the two newspapers selected, if possible, shall represent the political parties which at the last preceding election cast the largest and next largest number of votes. The list of nominations published by the board shall be arranged, so far as practicable, in the order and form in which they are to be printed upon the ballots. This subsection does not apply in those counties in which a specimen ballot is mailed pursuant to the provisions of § 2-10 of this article if such ballot includes the nominations to office which have been filed with or certified to the board.

(b) *Candidates for nomination or for delegates, members of local central committees of political parties.* — The names of the several candidates for nomination or for delegates, members of local central committees of a political party, shall be published within not less than two nor more than ten days before the said election in the mode prescribed hereinabove in this section, as far as may be practicable. It shall not be necessary to print sample ballots or cards of instructions for such elections, but either or both shall be printed by the board in the county or City of Baltimore, when requested by any candidate in said election, said request to be accompanied by a sum of money necessary to cover the cost of printing.

(c) *Incumbent judges of Court of Appeals and Court of Special Appeals.* — For purposes of this section, the name of an incumbent judge of the Court of Appeals and the Court of Special Appeals shall be published and shall be included on the ballot only at the general election for his continuance in office. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1971, ch. 352, § 1; 1972, ch. 571; 1978, ch. 9; ch. 210, § 1; 1983, ch. 375; 1987, ch. 11, § 1.)

**Failure to conform to notice requirements distinguished when raised in pre-election as compared to post-election litigation.** — In its appraisal of compliance with the notice requirements contained in this article, the Court of Appeals has clearly recognized the distinction between the effects of the fail-

ure to conform with such provisions when raised in pre-election litigation, as compared with the effect to be given those same provisions, when not strictly followed, and when challenged by litigation attacking the results of an election. *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

**VACANCIES IN NOMINATIONS — IN GENERAL**

**§ 9-1. Nomination declined.**

(a) *In general.* — The times designated in subsections (b) and (c) of this section for declining nominations and for withdrawal of certificates of candidacy and for board offices to be open are mandatory and the provisions of these subsections shall also be applicable to municipal elections in Baltimore City. The provisions of these subsections shall not be applicable to elections pursuant to § 4A-1 of this article, and any right of withdrawal in such elections shall be limited to whatever is set forth in the Governor's proclamation, provided, however, that said proclamation by the Governor must contain a provi-

sion which allows any person who has filed a certificate of candidacy pursuant to § 22-1 (b) of this article to withdraw such certificate within two days after the final filing date as established in § 4A-3 of this article.

(b) *Primary election.* — (1) Whenever any person who has filed a certificate of candidacy for nomination in any primary election shall, in a writing signed by him, and acknowledged before a notary public, notify the officer or board with whom the certificate of candidacy is required to be filed by this article, within 10 days after the final filing date established in § 4A-3 of this article that he desires to withdraw as a candidate for such nomination, the certificate of candidacy shall thereupon be and become void; and the name of any person so withdrawing shall not be printed upon the ballots to be used at the primary election. The filing of a valid certificate of withdrawal of candidacy is a final act of withdrawal; and a person who files such a certificate of withdrawal may not reinstate his candidacy, unless the time limit for the filing of candidacies has not expired. No filing fees shall be refunded to persons who withdraw in accordance with this section, subject, however, to § 4A-7 of this article.

(2) Board offices shall be open and certificates of withdrawal of candidacy shall be accepted until 5 p.m. on the last day for withdrawing.

(3) The name of any person who files a certificate of candidacy, is opposed, and does not withdraw shall appear on the ballot unless he dies or is disqualified and his death or disqualification is known to the board with which the certificate of candidacy was filed on or before the seventh day prior to the filing deadline. These provisions do not apply to the offices of Governor or Lieutenant Governor.

(c) *General election.* — (1) Any person nominated for public office as in this article provided may decline such nomination by notifying the officer with whom the certificate nominating him is required to be filed that he declines such nomination. The statement of declination shall be in writing, signed by the person nominated and acknowledged before a notary public or any person empowered to take oaths, and must reach the aforementioned officer by the following deadline: for a nomination to candidacy in an election in the year in which the Governor is elected, within ten days after the date of the primary election; for nomination to candidacy in an election in the year in which the Mayor of the City of Baltimore is elected, within 10 days after the primary election; for a nomination to candidacy in an election in the year in which electors for President of the United States are elected, at least 70 days before the general election. If the person nominated shall comply with the provisions of this paragraph for declining nomination, such nomination shall be void; and the name of any person so withdrawing shall not be printed upon the ballots.

(2) Board offices shall be open, and certificates of declination of candidacy shall be accepted until 5 p.m., on the last day for declining.

(3) The name of any person nominated for public office shall appear on the ballot unless he declines the nomination, dies, or is disqualified, and a certificate of nomination to fill the vacancy so created is timely filed. These provisions do not apply to the offices of Governor or Lieutenant Governor. (1957, ch. 739, § 1; 1959, ch. 534; 1961, ch. 336; 1963, ch. 564; 1964, ch. 153; 1965,

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ch. 784; 1966, ch. 142; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1971, ch. 2, § 1; ch. 265; 1972, ch. 181, § 32; ch. 581; 1976, ch. 632; 1979, ch. 249; 1981, chs. 790, 814; 1984, ch. 255; 1987, ch. 46; 1988, ch. 6, § 1; 1989, ch. 5, § 1.)

**Effect of amendment.** — The 1989 amendment, approved Mar. 9, 1989, and effective from date of passage, substituted “§ 4A-1” for “§ 22-1 (b)” in the second sentence of (a).

**Should any question arise as to timeliness of candidate’s withdrawal affidavit,** the resolution of that question is controlled by

the date of actual receipt in the office of the Secretary of State. 61 Op. Att’y Gen. 352 (1976).

**Cited in** *Barthelmes v. Morris*, 342 F. Supp. 153 (D. Md. 1972).

**§ 9-2. State and judicial offices; Congress and U.S. Senator.**

(a) *Manner.* — Should any nominee die before election day or decline the nomination, as in this subtitle provided, or should any certificate of nomination be or become insufficient or inoperative from any cause occurring after the period of time for the filling of vacancies in party nominations as is prescribed by § 4A-5 of this article, the vacancy or vacancies thus occasioned shall be filled in the manner prescribed.

(b) *State, judicial or congressional vacancies.* — In the event of any vacancy occurring because of the death or resignation of any person nominated for any statewide or judicial office, or as a candidate for United States Senator, under provisions of the preceding sections of this article, the vacancy shall be filled by the central committee, for the entire State, of the political party to which the nominee belongs.

(c) *Certification by State Administrative Board of Election Laws.* — A certificate of nomination to fill a vacancy shall be filed with the State Administrative Board of Election Laws, which shall, in certifying the nomination to the boards, insert the name of the person who has been nominated to fill a vacancy in place of that of the original nominee; and in case it has already sent forth his certificate, it shall forthwith certify to the boards the name and description of the person so nominated to fill a vacancy, the office for which he is nominated, the party or political principle he represents and the name of the person for whom he is substituted. (1957, ch. 739, § 1; 1965, ch. 784; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1970, ch. 103; 1971, ch. 354; 1972, ch. 570, § 1; 1977, ch. 638, § 4; 1982, ch. 394.)

**Lack of candidate for office of State’s Attorney in Baltimore City** is to be supplied by the State committee and not the city commit-

tee. *Valle v. Pressman*, 229 Md. 591, 185 A.2d 368 (1962).

**§ 9-3. Shared legislative districts.**

Where territory from more than 1 county is included in a congressional district, a State legislative district, or a State delegate district:

(1) A vacancy occurring because of the death or resignation of any person nominated for representative in Congress, State Senator or member of the House of Delegates in such district shall be filled by vote of the central committees of the party in each of those counties in the district.

(2) The central committee of each county involved shall cast a vote proportionate to its share of the population of the district where the vacancy exists.

(3) The population shall be based on the most recent decennial United States census.

(4) If one person fails to receive a majority of the votes or if there is a tie vote between or among the central committees, the vacancy shall be filled by the State central committee of the party. (1967, ch. 392, § 1; 1973, ch. 439; 1974, ch. 318; 1977, ch. 638, § 4; 1982, ch. 394.)

#### VACANCIES IN NOMINATIONS—LOCAL VACANCIES

### § 9-4. Filling local vacancies.

Local vacancies shall be filled by the central committee of the political party to which the nominee belongs. The person filling such vacancy shall satisfy the requirements of § 4A-1 (a) of this article. In the event of any vacancy occurring because of the resignation or death of any person nominated, or because of a tie vote in any primary election for any office in any county of this State or legislative district of Baltimore City, except as provided in § 9-5 of this article, the vacancy shall be filled at least thirty (30) days before the election, as follows:

(1) For any officer elected by the voters of one county, the vacancy shall be filled by the central committee for that county.

(2) For any officer elected by the voters of one legislative district and where the central committee is elected by the legislative district the vacancy shall be filled by the members of the central committee of such legislative district.

(3) For any officer elected by all of the voters of Baltimore City, the vacancy shall be filled by the central committee for Baltimore City.

(4) For a congressional district wholly contained in 1 county, the vacancy shall be filled by the central committee for the county.

Where the vacancy results from a tie vote, the nominees selected to fill the vacancy shall be one of the candidates receiving the tie vote. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1971, ch. 354; 1972, ch. 571; 1974, ch. 318; 1977, ch. 638, § 4; 1982, ch. 394.)

Local vacancies are in effect defined in this section as those existing in a nomination for any office in any county or legislative district of Baltimore. *Valle v. Pressman*, 229 Md. 591, 185 A.2d 368 (1962).

And vacancy in Baltimore is not within definition of local vacancy because it is not one in a legislative district but rather one for a political subdivision comprised of six legislative districts. *Valle v. Pressman*, 229 Md. 591, 185 A.2d 368 (1962).

"Legislative district" is equated to county for purposes of this section. *Valle v. Pressman*, 229 Md. 591, 185 A.2d 368 (1962).

Stated in *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

Cited in *Reeder v. Board of Supvrs. of Elections*, 269 Md. 261, 305 A.2d 132 (1973); *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

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**VACANCIES IN NOMINATIONS—PROCEDURES TO BE FOLLOWED  
IN SUDDEN VACANCIES**

**§ 9-5. Failure to timely print name of new nominee on ballot.**

(a) *Procedure; special provisions as to Montgomery County.* — If a certificate of nomination of a new nominee is filed with and certified to the Board within the time period prescribed by this article but too late for the name of the new nominee to be printed on the ballots in any county or the City of Baltimore, as hereinafter provided, the Board shall at once cause to be printed a sufficient number of stickers bearing the name of the substitute nominee, and shall deliver the same in due time to the judges for all those precincts wherein the nominee may be voted for, and these judges shall affix the stickers in the proper place on each ballot or ballot label. If punchcard voting has been authorized in Montgomery County pursuant to the provisions of § 16A-1 of this article, the Board at once shall cause the ballots to be reprinted with the correct names. If the Board determines that it is impossible to reprint the ballot, the Board, after consultation with the State Administrator, shall take all appropriate measures to notify the voters of the death, the procedure to be used by the voter to record his vote, and the procedure to be used by the Board for the conduct of the canvass.

(b) *Deadline for filing certificate of nomination; exceptions.* — Notwithstanding any other provision of law, no certificate of nomination may be filed within 10 days of the day of the election. These provisions do not apply to the offices of Governor or Lieutenant Governor. (1957, ch. 739, § 1; 1965, ch. 784; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1974, ch. 189; 1975, ch. 877, § 1; 1978, ch. 668; 1981, ch. 790.)

**§ 9-6. Date vacancy deemed to have occurred; exceptions.**

If the name of a candidate or nominee who has declined the nomination, died, or been disqualified appears on the ballot as hereinabove provided and receives a number of votes that would have been sufficient for nomination or election had that candidate or nominee not declined the nomination, died, or been disqualified, the vacancy so created shall be deemed to have occurred after the day of the election. These provisions do not apply to the offices of Governor or Lieutenant Governor. (1981, ch. 790.)

**§ 9-7. Filling vacancy where vacancy occurs within certain time parameters.**

(a) *Vacancy of candidate occurring after primary but before issuance of certificate of nomination.* — If the death, declination, or disqualification of a candidate occurs after the primary but before a certificate of nomination has been issued, the canvass and certification shall nevertheless proceed as if the death, declination, or disqualification had not occurred. If the person who is

certified as the nominee has died, declined, or been disqualified, a new nominee may be named in the manner provided by law.

(b) *Vacancy of nominee occurring after election but before declaration of results; exceptions.* — If the death, declination, or disqualification of a nominee occurs after the election but before the declaration of the results, the canvass and declaration shall nevertheless proceed as if the death, declination, or disqualification has not occurred. If the person who is declared elected has died, declined, or been disqualified, the resulting vacancy in the office shall be filled in the manner provided by law. These provisions do not apply to the offices of Governor or Lieutenant Governor. (1981, ch. 790.)

#### PARTY DESIGNATION ON BALLOT

### § 9A-1. Party designation on ballot.

A candidate for public office may not designate the political party with which he is affiliated on the ballot at any election held hereunder unless such party is a political party as defined in § 1-1 (a) (15) of this article. Candidates for public office who are not affiliated with a political party as defined in § 1-1 (a) (15) of this article shall be classified under the heading "other candidates" on the ballot. The provisions of this section shall not apply, however, to candidates for public office who are registered as an independent. (1971, ch. 354; 1987, ch. 11, § 1.)

**Restriction must serve substantial State interest.** — If no substantial State interest is served by a restriction which treats nonmajor party candidates differently from major party candidates, such a restriction cannot be constitutionally enforced. *Mathers v. Morris*, 515 F. Supp. 931 (D. Md.), aff'd, 649 F.2d 280 (4th Cir.), appeal dismissed, 454 U.S. 884, 102 S. Ct. 375, 70 L. Ed. 2d 199, cert. denied, 454 U.S. 895, 102 S. Ct. 393, 70 L. Ed. 2d 210, modified, 454 U.S. 935, 102 S. Ct. 467, 70 L. Ed. 2d 241 (1981).

**There is important State interest in requiring some preliminary showing of significant modicum of support before printing name of candidate on ballot;** if no other, there is an interest in avoiding confusion, de-

ception, and even frustration of the democratic process at the general election. *Mathers v. Morris*, 515 F. Supp. 931 (D. Md.), aff'd, 649 F.2d 280 (4th Cir.), appeal dismissed, 454 U.S. 884, 102 S. Ct. 375, 70 L. Ed. 2d 199, cert. denied, 454 U.S. 895, 102 S. Ct. 393, 70 L. Ed. 2d 210, modified, 454 U.S. 935, 102 S. Ct. 467, 70 L. Ed. 2d 241 (1981).

**When candidate may designate affiliated party on ballot.** — If all of the requirements in § 4B-1 of this article are met by a group of voters and they have successfully formed a political party, then a properly nominated candidate may designate that party on the ballot as the party with which he is affiliated. 62 Op. Att'y Gen. 411 (1977).

#### PARTY MEETINGS OR CONVENTIONS

### § 10-1. Composition of meetings or conventions; votes in meeting or convention.

Any party may elect and hold a party meeting or convention. The meeting or convention shall be composed of those persons, members of the party, who have been elected as members of the central committees for the party in the several counties and legislative districts of Baltimore City. Each county or legislative district shall be entitled to cast the number of votes as provided by

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party rules. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1971, ch. 354; 1975, ch. 754.)

A political party must have a State central committee to adopt a constitution and bylaws and to hold a party convention. *Wood v. Putterman*, 316 F. Supp. 646 (D. Md.), *aff'd*,

400 U.S. 859, 91 S. Ct. 104, 27 L. Ed. 2d 99 (1970).

Quoted in *Barnhart v. Mandel*, 311 F. Supp. 814 (D. Md. 1970).

### § 10-2. Procedure.

Each convention may be called according to party rules. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

## PARTY GOVERNING BODIES

### § 11-1. Power and authority.

(a) *Adoption of constitution and bylaws.* — Each political party which is required to nominate its candidates for public office by means of a primary election, pursuant to the provisions of this article, shall adopt and maintain in its files a permanent constitution and bylaws. The constitution and bylaws shall be adopted at a meeting of the political party, to be convened by the then chairman of the State central committee of the party, who shall preside as president pro tem of the meeting until such time as presiding officers are elected. The delegates to this meeting shall be the members of the central committee for each county and legislative district of Baltimore City. Each delegation is entitled to cast the number of votes provided by party rules.

(b) *Required provisions of constitution and bylaws.* — The constitution and bylaws shall provide for such matters as in the opinion of the political party shall be necessary for the proper conduct of party affairs, and shall specifically provide for the election of a party chairman and the State central committee of the party; for a meeting to be convened within forty-five days after the election next preceding the commencement of the term of office of the committee; for the manner of calling all meetings and for advance notification thereof; for rules governing the conduct of all meetings, including the attendance required for a quorum; for a procedure for filling vacancies in nominations for public office, whether such vacancy is caused by the death, resignation or disqualification of a nominee, or by the failure of any person to file for nomination to public office within the period prescribed by and required by law; and for the manner and method of amending the constitution and bylaws of the political party.

(c) *Notice of meetings.* — The constitution and bylaws shall provide that no meeting of any party or governing body of any party shall be called unless ten days' written notice thereof shall be given, by regular first class mail, to each person entitled under the constitution and bylaws to attend, addressed to the residence of such person as disclosed by the records of the board of the county or Baltimore City in which such person is a voter. In the event it is necessary to call a meeting to fill a vacancy in a nomination within ten days of a general

election, it shall be sufficient if seventy-two hours' notice shall be given in a manner to be provided by the constitution and bylaws.

(d) *Filing constitution, bylaws, etc., with State Administrative Board of Election Laws.* — Within ten days of the adoption thereof a copy of the constitution and bylaws shall be filed with the State Administrative Board of Election Laws. Such constitution and bylaws shall be adopted not later than six months after the first statewide general election following the first statewide primary election in which the political party is required to nominate candidates for public office. If a constitution and bylaws is not adopted and filed within the times aforesaid, then the political party shall lose its status as a political party for purposes of this article, until such time as it again complies with the requirements of § 4B-1 of this article. Once a political party has filed a permanent constitution and bylaws with the State Administrative Board of Election Laws, further filing after each primary election shall not be required, but any amendments to the constitution and bylaws shall be filed with the State Administrative Board of Election Laws within ten days after adoption. The State Administrative Board of Election Laws shall also be notified of the names and addresses of the persons elected as officers or as members of the governing body of the political party. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1970, chs. 34, 103; 1971, ch. 354; 1975, ch. 754; 1978, ch. 624; 1986, ch. 278.)

**Political party must have State central committee to adopt a constitution and bylaws and to hold a party convention.** *Wood v. Putterman*, 316 F. Supp. 646 (D. Md.), *aff'd*, 400 U.S. 859, 91 S. Ct. 104, 27 L. Ed. 2d 99 (1970).

**And primary election machinery is not available to party which has not adopted**

**them.** — The primary election machinery of § 5-1 of this article is only available to a political party if it complies with subsection (a) of this section. *Barnhart v. Mandel*, 311 F. Supp. 814 (D. Md. 1970).

**Quoted in** *Dorf v. Skolnik*, 280 Md. 101, 371 A.2d 1094 (1977).

### § 11-1A. Constitution and bylaws for local central committees.

(a) *Adoption.* — For any party required to select nominees at a primary election, the central committee for each county or Baltimore City shall adopt a permanent constitution and bylaws.

(b) *Required provisions.* — The constitution and bylaws for local central committees shall provide for such matters as in its opinion shall be necessary for the proper conduct of party affairs, and shall specifically provide for the election of a chairman; for the manner of calling all meetings and for advance notification thereof; for rules governing the conduct of all meetings, including the attendance required for a quorum; and for the manner and method of amending the constitution and bylaws.

(c) *Filing.* — Within 30 days of the adoption thereof a copy of the constitution and bylaws shall be filed with and maintained by the State Administrative Board of Election Laws and the party's State central committee. Such constitution and bylaws shall be adopted not later than six months after the statewide general election following the first statewide primary election in which the local central committee members are to become members of the



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central committee of the State. If a constitution and bylaws is not adopted and filed within the prescribed time, then the party State central committee shall prescribe a constitution, until such time as it again complies with these requirements. Any amendments to the constitution and bylaws shall be filed with the State Administrative Board of Election Laws and the party's State central committee within 30 days after adoption. The State Administrative Board of Election Laws and the party's State central committee shall also be notified of the names and addresses of the persons elected as officers and as members of the governing body of the political party. (1978, ch. 624.)

### § 11-2. Composition.

(a) *Party central committees for State.* — (1) Each political party as defined in § 1-1 (a) (15) of this article shall have a central committee for the State which shall be its governing body; the committee to be composed of the members of the central committee of the party for the several counties and Baltimore City.

(2) In a State central committee meeting each county or Baltimore City committee is entitled to cast a number of votes as prescribed by party rules.

(b) *Party central committees for counties and Baltimore City.* — For parties required to select nominees at a primary election, the central committee for the counties or Baltimore City shall be selected as provided in this article. Except as otherwise provided in this section, the central committee for any county or Baltimore City shall consist of the number of persons elected from each county and legislative district of Baltimore City as determined by party constitution. Any person elected to serve as a member of a party central committee shall be a resident of the county or Baltimore City, as the case may be, in which that central committee is located. Upon relinquishing his residency within that county or Baltimore City a member of a party central committee shall be considered to have resigned. Any vacancy in the party central committee for any county or legislative district of Baltimore City, Anne Arundel or Baltimore County shall be filled by the remaining members of the committee elected from that county or legislative district of Baltimore City, Anne Arundel, or Baltimore County. However, any person selected to fill a vacancy in a party central committee shall be a resident of the county or Baltimore City, as the case may be, in which that central committee is located. Upon relinquishing his residency within that county or Baltimore City, a member of a party central committee shall be considered to have resigned.

(c) *Chairmen of State and local party central committees.* — The chairman or co-chairman of the party State central committees who shall be residents of the State during their tenure in office shall be selected by the party central committee; and the chairman of the party central committee for each county or legislative district of Baltimore City shall be selected by the party central committee for that county or legislative district of Baltimore City. However, the chairman of the Republican Party central committee for Baltimore County shall be elected at large.

(d) *Rules of procedure.* — The party central committee for the State of any party shall determine its own rules of procedure, not inconsistent with the provisions of this article.

(e) *Tenure of members of State central committees.* — (1) Except as provided in paragraph (2) of this subsection, the tenure in office of any member of the central committee of any party shall begin at the time the canvass of the votes in this district is completed and the tenure continues to the extent of any extension in time between primary elections by reason of any change in the date of holding primary elections by political parties in this State.

(2) The tenure in office of a member of the Republican central committee shall begin on the 14th day following the gubernatorial general election.

(3) For purposes of this subsection, upon relinquishing residency in the county or Baltimore City, a member of a party central committee shall be considered to have resigned.

(4) The Republican State central committee may adopt provisions in its constitution and bylaws providing for the removal of members of the Republican State central committee who fail to discharge the minimum responsibilities of a State central committee member.

(f) *Anne Arundel County.* — (1) In Anne Arundel County, the members of the Republican Party central committee for the county shall be elected as follows: 3 members from each legislative district wholly contained within Anne Arundel County and 1 member from that portion within Anne Arundel County of any legislative district that is partially contained within Anne Arundel County.

(2) In Anne Arundel County, the members of the Democratic Party central committee for the county shall be elected as follows: 3 members each from legislative districts 31, 32, and 33, and 3 members from legislative district 30 including that portion of the population located in Anne Arundel County that is a part of legislative district 29.

(g) *Baltimore County.* — In Baltimore County, members of the party central committees shall not run at large. They shall be elected within legislative districts of Baltimore County or within that portion of any legislative district lying within Baltimore County, except for the chairman of the Republican Party central committee for Baltimore County, who shall be elected at large. For the Democratic central committee, 5 members shall be elected from each legislative district that lies wholly within Baltimore County, and 1 member shall be elected from the Baltimore County part of the legislative district which is partially within Baltimore County.

(h) *Montgomery County.* — In Montgomery County, there are 19 members of the party central committees for the county. For each committee, two members are elected from each of the legislative districts that lie wholly within Montgomery County and one member is elected from the Montgomery County part of each legislative district which is partially within Montgomery County. The remainder shall be elected at large, and any vacancy in a seat held initially by a member elected from a legislative district shall be filled by a person residing in that district. Any reference to the Democratic central committee for Montgomery County or any portion thereof means the entire mem-

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bership of the Montgomery County Democratic central committee, and in no event do the members of the central committee elected from a district comprise a separate central committee.

(i) *Carroll County.* — In Carroll County, the Republican central committee shall consist of seven members elected at large.

(j) *Baltimore City.* — (1) In Baltimore City the members of the party central committees shall be elected from the legislative districts of Baltimore City.

(2) Except for the Democratic central committee, the number of members of each party central committee from any legislative district in Baltimore City shall be equal to the number of persons that the legislative district is entitled to elect to the House of Delegates of the General Assembly of Maryland.

(3) The number of members of the Democratic central committee from each legislative district of Baltimore City shall be 5.

(k) *Prince George's County — Republican Party central committee.* — In Prince George's County, members of the Republican Party central committee may not run at large. They shall be elected from within legislative districts of Prince George's County or within that portion of any legislative district lying within Prince George's County. The number of members of the central committee shall consist of 2 members from each legislative district that is wholly within Prince George's County and 1 member from that portion of each legislative district that is partially within Prince George's County.

(1) *Same — Democratic Party central committee.* — (1) In Prince George's County, the Democratic Party central committee consists of 22 members.

(2) Two members of the committee shall reside in and be elected by the eligible voters of each of the legislative districts that lies wholly within Prince George's County.

(3) One member of the committee shall reside in, and be elected by the eligible voters of the Prince George's County portion of each legislative district that is partially within Prince George's County.

(4) In addition to the members of the committee elected from legislative districts, 7 members of the committee shall be elected by all the eligible voters in the county. At the time of election, each such member shall reside in a different one of the legislative districts that lies wholly within Prince George's County.

(5) A candidate for election to the Democratic central committee shall declare at the time of filing for candidacy which seat on the central committee the candidate is seeking.

(6) If a member who was elected from a specific legislative district ceases to reside in that district, the member may not continue to serve on the central committee.

(m) *Calvert County.* — In Calvert County, the Democratic Party central committee consists of 9 members elected by the voters of the county at large as follows:

(1) 2 members who reside in the first election district and receive the largest number of votes cast for candidates from that district;

(2) 2 members who reside in the second election district and receive the largest number of votes cast for candidates from that district;

(3) 2 members who reside in the third election district and receive the largest number of votes cast for candidates from that district; and

(4) 3 members who reside in Calvert County and who receive the highest number of votes cast in Calvert County for the remaining candidates. (1957, ch. 739, § 1; 1963, ch. 835; 1965, ch. 784; 1966, chs. 427, 717; 1967, ch. 392, § 1; ch. 575; 1968, ch. 251, § 1; ch. 615, § 2; 1969, ch. 761; 1970, ch. 727; 1971, ch. 354; 1973, chs. 279, 636, 814; 1974, chs. 214, 813; 1975, chs. 82, 754; 1976, ch. 905; 1977, ch. 368; ch. 638, § 4; 1978, chs. 148, 761; 1982, chs. 279, 303, 318, 563, 715; 1984, ch. 255; 1985, ch. 485, § 1; 1986, chs. 10, 151, 278.)

**Editor's note.** — Section 2, ch. 318, Acts 1982, provides that the provisions of the act apply to central committee members beginning with those elected in the next succeeding primary election.

Section 2, ch. 485, Acts 1985, provides that "(a) The Governor shall appoint the 2 members of the Democratic Party central committee of Calvert County initially added by this act.

(b) A member of the Democratic Party central committee of Calvert County appointed by the Governor under this act shall serve until a replacement member is elected and qualifies.

(c) A member of the Democratic Party central committee of Calvert County appointed by the Governor under this act shall be:

- (1) A member of the Democratic Party; and
- (2) A resident of, and registered to vote in, Calvert County."

Section 2, ch. 10, Acts 1986, provides that "(a) The Governor shall appoint the 2 members of the Democratic Party central committee of Calvert County initially added by this act.

(b) A member of the Democratic Party central committee of Calvert County appointed by the Governor under this act shall serve until a replacement member is elected and qualifies.

(c) A member of the Democratic Party central committee of Calvert County appointed by the Governor under this act shall be:

- (1) A member of the Democratic Party; and
- (2) A resident of, and registered to vote in, Calvert County."

**Application of 1976 amendment.** — The 1976 amendment to subsections (b) and (c) of this section was applicable to a committee

member elected in 1974. *Dorf v. Skolnik*, 280 Md. 101, 371 A.2d 1094 (1977).

**"Reside" or "resident" means "domicile" unless a contrary intent is shown,** and domicile is the place with which an individual has a settled connection for legal purposes and the place where a person has his true, fixed, permanent home, habitation and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning. *Dorf v. Skolnik*, 280 Md. 101, 371 A.2d 1094 (1977).

**Domicile retained unless abandonment affirmatively shown.** — Once a domicile is determined or established, a person retains his domicile at such place unless the evidence affirmatively shows an abandonment of that domicile, and in deciding whether a person has abandoned a previously established domicile and acquired a new one, courts will examine and weigh the factors relating to each place. *Dorf v. Skolnik*, 280 Md. 101, 371 A.2d 1094 (1977).

**Move from one district to another within same county would not cause vacancy.** — This section would not cause one to vacate his position on the central committee because of a move from one district to another within the same county. 62 Op. Att'y Gen. 442 (1977).

**Applied in** *Barnhart v. Mandel*, 311 F. Supp. 814 (D. Md. 1970).

**Stated in** *Wood v. Putterman*, 316 F. Supp. 646 (D. Md.), *aff'd*, 400 U.S. 859, 91 S. Ct. 104, 27 L. Ed. 2d 99 (1970); *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

### § 11-3. Authority of State central committee exclusive; incorporation of political parties prohibited.

(a) *Exclusive authority; incorporation of political parties prohibited.* — The governing body of a political party shall be the State central committee for the

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State, and no other organization, whenever or however incorporated, shall be entitled to any recognition or official status for any purpose contained in this article. Political parties in this State, whether making nominations through primary elections or nominating petitions, are expressly forbidden to incorporate under the general laws of this State providing for the formation of corporations.

(b) *Penalties.* — It shall be unlawful for any organization other than the State central committee for the State to hold itself out as the official organization or governing body of any political party. Violation of this section is punishable by a fine of not more than one thousand (\$1,000) dollars, or by imprisonment in jail for a period of six (6) months, or by both fine and imprisonment, in the discretion of the court. (1967, ch. 392, § 1; 1971, ch. 354.)

**Legislative intent.** — The legislative intent expressed by subsection (b) of this section is to reach the situation where there is a claim by an organization, other than the State central committee, that it is the official party organization. *Culotta v. Raimondi*, 251 Md. 384, 247 A.2d 519 (1968).

**Subsection (b) is directed against group action** and not that of an individual candidate.

*Culotta v. Raimondi*, 251 Md. 384, 247 A.2d 519 (1968).

**Applied** in *Barnhart v. Mandel*, 311 F. Supp. 814 (D. Md. 1970).

**Quoted** in *Snyder v. Glusing*, 308 Md. 411, 520 A.2d 349 (1987).

**Stated** in *Wood v. Putterman*, 316 F. Supp. 646 (D. Md. 1970).

### PRESIDENTIAL PRIMARIES AND CONVENTIONS

#### § 12-1. Delegates to national conventions.

(a) *Determination of number.* — The total number of delegates and alternate delegates to represent the respective political parties at their respective national conventions shall be ascertained and determined by the governing body of each party and certified to the State Administrative Board of Election Laws not later than the first day of January in each year in which national conventions for the nomination of President and Vice-President are held.

(b) *Selection.* — The selection of delegates shall be as follows:

(1) Selection of delegates to the Democratic national convention shall be according to §§ 12-2 and 12-3 of this subtitle;

(2) Selection of delegates to the Republican national convention shall be according to § 12-4 of this subtitle; and

(3) Selection of delegates to the national convention of any other party shall be according to § 12-5 of this subtitle. (1957, ch. 739, § 1; 1965, ch. 784; 1967, ch. 392, § 1; 1969, ch. 560; 1970, chs. 103, 440; 1971, chs. 268, 354; 1972, chs. 6, 209; 1975, ch. 755; 1979, ch. 127; 1980, ch. 8; 1983, ch. 671; 1987, ch. 674.)

**Stated** in *Shapiro v. Maryland*, 336 F. Supp. 1205 (D. Md. 1972).

**Cited** in *Bachur v. Democratic Nat'l Party*, 836 F.2d 837 (4th Cir. 1987).

#### § 12-2. Delegates to Democratic national convention.

(a) *In general.* — (1) Delegates to the Democratic national convention shall be selected by direct election, as provided in subsection (b) of this section.

(2) In regard to the selection of delegates to each Democratic national convention, the term "national party rules" means the national party rules of the Democratic party as they exist 90 days before the State primary election which immediately precedes the Democratic national convention.

(b) *Methods of selection.* — (1) Election of District Delegates. The Democratic State central committee shall certify to the State Administrative Board of Election Laws the number of delegates to be elected in a primary election to the national convention from each congressional district.

(2) Not later than 90 days prior to the primary election, the certification shall be made in accordance with the rules of the national and State Democratic parties.

(3) (i) With the written permission of a presidential candidate filed with the State Administrative Board of Election Laws not later than 5 p.m. on the 10th day after the final filing date established in § 4A-3 of this article, a delegate candidate shall have placed adjacent to his name on the ballot the name of a presidential candidate or the word "uncommitted".

(ii) If a delegate candidate has received permission from a presidential candidate to have the presidential candidate's name placed adjacent to the name of the delegate candidate on the ballot, and such delegate candidate subsequently withdraws as a candidate pursuant to § 9-1 of this article, another delegate candidate shall have placed adjacent to that delegate candidate's name on the ballot the name of that presidential candidate, if the written permission of that presidential candidate with respect to such other delegate candidate is filed with the State Administrative Board of Election Laws not later than the 5th day after the date on which delegate candidates may withdraw their candidacy before the primary election.

(4) Election of At-Large Delegates. After the election of the district delegates in accordance with § 12-2 (b) (1), the party and elected official delegates and the at-large delegates shall be chosen according to the national party rules.

(5) Selection of Alternates for Elected Delegates. Alternate delegates shall be selected by primary or committee processes subject to the national party rules which are applicable to the selection of delegates.

(c) *Vacancies.* — (1) Any vacancy in the position of delegate or alternate delegate occurring in the delegate selection process established by this section shall be filled as provided in this subsection.

(2) If, because of death or disability, a delegate is unable to select the alternate to take his or her place under the provisions of the national party rules, that selection shall be made by the delegation in a manner which assures that the alternate will be of the same presidential preference (or unpledged status) and, if possible, from the same political subdivision and of the same sex as the delegate replaced.

(3) (i) A vacant alternate position shall be filled by the delegation.

(ii) The replacement shall be of the same presidential preference (or unpledged status), from the same political subdivision, and of the same sex as the alternate being replaced. (1983, ch. 671; 1985, ch. 564.)

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**§ 12-3. Democratic presidential primary election; duties of delegates elected to Democratic national convention.**

(a) *Weight accorded results of presidential primary election.* — (1) If a presidential primary election for the Democratic party is required by this article, unless national party rules require otherwise, the results of the election shall be advisory.

(2) If national party rules require special recognition of presidential preference primary results, the State convention and the Maryland delegates to the national convention shall comply with those rules.

(b) *Delegates to reflect sentiments of those who elected them.* — (1) Delegates elected to the Democratic national convention, either uncommitted or pledged to a presidential candidate, shall in all good conscience reflect the sentiments of those who elected them.

(2) Notwithstanding any provisions of law to the contrary, delegates elected to the Democratic national convention shall vote in accordance with party rules. (1983, ch. 671.)

Stated in *Bachur v. Democratic Nat'l Party*,  
836 F.2d 837 (4th Cir. 1987).

**§ 12-4. Delegates to Republican national convention.**

(a) *In general.* — The procedure established in this section shall govern the selection of delegates to the Republican national convention.

(b) *Determination of number.* — The Republican State central committee shall certify to the State Administrative Board of Election Laws the number of delegates to be elected from each congressional district and the number of delegates to be elected at large, respectively, as provided in the rules of the Republican national convention, not later than the first day of January in each year in which national conventions for the nomination of President and Vice-President are held.

(c) *Methods of selection.* — The selection of delegates to the Republican national convention shall be as follows:

(1) *Election of District Delegates.* (i) There shall be elected at the primary election the number of delegates from each congressional district as provided in the rules of the Republican national convention.

(ii) Each delegate may have placed adjacent to the delegate's name on the ballot the name of a presidential candidate, provided that the written permission of the presidential candidate has been received by the State Administrative Board of Election Laws not later than 5 p.m. on the 10th day after the final filing date established in § 4A-3 of this article.

(iii) If a delegate candidate has received permission from a presidential candidate to have the presidential candidate's name placed adjacent to the delegate candidate's name on the ballot, and such delegate candidate subsequently withdraws as a candidate pursuant to § 9-1 of this article, another

delegate candidate shall have placed adjacent to the delegate candidate's name on the ballot the name of that presidential candidate, if the written permission of that presidential candidate with respect to such other delegate candidate is filed with the State Administrative Board of Election Laws not later than the 5th day after the date on which delegate candidates may withdraw their candidacy before the primary election.

(2) Election of At-Large Delegates. There shall be elected by the Republican State central committee the number of at-large delegates as provided in the rules of the Republican national convention.

(3) Ex Officio Delegates. There shall be no ex officio delegates to the Republican national convention.

(4) Selection of Alternates for Elected Delegates. Each elected delegate to the national party convention shall select an alternate delegate to the convention.

(5) Filling of Vacancies. The entire elected delegation to a national party convention shall fill vacancies occurring in the office of delegate.

(d) *Candidate for whom delegates bound to vote.* — (1) All the district delegates to the Republican national convention shall be bound to vote for the candidate of their party for the office of President of the United States who receives the highest number of votes within their respective congressional district at the primary election, and the at-large delegates shall be bound to vote for the candidate who receives the highest total number of votes at the primary election in the State.

(2) All delegates shall be so bound until the candidate for President of the United States is nominated by the convention, receives less than 35 percent of the votes for nomination by the convention, or releases the delegation, or until two convention nominating ballots have been taken. (1983, ch. 671; 1985, ch. 564; 1987, chs. 648, 674.)

### **§ 12-5. Party not entitled to nominate by primary election.**

In the case of a political party which is not entitled to nominate candidates for public office by means of primary elections, this subtitle shall not apply and in lieu thereof delegates and alternate delegates to represent the political party at its national convention shall be elected at a party convention in accordance with the lawful rules and practices of the party. (1983, ch. 671.)

### **§ 12-6. Primary election for candidate for President and delegates to national convention.**

(a) *Manner of becoming candidate for nomination for President.* — Whenever a party uses a primary election to nominate a candidate for President of the United States, any person who desires to run in the primary election may become a candidate for nomination only:

(1) By direction of the Secretary of State who shall place the name of a candidate for the Democratic party nomination on the ballot on the first regular business day in the year in which the President is elected and the name of



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a candidate for nomination by any other party on the ballot no sooner than 90 days nor later than 70 days preceding the date set by law for the primary election. The Secretary shall place the name of a presidential candidate on the ballot when he has determined in his sole discretion that the candidate's candidacy is generally advocated or recognized in the news media throughout the United States or in Maryland, in accordance with the national party rules, unless the candidate executes and files with the Secretary of State an affidavit stating without qualification that he is not and does not intend to become a candidate for the office in the Maryland primary election; or

(2) By making the payment required and by filing with the State Administrative Board of Election Laws a petition in the form prescribed by the State Administrative Board of Election Laws which shall contain the signatures of not less than 400 of the registered voters within each congressional district. For candidates for the nomination of the Democratic party, the payment and filing must be made not later than 9 p.m. on the day which is one week later than the first regular business day of the year in which the President of the United States is elected. For candidates for the nomination of any other party, the payment and filing must be made at least 70 days preceding the date set by law for the primary election. Nothing in this section shall require compliance with § 7-1 of this article.

(b) *Procedure for casting votes as uncommitted.* — The Secretary of State shall establish a procedure for the Democratic presidential primary through which votes may be cast as uncommitted to any presidential candidate.

(c) *Right to have name printed on official primary ballot.* — A candidate qualifying under this section shall be entitled to have his name printed upon the official primary ballot of his party in primary elections held under and in accordance with this article as a candidate for the nomination for President.

(d) *Duty of boards of supervisors of elections to have names printed on ballots.* — The board of supervisors of elections in each county and of Baltimore City shall have printed upon the official primary ballots of each of those political parties in each county of the State, and in each legislative district of Baltimore City at the primary election in each year in which a President of the United States is to be elected, the names of the candidates for President and names of candidates for election as delegates to conventions certified to them by the State Administrative Board of Election Laws in manner and form and in all respects similar to the way in which the names of candidates for nomination for Governor are required to be printed upon official primary ballots by the provisions of § 14-1 of this article.

(e) *Arrangement of names on ballot; preparation and casting of ballots.* — The names of the candidates for the nomination for President of the United States and the names of the candidates for election as delegates to conventions of the several political parties upon the official primary ballots shall be arranged and the ballots shall be prepared and shall be marked and cast by voters in the same manner as is prescribed by the provisions of this article with respect to the nomination in the primary election of candidates for the office of Governor of Maryland.

(f) *Canvass, ascertainment and certification of results.* — The results of the primary elections in the several counties and legislative districts of Baltimore City in presidential years shall be canvassed, ascertained and certified in the same manner as provided by law with respect to the election of delegates from the several counties and legislative districts to State conventions of the respective parties to nominate candidates for State offices. The votes cast in each primary election in each county and legislative district of Baltimore City shall be canvassed and certified by the respective boards of supervisors of elections in Baltimore City and the several counties of the State. The Board of State Canvassers then shall tabulate the votes so canvassed and certified in a manner plainly to indicate for each party:

(1) Which candidate for President received the highest number of votes in the State as a whole;

(2) Which candidate for President received the highest number of votes from each congressional district; and

(3) Which candidates for election as a delegate to a national convention received the highest number of votes from each congressional district. (1969, ch. 560; 1970, ch. 103; 1971, ch. 354; 1972, ch. 181, § 32; 1979, ch. 127, § 3; 1980, ch. 9; 1981, ch. 814; 1983, ch. 671; 1984, ch. 255; 1987, chs. 648, 674.)

**Subsection (a) (1) not void for vagueness.** — Subsection (a) (1) of this section does not violate the U.S. Constitution First Amendment free speech rights and is therefore not void for vagueness because it vests sole discretion in Secretary of State. *LaRouche v. Sheehan*, 591 F. Supp. 917 (D. Md. 1984).

**Media recognition provision does not violate equal protection clause.** — The media recognition provision of subsection (a) (1) of this section does not violate the equal protection clause since it serves a legitimate State interest in providing a basis for a reasonable assessment of the seriousness of an individual's candidacy and for exclusion of frivolous candidates from the ballot, and, when read in its totality, it does not unfairly or unnecessarily burden a candidate's access to the ballot. *LaRouche v. Sheehan*, 591 F. Supp. 917 (D. Md. 1984).

**Federal district court may not force Secretary to comply with subsection (a) (1).** — Federal district court does not have the authority to enjoin Secretary of State to comply with dictates of State law embodied in subsection (a) (1) of this section. *LaRouche v. Sheehan*, 591 F. Supp. 917 (D. Md. 1984).

**"Favorite son candidate".** — The mere fact that an individual who is a "favorite son candidate" is only seeking nomination in his home state does not preclude the Secretary of State from determining to place him on Mary-

land's ballot if his candidacy is either generally advocated or recognized in national news media. 61 Op. Att'y Gen. 352 (1976).

**Informal preliminary notice.** — The Secretary of State may, through informal preliminary notice, notify potential candidates, seeking the nomination for the office of President of the United States, more than 70 days before the primary election that he is considering placing their names upon the ballots. 61 Op. Att'y Gen. 352 (1976).

**Filing withdrawal affidavit is only way to remove name from ballot.** — Once the Secretary of State has finally determined in his sole discretion to place a candidate on Maryland's ballot, the only way for the candidate to remove his name is by filing a proper withdrawal affidavit, and the filing of a withdrawal affidavit is not precluded or "undone" by the candidate's appearing on the ballot in some other state. 61 Op. Att'y Gen. 352 (1976).

**Should any question arise as to timeliness of candidate's withdrawal affidavit,** the resolution of that question is controlled by the date of actual receipt in the office of the Secretary of State. 61 Op. Att'y Gen. 352 (1976).

**Quoted in *Anderson v. Morris*,** 500 F. Supp. 1095 (D. Md.), *aff'd*, 636 F.2d 55 (4th Cir. 1980).

**Cited in *Barthelmes v. Morris*,** 342 F. Supp. 153 (D. Md. 1972).

**Art. 33, § 12-7** REGISTRATION AND ELECTION LAWS

**§ 12-7. Presidential electors.**

(a) *Nomination.* — The State convention of any party shall nominate or provide for the nomination of candidates for presidential electors of the party in such manner as the convention determines.

(b) *Number of electors.* — The State convention shall nominate or provide for the nomination of as many candidates for presidential electors of the party as this State is entitled to appoint.

(c) *Certification of nominees to State Administrative Board of Election Laws.* — The names of persons nominated by the State convention as candidates for presidential electors shall be certified by the presiding officers of the State convention to the State Administrative Board of Election Laws. (1957, ch. 739, § 1; 1965, ch. 784; 1967, ch. 392, § 1; 1969, ch. 560; 1970, ch. 103; 1983, ch. 671.)

CONTESTED NOMINATIONS AT PRIMARY ELECTIONS

**§ 13-1. Time for petition for recount.**

Within ten days after the day of any primary election, or within two days after the results of the canvass are declared official, any candidate for a nomination or for delegate to any convention or for member of a central committee or position who has been defeated on the face of the returns may petition the board for an appeal from and review of the action and decision of the judges in counting the ballots and for a recanvass and recount of the ballots cast in any or all of the precincts of any county or Baltimore City or ward or legislative district or political division therein. If the candidate was a candidate for a State office or for Congress or for judge he may petition for said recount in two or more counties or legislative districts or wards or precincts of Baltimore City simultaneously. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1977, ch. 638, § 4; 1984, ch. 255.)

Petition should be addressed to and filed with the board of election supervisors. *Yerkes v. Board of Supvrs. of Elections*, 140 Md. 455, 117 A. 772 (1922).

**§ 13-2. Affidavit and bond.**

The petition shall be filed with a bond and an affidavit or affidavits, made by officers of election or by watchers, challengers or other persons, setting forth acts of fraud, mistake, error or irregularity in making the count or returns by the judges, or setting forth that some of the returns and tally sheets of the primary election show on their faces ambiguity, error, fraud, or mistake or miscalculation by the judges. A judge of the circuit court for the county shall determine and set bond to be filed by the petitioner sufficient to pay the reasonable costs of said appeal, recount, review and recanvass. (1957, ch. 739, § 1; 1958, ch. 38; 1967, ch. 392, § 1; 1982, ch. 820, § 1.)

**Editor's note.** — Section 6, ch. 820, Acts 1982, provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

**Fixing amount of bond.** — See Yerkes v. Board of Supvrs. of Elections, 140 Md. 455, 117 A. 772 (1922).

### § 13-3. Powers of supervisors.

The boards shall have jurisdiction and power to hear and determine any appeals, to review and correct the action of the judges in their respective jurisdictions and to recanvass, recount and certify the result of any primary election. For all the purposes of the review, recount and recanvass, the board shall act as and be judges for the counting of ballots, within their respective geographical jurisdictions. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

**Supervisors act in quasi-judicial capacity.** — Supervisors are required to exercise judgment and discretion in discharge of their duties and act in a quasi-judicial capacity. *White v. Laird*, 127 Md. 120, 96 A. 318 (1915).

### § 13-4. Procedure for recount.

(a) *Generally.* — The board after receiving the petition shall ascertain the votes recorded on the voting machines in the manner provided in § 17-8 of this article; or, if paper ballots were used, the board shall collect the ballot boxes, returns, tally sheets and paraphernalia of the election; or if punchcard ballots were used in Montgomery County, the board shall collect the punchcards, printouts and paraphernalia of the election. It shall proceed forthwith, in a summary way without answer, pleading or technicality and without requiring any evidence to be taken or proof submitted, to recount the ballots in those precincts named in the petition in any county, city, legislative district, ward or other political subdivision thereof, as the case may be.

(1) The review, recount and recanvass of voting machines shall be conducted by the board in the manner provided in § 17-4 of this article on the days and within the hours provided in paragraph (2) of this subsection.

(2) The review, recount and recanvass of paper ballots or punchcard ballots (for any election at which the use of such ballots has been authorized in Montgomery County by the State Administrative Board of Election Laws pursuant to § 16A-1 of this article) shall be conducted with all possible expedition and dispatch and in preference to all other business, under such mode of procedure as the board shall prescribe by means of tellers approved by them on the recommendation of and with equal representation to the opposing candidates. The board shall pass upon and decide whether any ballot contested by the teller for either side shall be rejected or counted. The members of the board shall sit for this purpose in the office of the board or in the courtroom of the circuit court for the county, as the case may be, every day, excepting Sunday, at least from 9 o'clock a.m. to 5 o'clock p.m., with one hour's intermission for lunch, until the review, recount and recanvass is completed.

(b) *Recount to be conducted publicly.* — The recount shall be conducted in the presence of the candidates or their representatives and of the press and

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general public. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1974, ch. 194; 1975, ch. 871, § 1; 1984, ch. 255.)

**Discretion in counting or rejecting a ballot.** — The election supervisors, in making a recount of votes, are vested with discretion in determining whether a ballot should be counted or rejected; and there has never been any statutory provision for appeals to the courts from the recounts made by the election supervisors. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 325, 106 A.2d 927, 108 A.2d 143 (1954).

**No authority to ascertain whether or not particular individuals voted.** — Judges of election are not authorized to, nor do they, attempt to ascertain whether or not particular individuals voted or did not vote, and the supervisors of election in a recount have no greater power. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 344, 108 A.2d 151 (1954).

**Comparison of poll and registration books, etc.** — In jurisdictions where paper ballots are used, a candidate does not have the right to require the comparison of poll books and registration books in the recount, and similarly where voting machines are used, a candidate does not have the right to compare, or compel the authorities to compare, the voting authority cards and the permanent registration cards. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 344, 108 A.2d 151 (1954).

**Relief on grounds that improper voters cast ballots or proper voters were denied right to vote** must be sought in forums and by procedures provided by this article for the con-

testing of elections, and not in a recount and recanvass proceeding. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 344, 108 A.2d 151 (1954).

**Action of judges reviewed by board of election supervisors.** — The entire machinery set up in the statute deals with a review of the counting of the ballots and is obviously intended to permit a defeated candidate in a close election to have the action of the judges which necessarily occurred under a certain amount of pressure and which might have been made without the close scrutiny that possibly would be available in a more leisurely count, to have their action reviewed by a tribunal set up in the statute, namely, the board of election supervisors. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 344, 108 A.2d 151 (1954).

**Review of actions of election supervisors.** — Where the election supervisors have not acted in violation of law, their action in counting or rejecting ballots cast in a primary election is not subject to review by mandamus in the absence of fraud or arbitrary conduct. On the contrary, where a board of election supervisors has made an obvious mistake of law in counting or rejecting ballots, the court has the power to correct such mistake. The decisions of such a board are as fully subject to review as the decisions of any administrative agency. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 325, 106 A.2d 927, 108 A.2d 143 (1954).

### § 13-5. Costs.

The petitioner shall pay the cost of the recount and recanvass in the county, municipality, legislative district or other district or political division, and his bond shall be liable therefor, unless the result of the election in the unit being or ordered recounted is changed or unless the petitioner has gained a number of votes over his principal opposing candidate equal to two per centum (2%) or more of the total votes cast in the unit being recounted. In either of such latter events, the costs shall be awarded against the municipality or county in which the recount is held. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 13-6. Counterappeal.

If the petition specified only a part of the precincts in which the petitioner was voted for, and if on completion of the review and recount of such specified precincts the result of the count of the judges in the county, municipality, district or other political division is thereby changed, then the opposing candidate thus affected may appeal within two days of this determination. Such

counterappeal shall be to the board, from the action and decision of the judges in counting the ballots and/or certifying the votes recorded upon the voting machines in the remaining precincts of said county, municipality, ward, legislative district or other political division in which he was voted for. Such counterappeal shall act as a request upon the board to recount and recanvass the remaining precincts, which they shall immediately proceed to do and the person filing the counterappeal shall attach affidavits thereto, or in lieu thereof, post bond as required by § 13-2 of this article. In each such case the cost of the completion of the recount and recanvass shall be paid by the opposing candidate or the municipality or county, as the case may be, in the manner prescribed in § 13-5 of this article. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 13-7. Correction of returns.

(a) *Correction of returns and certificates.* — Whenever any review, recount and recanvass is completed, the board shall correct the returns and certificates which may have been made of the primary election by any canvassing board.

(b) *Effect on canvass.* — When a petition and affidavit or affidavits and bond for recounting are filed before the completion of any canvass by the canvassing board of any county or municipality thereof, such board shall complete its canvass of the original returns from each polling place but shall then recess until the recount and recanvass herein provided for is completed. Thereupon the board shall make its certificate conform to the action and finding and to the certificate given by the board sitting as judges on the recount or counterappeal. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

## PAPER BALLOTS

### § 14-1. When paper ballots authorized; preparation of ballots; procedure for voting and canvassing, etc.

(a) *When authorized.* — In the event the boards do not have sufficient voting machines available or are unable to procure additional voting machines, or in the event that the number of names or questions submitted for vote at any election precludes the practical use of voting machines, the board shall use paper ballots in such election and the election shall be conducted as provided in this article for elections held by voting machines except as modified by the provisions of this section, as hereinafter provided.

(a-1) *Form and arrangement.* — The form and arrangement of all paper ballots shall be prescribed by the State Administrative Board of Election Laws in accordance with the requirements of this section.

(b) *Paper; type.* — Ballots shall be printed in black ink in uniform type upon plain white paper of ordinary book weight. The names of the candidates and their several party designations shall be printed in plain, clear, bold and legible roman capitals, twelve-point pica type, one eighth of an inch high or in depth. The back and outside of the ballots shall be marked "Official ballot for

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.....” followed by the designation of the county, congressional, legislative, councilmanic, or other district, excluding the number or name of the precinct for which it is prepared, and the ballots shall contain the date of the election, and a facsimile of the signature of the president of the board for which the ballots have been prepared. The ballot shall be printed on the same leaf, with a detachable stub or coupon one inch high and three inches wide, above the upper right-hand corner of the ballot, and binding on the upper edge thereof, but separated therefrom by a line running along the entire width of said coupon. Upon the coupon shall be printed the words “Voter’s Name,” with a line drawn thereunder for writing the name, and under the name and under this line the words “Number of Voter,” followed by a blank space for the insertion of a number. Before distribution the ballot shall be folded in marked creases so that no part of the marks or printing thereon shall be visible, excepting that which appears upon the back and outside and the detachable stub or coupon; and so that the folded ballot shall be of uniform width and length and proper width to be deposited in the ballot boxes. All ballots when printed shall be folded as above provided, and fastened together in convenient numbers in packages, books or blocks, so that each ballot may be detached and removed separately. For a primary election, as many different sets of official ballots shall be printed and supplied by the board at each polling place as there are parties participating in the primary, the ballot of each party to be a different color. The names of all candidates, delegates to any convention, or for central committee of the various parties entitled to hold a primary election shall be included on the ballots.

(b-1) *Number to be printed; surplus ballots.* — (1) The board shall cause to be printed and have in its possession at least five (5) days before the election a number of ballots for any general election equal to 110 percent of a total number of voters shown by the registry and for any primary election equal to 110 percent of the number of registered voters of the respective political parties. The boards shall keep a record of the number of ballots printed and shall preserve the same for at least six months after the election for which it was made.

(2) It shall be the duty of the board to have any surplus ballots on the day of election in its charge or that of an officer designated by it, and to supply such ballots to any judges who shall then make requisition therefor in writing, stating that the first supply of ballots has been exhausted or that for any cause the additional ballots are needed. The judge shall give a receipt for all surplus ballots delivered to them and a record of all such surplus ballots delivered to the judges shall be kept by the board. Any ballots not used shall be returned to the board.

(3) All surplus ballots shall be destroyed within ten days after the election, unless the destruction thereof is stayed by an order of court pending a contest. The board shall certify the number of ballots so destroyed to the clerk of the circuit court as soon as the ballots are destroyed.

(c) *Ballot boxes.* — All ballot boxes provided by the board for the deposit of ballots shall be numbered and of sufficient capacity to hold the ballots to be deposited therein, shall have an opening in the top large enough to allow a

single folded ballot to be passed easily through the opening, but no larger, and shall be supplied with a seal or sufficient lock and key.

(d) *Delivery of ballots and boxes.* — The board shall deliver, not more than three days and not less than one day preceding the election, ballot boxes for each precinct and other equipment and supplies required for the election, together with a sealed package of ballots, containing at least as many ballots as there are voters shown by the last preceding registration in said precinct clearly marked on the outside of its wrapper with the name of the precinct or polling place for which intended and the number of ballots enclosed. If the board fails or neglects to make the delivery by the time prescribed by this section, it shall be the duty of a judge designated beforehand by the board to take charge of the ballot box, immediately to send to the board therefor, and to obtain the same as soon as practicable in order that the election may be duly held. Any cost incurred in so doing shall be paid by the county commissioners, the county council or the Mayor and City Council of Baltimore City, as the case may be, as part of the election expenses.

(e) *Voting booths.* — Except in Montgomery County, for any election for which the State Administrative Board of Election Laws, pursuant to § 16A-1 of this article, has approved the use of electronically tabulated punchcard ballots and has approved the use of voting booths suitable for such ballots, the board shall provide a sufficient number of voting booths, equipped with tables or shelves, on which voters may conveniently mark their ballots. Each voting booth shall be at least three feet square and six feet high, shall contain three sides with a door or curtain on the fourth side, which door or curtain shall extend within two feet of the floor and shall be so arranged that it shall be impossible for anyone outside the voting booth to observe a voter in the act of marking his ballot. The number of voting booths shall be not less than one for each one hundred voters qualified to vote at such voting place. Each voting booth shall be kept properly lighted and provided with all supplies and conveniences necessary for marking ballots. The ballot boxes and voting booths shall be arranged in plain view of the judges, and the voting area shall be roped off in such a way as to permit no more than three feet for the entrance or exit of voters, and no person shall be permitted to enter the voting area by any other route.

(f) *Inspection and sealing of ballot boxes.* — As soon as the polls are open and immediately before any ballots are received by the judges, they shall inspect all ballot boxes to be used, so that they may be satisfied as to the structure thereof, and that such ballot boxes are empty and verify the numbers thereof. The ballot boxes shall then be locked and sealed. They shall not again be opened until the closing of the polls; and until such closing each ballot box shall be kept constantly in the sight of all persons entitled to be present. They shall be so placed that the voter offering his ballot, the judges and all persons entitled to be present may conveniently see every ballot deposited therein. The sealed package of ballots shall not be opened until after the ballot boxes shall have been so examined, and locked or sealed by the judges.

(g) *Procedure for casting ballots.* — The procedure for casting ballots shall be as follows:



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(1) At every election each qualified voter shall be entitled to receive one official ballot. In applying therefor to the judge holding the ballots, he shall give his name and residence, and the said judge shall repeat the same in a loud and distinct voice. If such name is found upon the registry by the judges having custody thereof, they shall repeat the said name, and the voter shall be allowed to enter the space enclosed by the booth or compartment. The judge holding the ballots, having first written in ink the voter's name and voting authority card number upon the coupon attached to one of them, shall deliver said ballot to the voter after having likewise written in ink his own name or initials upon the back thereof; and one judge shall at the same time record the voter's act of voting in the registry.

(2) Upon receipt of his ballot the voter shall forthwith retire alone to one of the booths or compartments and prepare his ballot. He shall mark with an indelible pencil after the name of every person or persons for whom he intends to vote, and to the right thereof, in the blank space provided therefor, a cross (x) mark and in the case of a question submitted to a vote of the people, he shall likewise mark in the appropriate space after the question a cross (x) mark. Not more than one voter shall be permitted to occupy any one booth or compartment at any time. No voter shall remain in or occupy a booth longer than may be necessary to prepare his ballot, and in no event longer than three minutes in case all such booths or compartments are in use and other voters are waiting to occupy the same, except that an additional two minutes shall be allowed if there are constitutional amendments or referenda to be voted upon.

(3) Before leaving the voting booth or compartment the voter shall fold his ballot without displaying the marks thereon, and in the same way it was folded when received by him. He shall keep the same so folded until he has cast his ballot, so that the signature or initials of the judge from whom he received it, and the name and number written on the coupon thereof, but nothing else thereon, may be seen. He shall forthwith hand his ballot to the judge at the ballot boxes, and the judge shall deposit his ballot in one of the boxes, having first detached therefrom its coupon, which he shall then string upon a cord or wire to be provided for the purpose. The said voter shall forthwith leave the enclosed space.

(4) No ballot without the endorsement of the name or initials of the judge thereon, as hereinbefore provided, shall be deposited in said ballot boxes. If any such ballot is deposited it shall be counted for the purpose of ascertaining the number of people voting and for no other purpose, and the judges shall in ink mark on the back thereof the word "Counted" and endorse their names.

(h) *Spoiled, rejected and unvoted ballots.* — Any voter who, by accident or mistake, shall spoil his ballot so that he cannot conveniently vote the same, may on returning said spoiled ballot to the judge holding the ballots, receive another in place of it, with his name and the same number written on the coupon thereof, as on the ballot so returned. No voter shall receive more than three ballots from said judge for the reason aforesaid. The ballots thus returned shall be immediately cancelled by endorsing thereon the word "Spoiled," and the precinct, election district or ward, as the case may be, and

the judge's initials. The spoiled ballots, together with those not distributed to the voters, shall be preserved and returned to the board as hereinafter provided. Every voter who does not vote any ballot delivered to him, before leaving the polling place, shall return such ballot to the judge from whom he received it, and said returned ballot shall be retained as if it had been spoiled. If for any other reason a person who has received a ballot shall leave the polling place without voting, he shall return the ballot to the judge. All ballots returned to the judge holding the ballots shall be immediately strung by him upon a cord or wire, provided for that purpose, still folded and with the coupons still attached and each endorsed upon the back thereof with the words "Spoiled," or "Rejected," or "Not Voted," as the case may be, and all such ballots shall be returned to the board, as hereinafter provided.

(i) *Other ballots; write-ins.* — Ballots other than those printed by the respective boards, according to the provisions of this section, shall not be cast or counted in any election. This subsection shall not prevent any voter in any general election from writing on his ballot and marking in the proper place the name of any person other than those already printed for whom he may desire to vote for any office. Such votes shall be counted the same as if the name of such person had been printed upon the ballot and marked by the voter.

(j) *Procedure for canvass generally.* — As soon as the election polls have been closed, the judges in their several precincts shall immediately, and at the place of polling, proceed to canvass the votes cast, as follows:

(1) The judges shall first seal up the unused ballots remaining of the package last broken by them and endorse the same with their signatures as unused ballots.

(2) All the coupons taken from the ballots cast shall be destroyed.

(3) The canvass shall not be adjourned or postponed until it shall have been fully completed, or until the several statements and tally sheets hereinafter required to be made by the judges shall have been made out, signed and sealed by them. The judges shall have the right to station police officers or officers of the peace within the room wherein such canvass is made in order to keep the peace. The challengers and watchers shall be allowed to be present sufficiently near so that they can see that the judges are faithfully performing their duties.

(k) *Rejection of defective ballots.* — The judges shall open the ballot boxes and count and announce the whole number of ballots in the boxes. They shall reject any ballots which are intentionally folded together and any ballots which do not have endorsed thereon the name or initial of the judge who held the ballots. If there shall be any mark on the ballot other than the cross-mark in a square opposite the name of a candidate as provided in subsection (g) of this section, or other than the name or names of any candidate written by the voter on the ballot, such ballot shall not be counted. Ballots not counted for such defects shall be marked "Defective" on the back thereof and shall be wrapped in a separate package and returned in the ballot box as hereinafter directed. No vote shall be counted for any candidate opposite whose name no cross-mark is placed. No ballot shall be rejected solely because any part or

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portion of the cross-mark extends beyond the square if the point of intersection of the cross-mark is within the square. No ballot shall be rejected solely because the voter has marked more names than there are persons to be elected to an office, but such ballots shall not be counted for any candidate in the group of names so marked.

(l) *Tallying votes.* — The judges shall open the ballots, and all of them shall be canvassed separately by one of the judges sitting between two other judges, each of opposite political affiliation, which judge shall call out each name and the office for which it is designated with the other judges looking at the ballot at the same time and making tally of the same. When all the ballots have been canvassed in this manner, the election judges shall compare their tallies together and ascertain the total number of votes received by each candidate. When they agree upon the numbers, one of them shall announce in a loud voice to the judges the aggregate number of votes received by each candidate. If requested by any watcher or challenger present at any canvass, it shall be the duty of the judges, and each of them, to exhibit to such watcher or challenger any ballot cast, fully opened or in such condition and manner that he may fully read and examine the same; but the judges shall not allow any ballot to be taken from their hands. As the ballots are counted they shall be strung upon a strong twine.

(m) *Packing voting materials for return.* — The procedure for packing voting materials for return shall be as follows:

(1) The "spoiled" and "not voted" ballots, as defined in subsection (h), shall be enclosed in a package to themselves and endorsed "Spoiled and Not Voted"; and "rejected" and "defective" ballots, as defined in said subsection and subsection (k), shall be enclosed in a package to themselves and endorsed "Rejected and Defective." The ballots cast and counted, as well as the two before-mentioned packages of "spoiled," "not voted," "rejected," and "defective" ballots, shall be placed in the ballot box.

(2) The ballot boxes shall then be sealed or locked and the key removed, whereupon the judges of election shall all write their names upon a strip of paper of sufficient length for the purposes specified in this section. Said strip of paper shall then be pasted over the keyhole of said ballot boxes and over the slit in the lid, in such manner that the signatures shall extend across the place of the opening of the lid, and so that when any box is opened it will tear the paper and destroy the signatures, and so that if a key is inserted in the keyhole it will tear the paper so pasted over the keyhole. Such paper shall be securely fastened on the boxes with sealing wax or some other adhesive material.

(n) *Delivery of voting materials to board.* — After the voting materials have been packed for return, as set forth in subsection (m) of this section, one of the judges, who shall have been designated by the board, shall take charge of the ballot boxes and their contents. The other judge, who shall also be an officer of registration, shall receive and hold the key thereof, if used, and the package of unused ballots sealed by the judges. One of the judges shall then take into his possession the registry. Each of the judges shall also take into his possession one of the statements of the vote (votes) cast, sealed up in its

envelope as aforesaid, and also one of the tally sheets, sealed up in an envelope as aforesaid. The meeting of the judges shall then be dissolved. The judge having possession of the ballot boxes shall immediately deliver the same with the contents to the board with the seal unbroken and shall take a receipt therefor. At the same time the judges having possession of the key, the package of unused ballots and the registers or the binder containing the registration cards, and one copy of the statement of votes cast and tally sheet shall deliver them to the board and take a receipt therefor. The judges having possession of the other statements and tallies shall deliver them before 12 o'clock noon of the day following the election to the respective officers to whom they are addressed, as aforesaid; and when so delivered, each of the said judges shall take a receipt therefor. No judge shall receive pay for his services unless he produces the receipt herein provided for. The members of each board shall be present at their respective offices on the days named for the purpose of carrying out the provisions of this section.

(o) *Custody of voting materials.* — The board, upon receiving ballot boxes and the keys thereof, shall note the condition of the seal or stamp on each box, the number thereof, and make an entry of the facts touching the same, in a book to be kept by them, together with the name of the officer who delivered the box. They shall be put by the board in a secure place to which the public in no case shall have access. Said boxes and their contents shall be safely kept for the space of four months from the date of such delivery, at which time, unless previously notified to produce the same to be used in evidence in some contested election or judicial or legislative investigation then pending, the board shall destroy, or cause to be destroyed, said ballots, and all of the said tallies and statements of returns; and the board shall record in the same book a certificate of the fact of destruction.

(p) *Production of voting materials in contests.* — The board shall produce any such ballots in regard to which testimony may be proposed to be taken before a judge taking examinations in a contested election. The board shall furnish copies of the same only on the order of a judge thereof and then, in pursuance of the terms and conditions of said order and subject to its restrictions. The board shall retain such ballots in possession and custody until such ballots are required by the order of the court having jurisdiction in the case to be delivered to the court, or by order of the Senate or House of Delegates, or by order of the city council of Baltimore, in whichever the seat is contested. (1957, ch. 739, § 1; 1966, ch. 142; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1969, ch. 281; 1975, ch. 102; ch. 877, § 1; 1977, ch. 295, §§ 1, 2; ch. 638, § 4; 1984, ch. 255.)

**Requirement for initialing is mandatory.** — The requirement that every ballot must be initialed by a judge of election before giving it to a voter is mandatory. *Hammond v. Love*, 187 Md. 138, 49 A.2d 75 (1946).

For upwards of fifty years, the peremptory requirement of initialing ballots has been deemed by the legislature an important safeguard in order to authenticate ballots by a defi-

nite rule which leaves little or no discretion to election officials. *Hammond v. Love*, 187 Md. 138, 49 A.2d 75 (1946).

**But initialing ballot with indelible pencil instead of with ink does not void ballot.** *Roe v. Wier*, 181 Md. 26, 28 A.2d 471 (1942).

**Effect of writing initials on coupon instead of back of ballot.** — See *Leonard v. Woolford*, 91 Md. 626, 46 A. 1025 (1900);

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*Coulehan v. White*, 95 Md. 703, 53 A. 786 (1902).

**Purpose of provisions for rejection of ballots.** — The statutory provisions calling for the rejection of ballots are designed to enable every voter to indicate his choice in such a manner that no one could possibly see for whom he has voted, and thereby to guard against bribery and intimidation. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 325, 106 A.2d 927, 108 A.2d 143 (1954).

**Essential requirements must be strictly observed.** — The legislature, in prescribing the method by which the voter shall prepare his ballot, evidenced an intention that the voter must strictly observe the essential requirements of the law. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 325, 106 A.2d 927, 108 A.2d 143 (1954).

**Mandatory provision.** — The provision for the rejection of any ballot on which there is any mark "other than the cross-mark in a square opposite the name of a candidate" is mandatory. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 325, 106 A.2d 927, 108 A.2d 143 (1954); *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 380, 107 A.2d 373, 109 A.2d 110 (1954).

**Not construed with literal narrowness.** — The provision for the rejection of any ballot on which there is any mark "other than the cross-mark in a square opposite the name of a candidate" has not been construed with literal narrowness. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 380, 107 A.2d 373, 109 A.2d 110 (1954).

**Test for determining validity of ballot** is that when an irregularity in the making of a cross-mark apparently occurred accidentally and in pursuance of the voter's purpose to make a cross-mark as prescribed by the statute, the votes on the ballot should be counted; but when the irregularity was apparently placed on the ballot intentionally and consti-

tuted a means of identifying the ballot, the ballot should be rejected. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 325, 106 A.2d 927, 108 A.2d 143 (1954); *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 380, 107 A.2d 373, 109 A.2d 110 (1954).

**Unnecessary disfranchisement of voters due to minor errors or irregularities in marking their ballots** is to be avoided. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 380, 107 A.2d 373, 109 A.2d 110 (1954).

**Marks held not to invalidate ballots.** — See *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 380, 107 A.2d 373, 109 A.2d 110 (1954).

**Discretion of board of supervisors** is not limited to determining the fact of the existence of a mark (not due to an imperfection in the paper or to a like cause) other than the cross-mark in a square opposite the name of the candidate. The supervisors, in making a recount of votes, are vested with discretion in determining whether a ballot should be counted or rejected. *Mahoney v. Board of Supvrs. of Elections*, 205 Md. 380, 107 A.2d 373, 109 A.2d 110 (1954).

**Rejection of all uninitialed ballots.** — See *Hammond v. Love*, 187 Md. 138, 49 A.2d 75 (1946).

**Presumption is that clerks (now judges) performed duty required of them**, i.e., compared their tallies and ascertained the total number of votes for each candidate. *Board of Canvassers of Election v. Noll*, 127 Md. 296, 96 A. 452 (1915).

**Applied in** *Wood v. Putterman*, 316 F. Supp. 646 (D. Md.), *aff'd*, 400 U.S. 859, 91 S. Ct. 104, 27 L. Ed. 2d 99 (1970).

**Quoted in** *Barnhart v. Mandel*, 311 F. Supp. 814 (D. Md. 1970).

**Cited in** *Dixon v. Maryland State Admin. Bd. of Election Laws*, 686 F. Supp. 539 (D. Md. 1988).

### GENERAL PROVISIONS FOR VOTING

#### § 15-1. Policing.

Each of the judges has the authority to keep the peace and to cause any person to be arrested for any breach of the peace, or for any breach of the election laws, or any interference with the progress of an election, the canvass of the ballots or the ascertainment and transcription of the votes recorded on the voting machines. It shall be the duty of all officers of the law present to obey the order of any judge, and an officer making an arrest by the direction of any judge shall be protected in so doing fully as if a warrant had been issued to him to make such arrest. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 15-2. Hours for voting.

The polling places throughout the State shall be opened by the judges at 7:00 o'clock a.m. on the day of election and the polling places shall remain open until 8:00 o'clock p.m. on the same day, when the polling places shall be closed. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 15-3. Challengers and watchers.

(a) *Authorized.* — Each candidate, political party or other body of voters having a candidate, candidates, principle, or proposition appearing on the ballot, shall have the right to designate a registered voter as a challenger and watcher at each place of registration and election. Said persons shall be assigned to such position near the judges, inside the registration or polling room, as to enable them to see each person as he offers to register or vote. They shall be protected in the discharge of their duty by the judges and the police.

(b) *Certificate as evidence of right to be present.* — A certificate signed by any party or candidate shall be sufficient evidence of the right of such challenger and watcher to be present in the registration or polling room.

(c) *Rights; unlawful acts.* — (1) A challenger or watcher has the right to enter the polling place one-half hour before the opening of the polls. However, if a majority of the election judges present find that the presence of the watchers or challengers in a polling place before it opens will prevent the timely opening of the polling place, the judges may direct all challengers or watchers to leave the polling place. Election judges are not required to admit to a polling place before the opening of the polls any challenger or watcher who was not present at the polling place at least one-half hour before its opening. A challenger or watcher has the right to enter or be present at the polling place at any time the polls are open, and may remain in the polling place until the returns are completed.

(2) It is unlawful for any challenger to inquire or ascertain for which candidate any voter intends to vote, or has voted, or to converse in the polling place with any voter or to assist any voter in the preparation of his ballot or in the operation of the voting machine. Any challenger who violates the restrictions of this paragraph may lawfully be ejected by the judges and is subject to the punishment provided for in this article.

(d) *Removal.* — A challenger or watcher may be removed at any time by the same person who appointed him.

(e) *Other persons allowed in polling place.* — Persons other than accredited challengers or watchers who desire to challenge the vote of any person shall be permitted to enter the polling place for that purpose, but a majority of the judges may limit the number of persons to be allowed in the polling place at any one time for such purpose; and all such persons shall leave the polling place as soon as the right to vote of the person challenged by them has been decided.

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(f) *Form of certificate.* — The form for the certificate of a challenger and watcher shall be supplied by the board, party, candidate or other organization and shall be on a form prescribed by the State Administrative Board of Election Laws. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1971, ch. 352, § 1; 1973, ch. 779; 1976, ch. 639; 1984, ch. 255.)

### **§ 15-4. Record of persons voting.**

(a) *Identification of voters by voting authority cards.* — A registered voter offering to vote at any election, before being permitted to vote, shall identify himself by signing a voting authority card and giving any change of address or name in the presence of the judges which shall be entered on the voting authority card or on a change of address or name form by the voter. When electronically reproduced voter authority cards are used, the voter shall enter his date of birth in the spaces provided, if such information is not preprinted. The applicant shall state the month and day of the applicant's birth, or the applicant's age, which shall be compared with the listed voter registration information, or the applicant shall identify himself by such other means as are referred to in the listed information. If, upon comparison of the information, it is found that the applicant is entitled to vote, then the judge having charge of the precinct register shall approve the voting authority card and write his initials thereon. The number of voting authority cards furnished to the judges shall exceed by ten percent the number of registered voters in the precinct. Each voting authority card shall be numbered and dated, and they shall be handed to the applicants in numerical order, as these applicants appear and offer to vote.

(b) *Disposition of voting authority cards at close of polls.* — At the close of the polls the judges shall account for all voting authority cards surrendered to them, to be returned to the board wrapped and sealed in a package marked "Surrendered Voting Authority Cards" bearing the signature of the judges. The unused and spoiled voters' voting authority cards shall be wrapped and sealed in a separate package, marked "Unused and Spoiled Voting Authority Cards," bearing the signature of the judges; and likewise returned to the said board with other election equipment. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1974, ch. 380; 1976, ch. 382; 1977, ch. 295, § 2; 1986, ch. 185.)

### **§ 15-5. Errors in registration.**

A person who is not registered as a qualified voter of the precinct may not vote or receive a ballot, but a vote may not be rejected because of an error in the voter's name or because of the wrongful omission or addition of one or more initials of his middle name or names, or because the voter gives the initials of one or more of his given name or names, instead of his full name, or one or more of his given name or names, instead of the initial or initials thereof, or because of an error in the number of his residence on the register, provided a majority of the judges are satisfied that the person offering to vote

is the identical person who is registered, and that he intended to register his true name and residence. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1976, ch. 382.)

## VOTING MACHINES

**§ 16-1. Use authorized.**

(a) *General provisions.* — The boards shall use a certified voting system in all elections conducted in accordance with the provisions of this article and under such rules and regulations as the State Administrative Board of Election Laws may deem advisable or necessary. Except as otherwise provided by law, a local board may use only one voting system in any election unless authorized in writing by the State Administrative Board of Election Laws. The boards may purchase, rent, lease or otherwise acquire certified voting systems and related equipment as may be required to implement the provisions of this subsection. In the event of the leasing, rental or other acquisition of a voting system and related equipment, it shall be exempt from State, county or municipal taxation.

(b) *Number of machines.* — At least one voting machine shall be furnished for each unit of four hundred voters, and an additional machine for every fractional part of such unit; in the case of special elections, however, the board in its discretion may determine the number of machines to be furnished to each precinct polling place.

(c) *Acquisition of machines.* — The boards shall use the powers conferred upon them for the acquisition of voting machines, and shall acquire or have available the necessary number of voting machines for use at all elections; the county commissioners or county councils or the mayor and city council of Baltimore shall provide for the payment of such machines.

(d) *Rental of machines.* — The boards in the counties shall have the power to rent or lease voting machines to any educational institution, municipal corporation, special tax area, or other political subdivision in that county, for use in any election or referendum vote in the educational institution, municipal corporation, special tax area, or other political subdivision. The rental or lease shall be on such terms and conditions as may be determined by the board. The board shall account for and pay over to the board of county commissioners or county council all moneys received in payment for rentals or leases made under this section, within thirty days after the receipt thereof. Every municipal corporation, special tax area or other political subdivision in the State is hereby authorized and empowered to rent or lease voting machines in this manner, and to use the same in any election or referendum vote within its corporate limits or boundaries, any law, ordinance or resolution to the contrary notwithstanding. (1957, ch. 739, § 1; 1965, ch. 303; 1967, ch. 392, § 1; 1974, ch. 335; 1975, ch. 877, § 1; 1978, ch. 347; 1988, ch. 111; 1989, ch. 5, § 1.)



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**Effect of amendment.** — The 1989 amendment, approved Mar. 9, 1989, and effective from date of passage, substituted "moneys" for "monies" in the third sentence of (d).

**Validity of statute providing for voting machines.** — See *Norris v. Mayor of Baltimore*, 172 Md. 667, 192 A. 531 (1937).

### § 16-2. Borrowing to obtain.

(a) *Counties authorized to borrow.* — Whenever the board in any county shall decide to purchase voting machines, the board of county commissioners or county council thereof may borrow funds for such purchase and issue individual notes, bonds or evidences of indebtedness for the repayment of the funds and of interest thereon.

(b) *Bonds.* — In the event general obligation bonds of the county are issued, such bonds may be issued without regard to any limitations upon the borrowing power of the county and the following provisions shall be applicable to such issuance:

(1) The bonds of each issue shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times, as may be determined by the board of county commissioners or county council of the county issuing the same. They may be made redeemable before maturity at the option of the board of county commissioners or county council at such price or prices and under such terms and conditions as may be fixed by the county commissioners or county council prior to the issuance of the bonds. The county commissioners or county council and the county executive of Montgomery County shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The bonds shall be signed by such officer or officers of the county issuing the same, the seal of such county shall be affixed thereto and attested in such manner, and any coupons attached thereto shall bear the facsimile signature of such officer as the county commissioners or county council and the county executive of Montgomery County shall determine. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. All bonds issued under the provisions of this section shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State. The bonds may be issued in coupon or in registered form, or both, as the county commissioners or county council may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The county commissioners or county council may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be for the best interest of the county. The provisions of §§ 9 to 11, inclusive, of Article 31 of

this Code, and any amendments thereto, shall not apply to bonds issued under the provisions of this section.

(2) The entire proceeds from the sale of any bonds issued under the provisions of this section, after payment of all costs and expenses incurred in connection with the preparation, sale and delivery of the bonds, shall be used solely for the payment of the cost of the voting machines for the purchase of which such bonds are issued. Any balance remaining after the purchase of said voting machines shall be used to pay the interest on or to redeem any of said bonds.

(3) In order to pay the principal of and interest on said bonds when and as the same become due and payable, the county commissioners or county council issuing the same are hereby authorized and directed to levy in each and every year in which any of said bonds are outstanding upon the taxable basis of said county a tax sufficient in rate and amount (i) if said bonds are issued in series maturing at stated periods and a portion of the principal is made payable annually, to pay the interest and the portion of the principal payable in such year; or (ii) if said bonds are not issued in series, but are payable or redeemable in whole at a fixed rate of maturity, to pay the interest on said bonds in such year and to produce a sum sufficient to accumulate a sinking fund for the redemption and payment of said bonds at maturity. The proceeds of such levy when collected and paid shall be used for such purposes and for no other purpose than that for which such levy was made; provided, however, that if the interest on such bonds matures before the levy, or before a sufficient amount of taxes levied for the purpose of paying said interest is collected, the county commissioners or county council may pay said interest out of the proceeds of the sale of said bonds.

(4) The bonds issued under the provisions of this section, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation by the State of Maryland or any of its political subdivisions, or by any town or incorporated municipality or any other public agency within the State.

(c) *Section supplemental to existing powers.* — The provisions of this section shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby, and shall be regarded as supplemental and additional to any powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. All laws or parts of laws inconsistent with the provisions of this section are hereby repealed to the extent of such inconsistency. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1970, ch. 50; 1974, ch. 195.)

### § 16-3. Mechanical requirements of machines.

(a) *Machines furnishing printed or photographic record of setting of counters and numbers registered thereon.* — The use of voting machines so constructed as to furnish a printed or photographic record of the setting of the counters and the numbers registered thereon by voting is hereby specifically authorized, provided, that the machine is constructed to furnish at least as

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many printed or photographic copies as the number of return sheets required by § 16-16 of this article.

(b) *Other mechanical requirements.* — Every voting machine acquired or used in accordance with this article shall:

(1) Provide facilities for voting for such candidates as may be nominated and upon such questions as may be submitted;

(2) Permit each voter, in one operation, to vote for all the candidates of one party for presidential electors;

(3) Permit each voter, at other than primary and special primary elections, to vote a ticket selected from the nominees of any and all parties and from independent nomination and to write in the name of a candidate not included on the official ballot;

(4) Permit each voter to vote at any election, for any person and for any office for whom and for which he is entitled to vote, and to vote for as many persons for an office as he is entitled to vote for, and to vote for or against any question which appears upon a ballot label;

(5) Preclude each voter from voting for more persons for any office than he is entitled to vote for, and from voting for any candidate for the same office or upon any question more than once;

(6) Be capable of adjustment by election officers, so as to permit each voter at a primary election to vote only for the candidates seeking nomination by the political party with which he is affiliated, if he is affiliated with a political party, and so as to preclude him from voting for the candidates seeking nomination by any political party with which he is not affiliated;

(7) Permit each voter to change his vote for any candidate, or upon any question appearing upon the ballot labels, up to the time he begins the final operation to register his vote;

(8) Permit and require voting in absolute secrecy, and shall be so constructed that no person can see or know for whom any other voter has voted or is voting, save a voter whom he has assisted or is assisting in voting as prescribed by law;

(9) Have voting devices for separate candidates and questions, which shall be arranged in separate parallel rows or columns, so that, at any primary election, one or more adjacent rows or columns may be assigned to the candidates of a party, and shall have parallel office columns or rows transverse thereto;

(10) Have a counter, or other device, to be known as a "public counter," the register of which is visible from the outside of the machine, which shall show during any period of voting the total number of voters who have operated the machine during said period of voting;

(11) Have a protective counter, or other device, the register of which cannot be reset, which shall record the cumulative total number of movements of the operating mechanism;

(12) Be provided with a lock or locks, by means of which, immediately after the polls are closed, or the operation of the machine for an election is completed, all movement of the registering mechanism is absolutely prevented while the machine is locked;

(13) Be provided with a screen, hood or curtain, which shall conceal the actions of the voter while voting;

(14) Be constructed of material of good quality, in a neat and workmanlike manner;

(15) When properly operated, register or record correctly and accurately every vote cast;

(16) Be so constructed that a voter may readily learn the method of operating it;

(17) Be safely transportable;

(18) Be so constructed and controlled that, during the progress of voting, it shall preclude every person from seeing or knowing the number of votes registered for any candidate, and from tampering with any of the registering mechanism. (1957, ch. 739, § 1; 1961, ch. 352; 1967, ch. 392, § 1; 1971, ch. 352, § 1.)

**Allegation that voters were not precluded by machines from voting for more persons than entitled to** was held to state a cause of action which should be subject to proof, in action contesting validity of contract for purchase of voting machines. *Proctor v. Brookhart*, 195 Md. 200, 72 A.2d 682 (1950).

**Utilization of single master lever to vote on series of questions.** — There is no prohibition of any kind in the election laws of the State of Maryland against the utilization of a

single master lever allowing voters to vote "for" or "against" an entire series of questions, so long as each voter is given the opportunity to vote for or against each individual question and each voter is given the opportunity to change his vote upon any question appearing upon the ballot up to the time he begins the final operation to register his vote. *Heaton v. Mayor of Baltimore*, 254 Md. 605, 255 A.2d 310 (1969).

#### § 16-4. Ballots and ballot labels — In general.

(a) *Names of candidates and description of constitutional amendments, etc.* — Each board shall provide ballots for every election in which any voter in the county or city shall participate, which shall contain:

(1) The name of every candidate who has filed or has been nominated in accordance with the provisions of this article; except that in lieu of the names of candidates for the office of elector of President and Vice-President of the United States, the names of the candidates for each political party for the office of President and Vice-President shall be printed thereon; and, when applicable,

(2) A description of every constitutional amendment or other question which is to be submitted to the vote of the people.

(b) *Ballots.* — Ballots shall be printed in plain clear type in black ink and, except in primary elections, upon clear white material of such size and shape as to fit the construction of the voting system. For primary elections the ballots may be printed, in the discretion of the boards, upon clear white material or material of different colors.

(c) *List of candidates.* — Upon request, a correct list of the names of the candidates for the designated offices shall be furnished by the boards to the candidates or their authorized agents.

(d) *Form and arrangement of ballots.* — (1) The form and arrangement of all ballots shall be prescribed by the State Board in accordance with the requirements of this section;

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(2) The State Board shall certify the contents and the arrangement thereof for each ballot to be used in each election not later than the 31st day preceding the election or any later date established by the Court of Appeals of Maryland, in extraordinary circumstances, upon petition of the State Board.

(e) *Delivery of copies of arrangement to each board.* — The State Board shall assure delivery to each board, within 4 days of certification, of a copy of the arrangement and contents it has certified for that county pursuant to subsection (d) of this section.

(f) *Preparation of arrangement and contents of ballots; display of titles of constitutional amendments; printing; judicial relief.* — (1) (i) Not later than the 5th day following certification as prescribed in subsection (d) or any later date established by the Court of Appeals of Maryland, in extraordinary circumstances upon petition of the State Board, the arrangement and contents for all ballots to be used in that election, showing the offices, names of candidates, constitutional amendments and questions, shall be prepared by each board, using the arrangement prescribed by the State Board, and placed on display at the offices of the board in a manner that is accessible to the public between the hours of 9 a.m. and 4 p.m.

(ii) If the ballot titles of constitutional amendments and questions are certified prior to 25 days before the election, they shall also be placed on display in the manner prescribed in subparagraph (i).

(2) The public display prescribed in subparagraph (i) shall last for 5 days.

(3) After 3 days of such display and the correction of any noted errors as provided in subsection (h) of this section, and subject to paragraph (4), the board may proceed with the printing of the ballots.

(4) (i) 1. Judicial relief from the arrangement and contents prepared by the board or to correct any other error discernible at that time may be sought, within 2 days after the expiration of the 3-day period, upon the sworn petition of any registered voter filed with the circuit court for any county.

2. The court may require the board:

A. To correct an error;

B. To show cause why an error should not be corrected; or

C. To take any other action required to provide any other relief deemed by the court to be appropriate and consistent with this article.

(ii) Except as may be required by subparagraph (i) 2. of this paragraph and subject to subsection (h) of this section, the arrangement prescribed by the board may not be modified after the expiration of the period prescribed in subparagraph (i).

(iii) Judicial review pursuant to subparagraph (i) may not delay printing of the ballots unless the court has so ordered within the period prescribed in subparagraph (i).

(g) *Errors.* — If an error is discovered after the ballots have been printed, the board shall correct the error promptly. If a board fails to make a change requested after printing, judicial relief may be sought, as provided in subsection (f) (4) of this section, not later than the second Monday preceding the election.

(h) *Change in ballots.* — If, because of an error or a change in circumstances, a board at any time finds it necessary to make a change in a ballot, it shall, with the approval of and pursuant to instructions from the State Board, promptly change the ballots by taking the following action:

(1) If there is sufficient time before printing or for reprinting of the ballot, make the appropriate changes or corrections on the printed ballots.

(2) If there is insufficient time for reprinting, and if it is appropriate to the voting system in use, cause to be printed a sufficient number of stickers incorporating the appropriate changes or corrections. The stickers shall be as consistent as possible with the printed ballots and be affixed to the ballots in the appropriate places.

(3) If time does not permit the process provided in paragraph (2) of this subsection, or if such a process is inappropriate, take all appropriate measures to notify voters of the change, the procedure to be used by each voter to record a vote, and the procedure to be used by the board for the counting of the ballots.

(i) *Same — Notice.* — After any change on a ballot pursuant to this section, the board shall immediately take all reasonable steps to notify all candidates for the nomination or office involved and any other persons deemed appropriate by the board.

(j) *Same — Uniformity of ballots.* — Any change on a ballot in accordance with the provisions of this section shall, to the extent practicable, be consistent with the requirement that ballots be uniform.

(k) *Same — Modification of arrangement on public display.* — Any arrangement placed on public display pursuant to subsection (f) of this section shall remain on display through the day of the election and be modified promptly from time to time to reflect any changes made pursuant to this section. (1957, ch. 739, § 1; 1959, ch. 464; 1961, chs. 556, 600; 1965, ch. 324; 1967, ch. 392, § 1; 1971, ch. 352, § 1; 1977, ch. 295, §§ 3, 4; 1982, ch. 820, § 1; 1986, ch. 422.)

**Editor's note.** — Section 6, ch. 820, Acts 1982, provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

**Advisory questions.** — The government of a charter county does not have the power to direct or request a local board of supervisors of

elections to submit an advisory question to the electorate of the county by placing the same upon the general election ballot. 61 Op. Att'y Gen. 384 (1976).

**Quoted in** Smith v. County Executive, 47 Md. App. 65, 421 A.2d 979 (1980).

**Cited in** Barthelmes v. Morris, 342 F. Supp. 153 (D. Md. 1972).

## § 16-5. Same — Candidates.

(a) *Alphabetical arrangement.* — In all elections, the names of candidates for every office shall be arranged alphabetically on the ballots of their party according to their surnames, under the designation of the office. The name of candidates of each political party for Governor and Lieutenant Governor shall be grouped together and, in primary elections, shall be arranged alphabetically in the order of the surnames of the gubernatorial candidates. In general elections, the names of candidates of each political party for President and

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Vice-President shall be grouped together under the designation "Electors for President and Vice-President." The use of nicknames, titles, degrees, or other professional designations on the ballot is absolutely prohibited.

(b) *Columns, rows or punchcard sides.* — All candidates for the same office shall, as far as possible, be placed in one column or in one row on the ballots. However, another column, row, or punchcard side, as appropriate, may be used for the printing of names, if (1) on paper ballots, the names to be printed are over thirty-six; (2) on voting machines, the required number of spaces assigned to each party or office is exhausted; or (3) on punchcard ballots, the number of candidates for an office exceeds the number of spaces available on one side of a punchcard. If two or more columns, rows, or punchcard sides are used for the names of candidates for the same office, the same number of names, so far as possible, shall be printed in each column, in each row, or on each punchcard side. The initial letters of the given names of the several candidates shall be printed, if columns are used, directly beneath each other in a vertical line, and, if rows are used, directly across from each other on the same horizontal line. The respective party designations of these several candidates shall be printed, if paper ballots or punchcards are used, directly beneath each other, and, if voting machines are used, to the left or above.

(c) *Titles of offices.* — The titles of offices may be arranged horizontally or vertically on the ballots, with the names of candidates for an office arranged longitudinally under or transversely opposite the title of his office. The titles of offices shall be so arranged that: (1) there shall first appear those titles of public offices for which the voters of the entire State or of an entire congressional district may vote as follows: President and Vice-President, Governor and Lieutenant Governor, Comptroller, Attorney General, U.S. Senator, Representative; (2) there shall next appear the titles of offices of the Senate and House of Delegates of the General Assembly of Maryland; (3) there shall next appear the titles of the offices of Mayor, president of the city council, Comptroller and members of the City Council of Baltimore City or county executive and county council or county commissioners of the respective counties; (4) there shall next appear the titles of candidates for judge of the circuit courts of the several counties and questions of continuance in office of an incumbent judge of the Court of Appeals and the Court of Special Appeals; (5) there shall next appear, in the following order, the titles of offices for which the voters of the respective counties or Baltimore City may vote, including, but not limited to, the offices of Treasurer, State's Attorney, clerk of the circuit court in the several counties, register of wills, judges of the orphans' courts, and sheriff; (6) the titles of party offices shall follow the titles of public offices on all ballots.

(d) *Party designations and residences of candidates; size and face of printing.* — The party designation of each candidate, properly separated from his name, shall be included on all ballots at any election; provided, however, that the party name shall consist of one word only. In addition, the name of each candidate for public or party office for which the voters of the entire State or more than one county or legislative district may vote, shall be identified by the county or city in which said candidate resides. If there is a provision for the election of delegates who are by law required to live in a specific county

and only a certain number of delegates may be elected from that county, an elector may not cast a vote for more than that number of candidates from that specific county. The ballots shall be arranged so that exact uniformity, to the extent practicable, will prevail as to size and face of printing of all candidates' names and party designation. The names of all candidates for judge of the circuit courts for the several counties, and for a county board of education and the names of incumbent judges of the Court of Special Appeals or the Court of Appeals at an election for continuance in office shall be placed on the ballots without any party label or other distinguishing mark or location which might directly or indirectly indicate the party affiliation of the candidate or judge.

(e) *Grouping of names of all candidates of political party; candidates of majority party first — Ballots on lever voting machines.* — (1) The names of all candidates of a political party shall appear on the ballots in adjacent rows or columns containing generally the names of candidates nominated by such party.

(2) In primary elections the names of candidates seeking nomination by a particular party shall be segregated in adjacent rows or columns by parties.

(3) In both primary and general elections, the candidates of the majority party shall be placed in the first rows or columns, the principal minority party shall be in the succeeding rows or columns to be followed by other parties in order of highest voter registration, and thereafter independents.

(4) The provisions of this subsection shall apply to ballots on lever voting machines.

(e-1) *Same — Ballots other than voting machine ballots.* — (1) In general elections, the names of all candidates of a political party within a contest shall appear in adjacent voting positions on the ballot containing generally the names of candidates nominated by such party.

(2) On general election ballots, the names of the candidates of the majority party shall be placed in the first voting position or positions within a contest, the names of candidates of the principal minority party shall be placed in the succeeding voting position or positions within that contest, to be followed by other political parties in order of highest voter registration, and thereafter independents.

(3) In primary elections, the names of the candidates seeking nomination shall be segregated by party.

(4) The provisions of this subsection shall apply to all ballots other than voting machine ballots, including absentee ballots.

(f) *Instructions as to number of candidates to vote for.* — Above the group of names of the candidates for each office, and upon a separate line immediately underneath the designation of the office, there shall be printed in bold, plain roman capitals of twelve-point pica type, an appropriate direction or instruction to the voter informing him of the number of persons for whom he may lawfully vote for the particular office mentioned immediately above each such direction, as: "Vote for One," "Vote for Two," or "Vote for Six," as the case may be.

(g) *Candidates for same office claiming same party name.* — When the name of a political party is given in connection with the name of a candidate



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nominated by petition, it shall be stated on the ballots to the right of the name of the candidate; but if there shall have been any nomination for the same office by a primary election claiming the same party name, duly certified as hereinbefore provided, there shall be then printed to the right of the name of the candidate so nominated by petition, only the word "Independent" and none other. If the same party name shall be claimed on behalf of nominations made by more than one primary election and duly certified as aforesaid, the officers by whom the ballots are to be prepared, or a majority of them, shall determine which nominees are justly entitled to the party name, and to the right of the names of other nominees there shall be printed upon the ballots only the word "Independent" and none other. (1957, ch. 739, § 1; 1959, ch. 464; 1961, chs. 556, 600; 1965, ch. 324; 1967, ch. 392, § 1; 1971, ch. 352, § 1; 1972, ch. 12; ch. 201, § 1; 1974, ch. 355; 1977, ch. 295, § 4; ch. 818; 1978, ch. 210, §§ 1, 2; 1982, ch. 594; ch. 820, § 1; 1987, ch. 11, § 1.)

**Editor's note.** — Section 6, ch. 820, Acts 1982, provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

**Arrangement of names in vertical columns.** — If more than one vertical column is required on the voting machines to accommodate the names of all the candidates for an office, the same number of names must be placed in each column as far as possible and there must be used the fewest number of columns that will permit this. Board of Supvrs. of Elections v. Komenda, 259 Md. 149, 268 A.2d 563 (1970).

**In multi-county district candidates for member of House of Delegates from that district should be listed alphabetically and**

not separated by county or residence. 59 Op. Att'y Gen. 259 (1974).

**Judicial candidates** who were successful in primary elections should appear on the general election ballot in alphabetical order and without party designation of any kind and no indication should be given on that ballot which candidates were successful in which party primaries. 61 Op. Att'y Gen. 399 (1976).

**Candidate nominated by State central committee.** — Though § 69 of Article 33, 1951 Code, did not expressly so provide, it is to be supposed that the same protection as to party designation which that section conferred upon persons nominated by a primary election or by a convention would extend to a candidate nominated by a State central committee. Tyler v. Board of Supvrs. of Elections, 213 Md. 37, 131 A.2d 247 (1957).

### § 16-6. Same — Questions.

(a) **Condensed statement and descriptive title.** — The ballots shall contain a condensed statement in understandable language of every constitutional amendment or other question to be submitted to the vote of the people at any election. It is sufficient in any case to print the legislative title, a brief summary of the contents or purpose of the proposed amendment or referendum unless the act proposing the constitutional amendment or other question specifically provides the title to be used. The Secretary of State shall prepare and certify the form in which a constitutional amendment or question shall appear and each amendment or question shall be captioned with a descriptive title in boldface type containing not more than three words. A constitutional amendment, or any question to be submitted to the popular vote, shall be printed on the ballots following the names of the candidates for office, and in the absence of some other provisions shall be accompanied by the words "For" and "Against." The county commissioners, county councils, or treasurer of Baltimore City, as the case may be, shall prepare and certify to the boards the form

in which local questions shall appear on the ballots. Under the conditions provided for in § 23-1 (a) the clerk of the Circuit Court for Howard County shall certify local questions. In the event the title of the bill, ordinance or resolution, as the case may be, is one hundred words or less, the title shall be sufficient. In the event the title exceeds one hundred words, a summary of the title containing not in excess of one hundred words shall be prepared and certified to the boards.

(b) *Order.* — Each board, in the preparation of ballots, shall follow the order designated by the Secretary of State and shall always place the proposed constitutional amendments and the other statewide referenda, if any, in numerical order as indicated. Constitutional amendments shall be placed first on the ballots, to be followed by statewide questions, statewide referenda and by local questions or referenda in that order. Local questions or referenda shall be designated by successive letters of the alphabet, rather than numerically. The county council, county commissioners or the treasurer of the City of Baltimore shall designate the alphabetical order of local questions or referenda. (1957, ch. 739, § 1; 1959, ch. 464; 1961, chs. 556, 600; 1965, ch. 324; 1967, ch. 392, § 1; 1971, ch. 352, § 1; 1974, ch. 328; 1976, ch. 923.)

*Editor's note.* — Section 1, ch. 512, Acts 1986, provides that "pursuant to the provisions of Article 33, §§ 16-6 and 23-1 (a), the Dorchester County Commissioners prior to August 18, 1986 are authorized to adopt legislation that directs the State Administrative and Dorchester County Boards of Election Laws to prepare and include on the ballot for the November general election of 1986 the following question: 'Should the Dorchester County alcoholic beverages dispensary system be abolished in favor of a free enterprise system?'"

Section 2 of ch. 512 provides that "the State Administrative and Dorchester County Boards of Election Laws shall do those things necessary and proper to place this question on the ballots or voting machine labels prepared for the November general election of 1986, so that each participating voter in Dorchester County may have an opportunity to cast a vote on the question. The question shall be proposed, presented, tallied, and reported in general accordance with the provisions of Article 33 of the Annotated Code. The vote on this question is advisory only." The advisory question posed by ch. 512, Acts 1986, was approved at the general election held on November 4, 1986.

**Failure to conform to notice requirements distinguished when raised in pre-election as compared to post-election litigation.** — In its appraisal of compliance with the notice requirements contained in this article, the Court of Appeals has clearly recognized the distinction between the effects of the failure to conform with such provisions when raised in pre-election litigation, as compared with the effect to be given those same provisions,

when not strictly followed, and when challenged by litigation attacking the results of an election. *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

**Constitutional sufficiency of legislative title used as ballot question.** — Where a legislative title is used as the ballot question under this section, the prescriptions of Md. Const., art. III, § 29, concerning the sufficiency of the title, come into play and the question must embrace one subject, fairly apprise the voters of the purpose of the act, not be misleading and not be calculated to lead the public to believe that the proposed legislation is substantially different from that which would actually become law under the statute. *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

**Secretary of State has been authorized to and has prepared ballot titles for proposed amendments.** This approach met the approval of the Attorney General and was approved by the voters as to questions put to referendum. *Morris v. Governor of Md.*, 263 Md. 20, 281 A.2d 216 (1971).

**And ample standards have been provided.** — The Secretary of State has been provided by the legislature in this section with ample standards for preparation of ballot titles, such as a "condensed statement in understandable language," the "legislative title," "a descriptive title in boldface type containing not more than three words." The delegation, such as it is, meets the tests the Court of Appeals has heretofore laid down with approval. *Morris v. Governor of Md.*, 263 Md. 20, 281 A.2d 216 (1971).

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**Authority given Secretary of State to choose between legislative title for proposed amendment and summary he has prepared** is not an impermissible delegation of legislative power. *Morris v. Governor of Md.*, 263 Md. 20, 281 A.2d 216 (1971).

**Standard of validity where brief summary used for ballot question.** — Where the ballot question used is not the legislative title but a brief summary of the contents or purpose of the proposed act, the standard by which the question's validity will be judged is whether the question posed, accurately and in a nonmisleading manner, apprises the voters of

the true nature of the legislation upon which they are voting. *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

**Advisory questions.** — The government of a charter county does not have the power to direct or request a local board of supervisors of elections to submit an advisory question to the electorate of the county by placing the same upon the general election ballot. 61 Op. Att'y Gen. 384 (1976).

**Cited in** *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969); *Reeder v. Board of Supvrs. of Elections*, 269 Md. 261, 305 A.2d 132 (1973).

### § 16-7. Instructions for voters and specimen ballots.

(a) *Duty of Attorney General.* — At least thirty days before every statewide election the Attorney General shall prepare full instructions for the guidance of voters at election.

(b) *Cards of instruction.* — The sets of instructions prepared by the Attorney General shall be furnished by the State Administrative Board of Election Laws to the several boards, who shall respectively cause the same to be printed in large, clear type, on separate cards, to be called "cards of instruction." Each board shall furnish three of the proper sets of instructions for use in each polling place for each election district or precinct.

(c) *Specimen ballots.* — Each board shall also cause to be printed two or more copies of the form of the ballot to be used for each precinct polling place at each election therein, to be in type of suitable size and designated as "specimen ballots."

(d) *Posting at polling places.* — On the morning of each election, before the voting begins, the boards shall cause to be conspicuously posted in each precinct polling place the cards of instruction and specimen ballots. Cards of instruction and specimen ballots shall also be conspicuously displayed on the outside of the building wherein the voting shall take place. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1970, ch. 103; 1974, ch. 355.)

### § 16-8. Voting machine custodians.

(a) *Appointment of custodians and deputies.* — Each board shall appoint a custodian of voting machines and a deputy custodian whose duty it shall be to prepare the machines for use. Each custodian, after assuming his office shall take a training course in the operation and repair of voting machines at the factory of the manufacturer of the machines used; and each deputy custodian shall take a training course in making minor repairs to such machines as soon as possible after assuming his duties. Additional custodians may be employed as may from time to time be necessary.

(b) *Duties.* — The custodian and deputy custodians of voting machines shall have the voting machines prepared for election purposes as hereinafter pro-

vided and perform such other duties as may be prescribed by the board. (1957, ch. 739, § 1; 1963, chs. 338, 737; 1967, ch. 392, § 1; 1971, ch. 351, § 3.)

### § 16-9. Preparation of machines by custodians.

(a) *When machines to be made ready for use.* — The custodians and deputy custodians shall prepare all machines for use at any election and shall have the machines ready by not later than seven days prior to the date of the election.

(b) *Notice to local party committees.* — On or before the fifteenth day preceding an election, the board shall mail to the chairman of the city or county committee, as the case may be, of each political party as defined in § 1-1 (a) (15) and to each candidate who is not a candidate or nominee of a political party, a written notice stating the times when and the place or places where the machines for use in the several polling places in the city or county will be prepared for use as above provided. At such times and places, one representative of each of the political parties, certified by the respective chairmen of the city or county committees of the parties, and one representative of each candidate who is not a candidate or nominee of a political party, shall be entitled to be present and be entitled to see that the machines are in proper condition and order for use.

(c) *Certificate of board members and custodians.* — Each member of the board, the custodian and deputy custodians thereof shall make and sign a certificate in writing, and request each party representative present at the preparation of the machine to attest to the same, which shall be filed with the board stating (1) the identifying number or other designation of the voting machines; (2) that each registering counter of the machine was set at zero (000); (3) the number appearing on the exposed counter which registers every consecutive operation of the machine; (4) the number on the seal with which the machine has been sealed; (5) that the keys for each machine have been sealed in separate envelopes identified by the serial number of the voting machine; and (6) the date and place of the inspection and preparation of the machine and that the proper ballot labels have been installed thereon. Each machine sealed as in this section provided shall remain locked and sealed until the time of examination immediately preceding the opening of the polls, as hereinafter provided. The certificates shall be filed as a permanent record with the board and copies furnished to the party representatives and to the State Administrative Board of Election Laws. (1957, ch. 739, § 1; 1963, ch. 735; 1967, ch. 392, § 1; 1972, ch. 571; 1976, ch. 26; 1977, ch. 295, § 4; 1987, ch. 11, § 1.)

### § 16-10. Delivery of machines and equipment; preparation for use by boards.

(a) *Required; special provisions as to Baltimore City.* — Each board shall cause to be delivered the proper voting machine or voting machines, furnished with ballots, all electronically reproduced precinct registers or binders con-

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taining the precinct cards, and equipment boxes, containing all equipment and supplies for the conduct of the election, to the polling places of the respective election precincts at least one hour before the time set for opening the polls at each election, and shall cause each machine to be set up in the proper manner for use in voting. Each machine shall then remain sealed until the examination immediately preceding the opening of the polls prescribed by this subtitle.

In Baltimore City, the board shall deliver to the police commissioner of Baltimore City, not more than three days and not less than one day preceding the election, all electronically reproduced precinct registers or binders containing the precinct cards, and equipment boxes, containing all equipment and supplies for the conduct of the election. The police commissioner shall give a receipt therefor, and shall deliver or cause the same to be delivered to the judges of election of the respective precincts at or before the opening of the polls on the day of election. The board shall keep a record of the time when these deliveries are made by them and of the particulars thereof.

(b) *Protection.* — The board shall provide ample protection against tampering with and damage to the voting machine, and, for such purpose, the board or any of the judges or custodians of the polling places shall and may call upon any police officer to furnish such assistance as may be necessary. It shall be the duty of police officers to furnish such assistance when so requested by the board, or by any judge or custodian.

(c) *Other equipment.* — The board shall furnish, at the expense of the city or county, as the case may be, and deliver with each voting machine:

(1) Diagrams of sample ballots, of suitable size, representing such part of the face of the voting machine as will be in use in the election and accompanied by illustrated directions for voting on the machine. Such diagram shall be posted in a prominent position within the polling place.

(2) A mechanically operated model of a portion of the face of a voting machine, for instruction of the voters. Such model shall be placed in a prominent position within the polling place.

(3) A seal, for sealing the machine after the polls are closed, unless the construction of the machine is such that the machine is automatically locked and sealed when the results are exposed; an envelope for the return of the keys, if the construction of the voting machine shall permit their separate return; and such other election materials and supplies as may be necessary, or as may be required by law.

(d) *General return or tally sheets; duplicate return sheets or statements of votes cast.* — The board shall also deliver sufficient general return or tally sheets, and duplicate return sheets, or statements of votes cast. The general return or tally sheet, and duplicate return sheet, or statement of votes cast shall be printed to conform with the type of voting machine used. The designating number and letter, if any, on the counter for each candidate shall be printed thereon opposite the candidate's name. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1974, ch. 380.)

**§ 16-11. Operation of machines.**

(a) *Keys.* — The board shall deliver the keys which unlock the operating mechanism and the registering counters or counter compartment of the voting machine, to one of the judges not earlier than noon of the Saturday preceding an election, nor later than three quarters of an hour before the time set for the opening of the polls, and shall take his receipt therefor. The keys shall be enclosed in a sealed envelope, on which shall be written or printed: (1) the number of the voting machines; (2) the name or designation of the precinct; (3) the number of the seal; and (4) the number registered on the protective counter or device as reported by the custodian.

(b) *Inspection of machines.* — The judges shall meet at their respective polls on election day at least one-half hour before the opening of the polls, and shall one-half hour before the opening of the polls inspect the equipment furnished. If at least two judges of opposite party affiliation are present: (1) they shall open the envelope containing the keys to each voting machine and shall, except in the case of machines so constructed as to furnish a printed or photographic record of the setting of the counters and the numbers registered thereon by voting, unlock the counter compartment to ascertain whether the tabulating devices are all set at zero (000), whether the numbered seal on the operating lever is unbroken, and that the number thereon is identical with the number certified on the envelope containing the keys; (2) they shall also compare the number appearing on the dials of the exposed counter designed to register every consecutive operation of the machine with the reading thereof noted on the envelope containing the keys. If the machine is so constructed as to furnish a printed or photographic record of the setting of the vote-registering counters as they appear prior to the opening of the polls the counter compartment shall not be opened nor shall the counters be exposed to view and the printed or photographic record shall be examined in the same manner as provided in this subsection for the examination of counters to ascertain that all are set at zero (000). The judges shall also inspect the face of every machine to make sure the proper ballot labels are in proper places and that the machine is otherwise ready for use; and (3) they shall inspect the paper roll for a label or line that has been signed by the voting machine custodian and indicates the date of the election. If a label or line is not visible, one of the judges shall draw a line, from side to side, upon the paper roll and date it with the election date. All judges inspecting the machine shall place their initials on the line.

(c) *Certificate of judges; removal of seal on operating lever.* — If after such an inspection the judges shall find the machine to be in proper order, they shall sign a certificate to that effect, which shall be returned to the board with other equipment; and after signing such certificate they shall remove the metal seal on the operating lever at the time set for the opening of the polls, and said lever shall then be operated only by duly qualified voters for the purpose of registering their respective votes.

(d) *Machine to remain locked until polls opened; test vote after repair or adjustment.* — The machine shall remain locked against voting until the polls

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are opened, and shall not be operated except by voters in voting. Should it be necessary, in the opinion of a custodian making a repair or adjustment to a machine in use while the polls are open, he shall be authorized to test vote the same provided such is accomplished in the presence of two election judges, one from the majority party and one from the principal minority party. A written record of such test vote shall be made as set forth in subsection (e) of this section and otherwise in accordance with such regulations as a local board may prescribe.

(e) *Counters to be adjusted.* — If any counter is found not to register zero (000), the judges shall immediately notify the custodian, or the board who shall, if practicable, adjust or cause the counters to be adjusted at zero (000); but if it shall be found impracticable for the custodian or other person authorized by the board to arrive in time so as to adjust such counter before the time set for opening the polls, the judges shall immediately make a written record of the designation or designating letter or number of each counter, together with the numbers registered thereon, hereinbelow called the initial numbers, and shall sign and post the same upon the wall of the polling place, where it shall remain until the polls are closed; if the machine is so constructed as to furnish a printed or photographic record of the setting of the counters and the numbers registered thereon by voting and if it shall be found impracticable for the custodian or other person authorized by the board to arrive in time so as to adjust such counter before the time set for opening the polls there shall be posted as above provided in lieu of the written record of the judges the printed or photographic record of the counter setting furnished by the machine. In filling out the return of the election, if the final number of such counter is greater than the initial number, the election officers shall subtract the initial number from the final number and enter the difference on the returns as the vote for the candidate or on the question represented by such counter; if the final number of such counter is less than the initial number, the judges shall add one thousand to the final number and shall subtract the initial number from the sum so ascertained, and shall enter upon the returns, as the vote for the candidate or on the question represented by such counter the final number plus one thousand less the initial number.

(f) *Location of machine.* — The exterior of the voting machine, and every part of the polling place shall be in plain view of the judges and watchers. Every voting machine shall be located in the polling place, in such a position that, unless its construction shall require otherwise, the ballot can be seen plainly by the judges and watchers when the machine is not occupied by a voter. The judges shall not themselves be, nor allow any other person to be, in any position that will permit one to see or ascertain how a voter votes, or how he has voted. The said judges, or one of them, shall inspect the face of the machine at frequent intervals, to see that the ballot labels are in their proper places, and that the machine has not been damaged or tampered with.

(g) *Counters not to be exposed; repairs and adjustments.* — During an election, the door or other covering of the compartment containing the counters of the machine, shall not be unlocked or opened, or the counters exposed, except by the action of the proper custodian of voting machines for good and suffi-

cient reason, statement of which shall be made in writing and signed by him and attested by the signatures of the judges, or except upon the written order of the board for good and sufficient reason which shall be stated in the order. No repairs or adjustments shall be made to any voting machine during an election unless made by a custodian or deputy custodian, for good and sufficient reason and a complete statement shall be prepared for each repair or adjustment made. Such statement shall contain information as to the repairs made, the reason for the malfunction of the machine, the duration of the period of time that the machine is out of order and shall be filed as a permanent record, the original in the custody of the board, one copy to the custodian and one to one of the attesting judges.

(h) *Adjustment in primary elections.* — In primary elections, before a voter is admitted to the voting machine, it shall be adjusted by the judge in charge thereof, so that such voter shall only be able to vote for the candidates or offices of that party with which he is affiliated.

(i) *Meaning of "judges".* — As used in this section and § 16-12 of this subtitle, the word "judges" shall refer to a combination of judges which shall, at all times, include judges affiliated with the majority party and the principal minority party. (1957, ch. 739, § 1; 1961, ch. 352; 1963, ch. 736; 1967, ch. 392, § 1; 1971, ch. 352, § 1; 1976, ch. 639; 1977, ch. 295, § 4; 1987, ch. 11, § 1; 1988, ch. 6, § 1.)

### § 16-12. Instruction and assistance in voting.

(a) *Instructions.* — With the aid of the diagrams authorized in § 16-10 (c) (1) of this article and the mechanically operated model, the judges, if requested by the voter, shall instruct each such voter, before he enters the voting machine booth, regarding the operation of the machine, and shall give the voter opportunity personally to operate the model.

(b) *Assistance to certain persons.* — Any voter who requires assistance to vote by reason of blindness, disability, or inability to read the English language or write may be given assistance by a person of the voter's choice, not to include the voter's employer or agent of that employer or officer or agent of the voter's union.

(c) *Manner of giving assistance; further instructions.* — (1) Assistance in marking their ballots or operating a voting machine shall be given to voters who shall declare under oath to the judges that by reason of blindness, disability, or inability to read the English language or write they are unable without assistance to mark their ballots or operate the voting machine. No ballot shall be marked under this section or voting machine operated until a majority of the judges shall be satisfied of the truth of the fact stated in such affidavit. Upon making and filing with the judges such affidavit, the voter shall retire to one of said booths or voting machines with any person of the voter's choice, not to include the voter's employer or agent of that employer or officer or agent of the voter's union, or with two judges of opposite political parties. Then and there the person whom the voter has selected, or in case the voter has selected no one, one of said judges in the presence of the other, shall mark



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the ballot or operate the voting machine as such voter shall direct. The only assistance which it shall be lawful for said person or for the said judges to give the voter is to mark the ballot or operate the voting machine, as the voter shall direct, without prompting or suggestion from them, or either of them.

(2) If, however, any voter, after entering the voting machine booth, shall ask for further instructions concerning the manner of voting, then two of the judges of opposite political parties shall give him such instructions, but no such judge shall, in any manner, request, or suggest, or seek to persuade or induce any such voter to vote any particular ticket, or for any particular candidate, or for or against any particular question. After giving such instructions, the judges shall retire, and the voter shall forthwith vote.

(d) *Person accompanying voter into booth or machine.* — A voter may not be accompanied into a voting booth or voting machine by any person over the age of five years unless the affidavit required by subsection (c) has been accepted by the election judges. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1977, ch. 295, § 5; 1983, ch. 372.)

### § 16-13. Time allowed for voting.

No voter shall remain within the voting machine booth longer than four minutes, if there are other voters awaiting an opportunity to register their vote, except that an additional three minutes shall be allowed if there are constitutional amendments or referenda to be voted upon. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 16-14. Challenge of right to vote.

(a) *Ground for challenge.* — No person's right to vote shall be challenged at the poll on any ground but identity.

(b) *Procedure.* — When the right of any person to vote shall be challenged, the challenge shall be made and its validity determined immediately before or after such person receives a voting authority certificate or card and before the challenged voter enters the voting booth to cast his ballot. The person challenging shall be put under oath by a judge and assign his reason for the challenge, and one of the judges shall administer to the challenged voter an oath to make true answers to questions. The judges shall question the challenged voter touching the cause of the challenge, and if a majority of the judges, after the questioning is concluded, is of the opinion that he is the person so registered, his vote shall be received accordingly. Unless a majority of the judges is of the opinion that the challenged voter is entitled to vote, his vote shall not be received, and the word "Rejected" shall be written on his voting authority certificate or card. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 16-15. Closing of polls.

(a) *Time of closing.* — The polls shall be officially closed at 8 p.m. except that all qualified voters who are then waiting in line to vote shall be permitted to do so by the judges.

(b) *Locking and sealing of machines.* — When the last such voter in the polling place has voted, the judges shall immediately lock and seal the operating lever or mechanism of the machine, or of each machine, if more than one, so that the voting and counting mechanism will be prevented from operation, and they shall then sign a certificate stating:

- (1) That the machine has been locked against voting and sealed;
- (2) The number of voters, as shown on the public counters;
- (3) The number on the seal which they have placed upon the machine;
- (4) The number registered on the protective counter or device; and
- (5) The number or other designation of the voting machine.

(c) *Comparison of numbers of voters shown.* — The judges shall then compare the number of voters, as shown by the counter of the machine, with the number of those who have voted as shown by the voting authority cards. (1957, ch. 739, § 1; 1961, chs. 326, 352; 1967, ch. 392, § 1.)

### § 16-16. Tabulation of votes.

(a) *Manner of tabulating.* — The judges, in the presence of any candidate, the duly accredited watchers, and all other persons who may be lawfully within the polling place, shall then proceed as follows to tabulate the votes cast:

(1) (i) On machines that do not furnish a printed or photographic record of the setting of the counters and the numbers registered thereon by voting, the judges shall make visible the registering counters, and, for that purpose, shall unlock and open the doors or other covering concealing the same, giving full view of all of the counter numbers. The judges, under the scrutiny of the watchers, and in the order of the offices as their titles are arranged on the machine, shall read and announce, in distinct tones, the designation or designating number and letter of each counter for each candidate's name, the result as shown by the counter numbers, and/or the designation or designating numbers or letters on each counter, and the result as shown by the counter numbers for and against each question voted on.

(ii) The counters shall not be read consecutively along the party rows or columns, but shall always be read along the office columns or rows, completing the canvass on each machine for each office or question before proceeding to the next.

(iii) The vote as registered shall be entered by the judges, in ink, on duplicate statement of votes cast, or return sheets, which, after the canvass is completed, shall be signed by the judges.

(iv) If more than one voting machine is used in any precinct, the votes registered on each machine shall be ascertained in like manner, and separately entered in appropriate spaces on the duplicate statements of votes cast, or return sheets.

(v) The total vote cast for each candidate, and for and against each question, shall then be computed and entered on the duplicate statements of votes cast, or return sheets.

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(2) (i) In the case of all machines so constructed as to furnish a printed or photographic record of the total vote registered on the various counters, it shall not be required that the counter department be opened and the counters exposed to view but the printed or photographic record shall be considered as the official return sheets for that machine. In the case of such machines, immediately following the closing of the polls and after the last voter has voted the judges shall immediately lock and seal each machine as hereinbefore provided and shall then cause the machine to produce the printed or photographic records thereon and shall thereupon proceed as in the case of ordinary voting machines, except to the extent to which the furnishing of the printed or photographic record makes such steps unnecessary.

(ii) In the event of a mechanical failure of the printing or photographic mechanism in any machine equipped with such mechanism for recording the setting of the counters and the numbers registered thereon, the procedure to be followed from and after such failure, whenever such failure occurs, shall be the same as in the case of machines not equipped with such mechanism.

(3) If the label or line that was visible before the polls opened is now invisible, one judge shall draw and date a new line on the paper roll and all judges canvassing the machine shall initial the line. The paper roll shall be left intact in the voting machine.

(b) *Preparation of general return sheets or tally sheets.* — (1) When the canvass of all voting machines in the polling place has been completed, the judges shall then prepare in ink, a general return sheet (sometimes called a tally sheet) reporting the vote registered on each machine, the vote cast for each candidate, the vote cast for and against each question, the number of voters who have voted, as shown by the list of voters, and the number who have voted on each machine, as shown by the public counters, and also the number registered on the protective counter or device on each machine immediately prior to the opening of the polls and immediately after the closing thereof and the sealing of the machine. The number or other designation of each machine used shall also be entered thereon, whereupon a general return sheet (sometimes called a tally sheet) shall be signed by all of the judges.

(2) In the case of primary elections, separate sets of return sheets in duplicate may be prepared for each party, or the tabulations for each party may be entered on one set of return sheets, in duplicate, said choice of returns to be in the discretion of the board.

(3) The registering counters of the voting machines shall remain exposed to view until the said returns and all other reports have been fully completed.

(c) *Proclamation of result of votes cast; exception as to Montgomery County.* — (1) Except in Montgomery County polling places for any election at which the use of electronically tabulated punchcard ballots has been authorized by the State Administrative Board of Election Laws pursuant to § 16A-1 of this article, the proclamation of the result of the votes cast shall be announced distinctly and audibly by one of the judges, who shall read the names of each candidate, the designation or designating numbers and letters of his counters and the vote registered on each counter, and also the vote cast for and against each question submitted.

(2) During such proclamation ample opportunity shall be given to any person lawfully present to compare the results so announced with the counters of the machine, or the printed or photographic record thereof in the case of machines so constructed as to furnish a printed or photographic record of the setting of the counters and the numbers registered thereon by voting which have furnished the same, and any necessary corrections shall then and there be made by the judges, after which the doors or other cover of the voting machine shall be closed and locked.

(d) *Signing and sealing of return sheets; disposition thereof.* — The return sheets shall be signed by each of the judges. If any judge shall decline to sign such return, he shall state his reason therefor in writing, and a copy thereof signed by himself shall be enclosed with such return. Each of the return sheets shall be enclosed in an envelope, along with a printed or photographic record of the setting of the counter and the numbers registered thereon from each mechanical voting machine which furnishes printed or photographic records. The envelope shall then be sealed and each of the judges shall write his name across the fold of the envelope.

(1) One of the envelopes shall be directed to the clerk of the circuit court of the county; and

(2) One to the county commissioners or county council of the county or to the Mayor of the City of Baltimore, as the case may be; and

(3) The envelope containing the general return sheet, or tally sheet, shall be directed to the board.

(e) *Delivery of keys of machines.* — The judges shall promptly deliver the keys of the voting machine, or of each voting machine, as the case may be, enclosed in a sealed envelope, to the official authorized by law to receive the same, if the construction of the voting machine shall permit their separate return. Said envelope shall have endorsed thereon a certification of the election officers, stating the number of the machine, the precinct where it has been used, the number on the seal, the number on the protective counter or device at the close of the polls and a statement that the certificate is correct in all respects.

(f) *Report to board.* — The judges of the several precincts shall, immediately upon completion of the tabulation of the vote, report the unofficial result to the board and also the time when the tabulation of the vote was completed.

(g) *Posting statement.* — Immediately after the vote has been ascertained, the statement thereof may be posted on the door of the polling place.

(h) *Removal of machines.* — As soon as possible after the completion of the count, the board shall have the voting machine properly boxed or securely covered and removed to a place of storage to be designated by the board. (1957, ch. 739, § 1; 1961, chs. 326, 352; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1972, ch. 570, § 1; 1977, ch. 295, § 5; 1978, ch. 402; 1979, ch. 349; 1982, ch. 820, § 1; 1987, ch. 11, § 1.)

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**Editor's note.** — Section 6, ch. 820, Acts 1982, provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

### § 16-17. Delivery of return sheets and registration records.

After the proceedings set forth in § 16-16 of this article, two of the judges, each representing a different political party, shall take into their possession the registers, or the binder containing the registration cards for the precinct and shall take charge of the statements of the votes cast, sealed up in their envelopes as aforesaid, and the meeting of the judges shall then be dissolved. Thereupon, the judges shall forthwith or, at the discretion of the board, not later than twelve o'clock noon on the day following the election deliver the registers or the binder containing the registration cards to the board, and the statements to the respective officers to whom they are addressed as aforesaid, or to the duly designated agents of these officers, and shall take receipts therefor. No judge required to obtain a receipt as herein provided shall receive pay for his services unless he produces that receipt. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1974, ch. 196.)

### § 16-18. Use of single general return sheet by local board.

Notwithstanding § 14-1 of this article or any other provision of this article pertaining to the use of three return sheets, a local board may adopt a procedure using a single general return sheet under the following conditions:

(1) The members of the local board shall sign a certification that every counter used in the election has been canvassed and verified by the board; and

(2) At the time of submitting the certified copies of returns required by § 17-5 of this article, the local board shall furnish a copy of the certification specified in paragraph (1) of this section. (1976, ch. 82; 1984, ch. 255; 1987, ch. 11, § 1; ch. 64.)

## ELECTRONICALLY TABULATED PUNCHCARD BALLOTS

### § 16A-1. Punchcard ballot voting system in Montgomery County.

(a) *System authorized.* — In Montgomery County or a portion thereof, ballots may be in the form of one or more punchcards which may be electronically tabulated.

(b) *Approval by State Administrative Board of Election Laws.* — Before the local board in Montgomery County may use electronically tabulated punchcard ballots, the particular voting system, including the form of ballot arrangement, the nature of the punchcard used, the method of marking ballots, and any sorting or counting devices must be approved by the State Administrative Board of Election Laws. Before approving a punchcard ballot system for use, the State Administrative Board of Election Laws shall be satisfied that the system is accurate, efficient, free from the likelihood of mechanical

breakdowns, understandable by voters, that it is subject to recount by some other system, and that it otherwise complies with the laws of Maryland.

(c) *Application to Board.* — The Montgomery County board of supervisors of elections shall make written application to the State Administrative Board of Election Laws, separately for each primary, special, or general election for which approval is sought, to use an electronically tabulated punchcard ballot voting system. The application must reach the State Board no later than six months prior to the election and shall include the maximum number of polling places in which the system is to be used. The State Administrative Board of Election Laws shall make a decision on the application and communicate that decision in writing to the local board within 60 days of receiving the application.

(d) *Rules and regulations.* — The use of an electronically tabulated punchcard ballot voting system in Montgomery County shall be governed by general rules and regulations promulgated by the State Administrative Board of Election Laws and by conditions attached by that Board to the granting of the application from the Montgomery County board. The rules, regulations and conditions shall be consistent with the purposes of this subtitle, and shall include a description of the voting system, specifications for equipment required to implement the system, procedures for use of the system in the polling places on election day and for the canvass of votes following the election, and provisions to insure the following:

- (1) The secrecy of the ballot, in both the voting and tabulating processes.
- (2) A process whereby each voter is permitted to vote at any election for all persons and offices for which he is entitled to vote; to vote for as many persons for an office as he is entitled to vote for; and to vote for or against any question upon which he is entitled to vote.
- (3) Rejection of all votes for any office or measure when the number of votes cast by a voter exceeds the number that voter is entitled to cast.
- (4) Correct counting of votes on ballots on which the proper number of votes has been indicated.
- (5) A process whereby each voter is permitted to vote by one punch or mark for more than one candidate, if this method of election is required by law.
- (6) The casting and counting of write-in votes, if this method of voting is permitted by law.
- (7) The tabulating and recording of votes by precinct for or against any candidate, candidates, or question.
- (8) A process whereby ballots which are cast early in the voting day may be transferred by election judges to a central counting location and be prepared prior to the hour of closing of the polls for tabulation, thereby facilitating the prompt reporting of election returns after the hour of the closing of the polls. The tabulation, release or announcement of election results or the duplication of damaged ballots, prior to the hour of the closing of the polls is prohibited.

(e) *Penalty.* — In addition to any other penalty provided in this article, any person convicted of a violation of this section shall be punished by a fine of not less than \$500 or more than \$1,000 in the discretion of the court. (1975, ch. 877, § 2; 1979, ch. 386.)

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**§ 16A-2. Punchcard ballots in Harford County.**

Section 16A-1 of this article, and any other provisions of this article relating to the use of punchcard ballots, are applicable in Harford County. (1981, ch. 476.)

**VOTING SYSTEMS**

**§ 16B-1. Compliance with subtitle.**

The State Administrative Board of Election Laws, hereinafter referred to in this subtitle as the "State Board," shall exercise its authority under § 1A-1 (e) (3) relating to voting systems in accordance with the provisions of this subtitle. (1978, ch. 347.)

**§ 16B-2. Review, approval, certification and decertification of systems.**

(a) *Review and evaluation of systems.* — The State Board shall periodically review certified voting systems and evaluate alternative systems to assure that elections are conducted with equipment best designed to:

- (1) Protect the secrecy of the ballot;
- (2) Protect the security of the voting process;
- (3) Count and record all votes accurately; and
- (4) Protect all other rights of voters and candidates.

(b) *Approval of systems.* — (1) The State Board may not approve any voting system unless it meets the standards in subsection (a) of this section and the public interest will be served by approval of the system.

(2) In determining if the voting system meets the required standards and would serve the public interest, the State Board shall consider, among other factors:

- (i) The commercial availability of the system and its replacement parts and components;
- (ii) The efficiency of the system;
- (iii) The likelihood of mechanical breakdown;
- (iv) The system's ease of understanding to the voter;
- (v) The convenience of voting afforded by the system;
- (vi) The timeliness of the tabulation and reporting of election returns;
- (vii) The potential for an alternative means of verifying the tabulation; and
- (viii) The cost of implementing the system.

(3) A voting system approved hereunder need not satisfy the requirements of §§ 14-1, 16-1 (b), 16-3, 16-5, 16-11, and 16-16 if the State Board finds that those requirements are inappropriate to the system under consideration and compliance therewith is not necessary to protect the rights of voters and candidates.

(c) *Certification.* — Upon the approval of a voting system by the State Board and the adoption by the State Board of rules and regulations governing

its use, the State Board shall certify the system for use and so notify the local boards.

(d) *Decertification.* — If the State Board determines that a system it has previously certified no longer merits certification, it may decertify that system and, if one or more of the standards in subsection (a) (1), (2), and (3) of this section are no longer met, shall decertify that system. The State Board shall determine when, or upon what conditions, the decertification becomes effective. In no event may the decertification (or an amendment to the rules and regulations having the effect of decertification) become effective for a subdivision whose local board has acted in reliance upon the certification of the system involved, and upon whom decertification would have a significant and adverse impact, unless the local board and the governing body of that subdivision consent thereto or the State Board determines, with respect to that subdivision, that the system no longer meets all of the standards set forth in subsection (a) (1), (2), and (3) of this section. (1978, ch. 347; 1987, ch. 11, § 1.)

### **§ 16B-3. Notice to local boards.**

The State Board shall notify the local boards of each system under review and each system approved, certified, or decertified. (1978, ch. 347.)

### **§ 16B-4. Adoption of rules and regulations.**

The State Board, in exercising its authority under this subtitle, shall adopt rules and regulations governing the procedures for its review, approval, certification, and decertification of voting systems. (1978, ch. 347.)

## **BOARD OF CANVASSERS**

### **§ 17-1. Custody of return sheets.**

It shall be the duty of the county commissioners, county councils, clerks of court, mayor and boards, or their duly designated agents, respectively, to keep safely, under lock and key, the original return sheets or statements of votes cast and general return or tally sheets. The officers or designated agents to whom the statements are so delivered shall securely keep the same with the seals unbroken. When the board of canvassers shall have assembled and organized according to law, as hereinafter provided, the clerks of court, county commissioners, county councils, mayor and boards, or their designated agents, shall immediately deliver or transmit to the board of canvassers the return sheets or statements of votes cast and general return or tally sheets in the sealed envelopes. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1974, ch. 196.)

### **§ 17-2. Organization of local board of canvassers.**

(a) *Organization generally.* — Each board shall constitute a board of canvassers for its county or city, as the case may be. On or before the second day



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following every primary or general election, and on the first day following every special primary or special election, the board of canvassers for each county and for the City of Baltimore shall meet at the usual place for holding the circuit court of the county or at the office of the board. Each board of canvassers shall elect a chairman and secretary from their number. Each member of the board of canvassers shall take an oath, which shall be administered and recorded by the clerk of the court, to truly canvass, add up and declare the votes as required by law. At their first meeting a majority of the whole board of canvassers shall be a quorum. If a majority shall not attend as aforesaid, the canvassers present shall adjourn to the next day, when they shall meet again between the same hours. The canvassers shall perform the duties required by law; and all questions arising in the course of their proceedings shall be determined by a majority of the canvassers. All the sessions, deliberations and proceedings of the board of canvassers shall be public, and the candidates and their counsel shall have the right to attend and inspect the original statements and returns, and all other documents and records.

(b) *Substitute members.* — In the event any member of the board is not present at the time fixed in subsection (a) of this section for conducting the canvass, any substitute member of the board may be sworn in as a member of the board of canvassers, provided that at all times at least one member of the board of canvassers shall be a member of the same political party as the minority member of the board. (1957, ch. 739, § 1; 1961, chs. 345, 686; 1963, ch. 178; 1967, ch. 392, § 1; 1971, ch. 2, § 1; 1987, ch. 11, § 1; 1990, ch. 165.)

*Effect of amendment.* — The 1990 amendment, effective July 1, 1990, inserted "or before," and deleted "between the hours of ten o'clock a.m. and one o'clock in the afternoon" following "special election" in the second sentence of (a).

**§ 17-3. Statements of votes cast.**

(a) *Preparation of statements.* — The board of canvassers, upon being duly organized, shall open all the original statements of votes cast, general returns, tally sheets delivered or transmitted to them, and shall canvass and add up the votes and make abstracts or statements thereof in the following manner, as the case may require: All votes for Governor shall be on one sheet; in like manner, all votes for other State officers shall be on another sheet; all votes for presidential electors, on another sheet; all votes for and against continuance of an appellate judge in office, on another sheet; all votes for judges of other courts, on another sheet; all votes for Senators to the General Assembly, on another sheet; all votes for Delegates to the General Assembly, on another sheet; and all votes for any other officer, on a separate and appropriate sheet; all votes for or against any proposition which may be submitted to a vote of the people, on another sheet. Three originals shall be made of each abstract or statement; upon each original, all numerals or words representing a number of votes cast shall be either printed or typed.

(b) *Omissions or mistakes in statements or tally sheets.* — If, upon proceeding to canvass the votes, it shall clearly appear to the canvassing board for the city or county that in any statement or tally sheet produced to them, certain

matters are omitted which should have been inserted, or that any mistakes exist, they shall immediately issue a subpoena to the election officials who prepared and certified the returns. These persons shall forthwith attend and shall make such corrections as the facts in the case require; such changes shall not alter any decision previously duly made by them, but shall cause the canvass to be correctly stated. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1972, ch. 570, § 1; 1974, ch. 91; 1978, ch. 210, § 3.)

**Rejection of returns by canvassers because seals on ballot boxes broken.** — Canvassers may not reject returns from a precinct because the seals and strips of paper on the ballot boxes have been torn, broken and virtually destroyed. The canvassers, as such, have no right to have ballot boxes before them; they should be in the custody of the clerk. Powers conferred on canvassers are wholly different from those conferred on the same individuals as supervisors; the duties of the former are purely ministerial. Board of Canvassers of Election v. Noll, 127 Md. 296, 96 A. 452 (1915).

**Canvassers are not authorized to correct mistakes.** Board of Canvassers of Election v. Noll, 127 Md. 296, 96 A. 452 (1915).

**Their duties are purely ministerial.** — In Price v. Ashburn, 122 Md. 514, 89 A. 410

(1914), it was decided flatly: "It has been repeatedly held that the duties of canvassing officers are purely ministerial." And that: "The canvassers could only canvass and declare the result as shown by the returns." Bowling v. Weakley, 181 Md. 496, 30 A.2d 791 (1943).

**And they could not decide whether candidate-elect was ineligible.** — The board of canvassers was not authorized to decide whether the candidate-elect was ineligible to take his oath as a member of the House of Delegates. Bowling v. Weakley, 181 Md. 496, 30 A.2d 791 (1943).

**Authorized corrections should be promptly made.** — Such corrections as are authorized by the statute should be promptly made. Board of Canvassers of Election v. Noll, 127 Md. 296, 96 A. 452 (1915).

#### § 17-4. Verification of voting machines.

(a) *Examination of machines; certification.* — (1) Within ten days after each election, each board as a part of its canvass shall verify the votes cast on the voting machines. The paper roll shall be inspected for votes cast for write-in candidates, and a tabulation of all such votes cast shall become a part of the official canvass. In the case of voting machines which have not provided a printed or photographic record of the numbers registered on the counters by voting, the board shall make a record of the number of the seal and the number on the protective counter, if one is provided, of each voting machine used in each election precinct or district in each election; it shall open the counter compartment of each machine and without unlocking the machine against voting, shall verify the votes cast.

In the case of voting machines which have provided a printed or photographic record of the numbers registered on the counters by voting the board shall verify the votes cast as shown by the printed or photographic record pertaining to each machine used in each election precinct or district in each election. Before making any verification, the board shall give notice, in writing, to the custodian of the voting machines, to the chairman of the central committee of any party in the counties or in Baltimore City which shall have nominated candidates for any general election or shall have candidates for nomination at any primary election and to every candidate who is not a candidate or nominee of a political party, each of whom has the right to appoint and designate two representatives who each have the right personally to examine and make a copy of the vote recorded on the machines.

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(2) Upon completion of verification the members of the local board shall sign a certification that every counter used in the election has been canvassed and verified by the board.

(3) At the time of submitting the certified copies of returns required by § 17-5 of this article, the local board shall furnish a copy of the certification specified in paragraph (2) of this subsection.

(b) *Correction of returns.* — If upon such verification, it shall be found that the original returns have been incorrectly made from any machine or machines, a statement in writing shall be prepared, giving in detail as to each such machine, the result of the verification. Such statement shall be witnessed by the persons present and shall be filed with the other returns of said election. This return shall thereupon supersede the returns filed by the judges of the election precinct in which the unofficial count was made.

(c) *Testing counting mechanism.* — If during the verification, any discrepancy cannot be reconciled, the board, after the expiration of the time within which petition for recount may be made, with the assistance of the custodian of the machine, shall unlock the voting and counting mechanism of the machine. In the presence of the authorized representative present, they shall proceed to thoroughly examine and test the machine to determine and reveal the true cause or causes, if any, of the discrepancy in the returns from such machine. Before testing the counters, they shall be reset at zero, after which each counter shall be operated at least one hundred times. After the completion of such examination and test, the custodian shall then and there prepare a statement, in writing, giving in detail the result thereof, and such statement shall be witnessed by the persons present and shall be filed in the office of the board. (1957, ch. 739, § 1; 1961, ch. 352; 1967, ch. 392, § 1; 1976, ch. 486; 1977, ch. 295, § 6; 1984, ch. 255; 1987, ch. 11, § 1.)

### § 17-5. Certified copies of returns.

(a) *Duty to transmit copies to Governor, State Administrative Board of Election Laws and court clerks; recording.* — On the second Friday after any primary or general election or, if the canvass is completed after this time, within 48 hours after its completion, and as soon as possible after any special primary or special election, the board of canvassers shall transmit 1 of each of the statements made by them, attested by the signature of their chairman and secretary, to the Governor, to the State Administrative Board of Election Laws and to the clerk of the circuit court for the county who shall enter the same of record.

(b) *Write-in candidates.* — In all general elections where write-in votes have been cast, the board of canvassers shall transmit a statement of returns as to such write-in votes.

(c) *Manner of delivery of copies to Governor and State Administrative Board of Election Laws.* — Immediately after the adjournment of the board of canvassers, the secretary of the board shall deposit the statements in the nearest post office, addressed respectively to the Governor and to the State Administrative Board of Election Laws, or shall actually deliver the state-

ments to the office of the Governor and the office of the State Administrative Board of Election Laws.

(d) *Tabulation to be published.* — (1) The canvassing board shall also make a statement of the whole number of votes given in each precinct and county or city, with the names of the candidates and the number of votes given for each in tabular form, and the name of any appellate judge at an election for his continuance in office and the number of votes for or against his continuing, in tabular form.

(2) The canvassing board, if the same can be done without charge, shall cause a copy of such statement to be published in one or more of the newspapers printed in the counties or in the City of Baltimore. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 615, § 2; 1970, ch. 103; 1971, ch. 2, § 1; ch. 352, §§ 1, 4; 1974, ch. 91; 1978, ch. 210, § 3; 1982, ch. 820, § 1; 1984, ch. 385; 1985, ch. 564; 1990, ch. 90.)

**Effect of amendment.** — The 1990 amendment, effective July 1, 1990, rewrote (b).

**Editor's note.** — Section 6, ch. 820, Acts 1982, provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

**Conditions for reporting of results of write-in voting invalid.** — The State may not condition the reporting of the results of write-

in voting on candidate certification, whether or not accompanied by a fee. *Dixon v. Maryland State Admin. Bd.*, 878 F.2d 776 (4th Cir. 1989).

**Applied in** *Wood v. Putterman*, 316 F. Supp. 646 (D. Md.), aff'd, 400 U.S. 859, 91 S. Ct. 104, 27 L. Ed. 2d 99 (1970).

**Stated in** *Dixon v. Maryland State Admin. Bd. of Election Laws*, 686 F. Supp. 539 (D. Md. 1988).

## § 17-6. Declaration of election or continuance in office.

† In the canvass of votes by the canvassing board for the city or county herein provided, said board shall, unless otherwise provided in the Constitution of this State, declare who is elected, nominated or continued, as the case may be, to, for, or in any city or county office or to or for any office voted for only within the territory or such city or county. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1978, ch. 210, § 3; 1979, ch. 267.)

## § 17-7. Errors of board of canvassers.

(a) *Corrections.* — Whenever it shall be made to appear by affidavit filed within the time period stated in § 13-1 of this article that errors have occurred in the determination of the board of canvassers of any county or city in the State, the circuit court of the county may by order require the board of canvassers to correct such errors or show cause why such corrections should not be made; and in the event of the failure of the board of canvassers to make such corrections, or show cause as aforesaid, said court may compel the board of canvassers by writ of mandamus to correct such errors, and if the board of canvassers shall have made its determination and dissolved, the court may compel it to convene for the purpose of making such corrections. For the purpose of making such corrections as the court shall order, the meeting of the board of canvassers shall be deemed a continuation of its regular session, and the statements and certificates shall be made and filed as the court shall

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direct, and so far as the same shall vary from the original statements and certificates, the statements and certificates made under the order of court shall stand in lieu thereof, and shall in all cases have the same effect as if corrected statements had been a part of the original statement required by law.

(b) *Procedure.* — The practice in such cases shall be as in mandamus proceedings, and the court shall determine the time for the speedy hearing thereof, in its discretion; and for the purpose of service of papers and other proceedings the board of canvassers, as organized and existing at the time of making the original canvass, shall be deemed a continuing board. There shall be the same right of appeal as in other mandamus cases, but such appeal shall be taken within five days from the date of the decision complained of, and shall be heard and decided by the Court of Special Appeals as soon after the transmission of the record as possible. The testimony taken in such cases shall be sent to the Court of Special Appeals as part of the record. (1957, ch. 739, § 1; 1958, ch. 38; 1967, ch. 392, § 1; 1976, ch. 472, § 8; 1982, ch. 820, § 1.)

*Editor's note.* — Section 6, ch. 820, Acts 1982, provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

**Appeal to lower court before application**

*for mandamus.* — Persons injured by error of canvassers should appeal to the lower court to require an error to be corrected before applying for mandamus to compel such correction. *Dorsey v. Ennis*, 167 Md. 444, 175 A. 192 (1934).

**§ 17-8. Release of voting machines.**

(a) *Locking and sealing; requirements for opening.* — (1) Except as provided in paragraph (2) of this subsection, every voting machine used in any election shall remain locked and sealed after the period for canvassing of the vote that is provided for in § 17-5 of this article for as much longer as may be necessary or advisable because of any contest over the result of the election.

(2) A voting machine may be opened and the data and figures in it examined in the presence of the officer having the custody of such machine upon the order of any court of competent jurisdiction, or by direction of any legislative committee to investigate and report upon contested elections affected by the use of such machine.

(b) *Inspection of machines.* — If within 2 days after the results of the canvass are declared official, the board shall receive notice in writing of any contest over the result of the election, then such board, within 5 days from the receipt of such notice and in the presence of the principals involved in any such contest or their authorized representatives, shall inspect and examine the voting machines containing the votes cast for such contested office, and shall make a record of the votes for such office upon those machines.

(c) *Evidence of record of votes.* — Such record shall be received as evidence as fully as if proved by the oral testimony of the persons who shall sign the same, or by the production of said voting machines in court or before said board.

(d) *Release of machines.* — After such inspection, examination, and recording of the results, and after permission to release the voting machines has

been granted by the State Administrative Board of Election Laws, the voting machines shall be released and made available for use in any succeeding election. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1971, ch. 352, § 1; 1985, ch. 564.)

### § 17-9. Publication of copies of return.

Each local board of supervisors of elections shall publish a sufficient number of copies of the complete election return and these copies shall be available to the general public at cost. They shall be a complete and accurate copy of the return by precinct in that political subdivision for the primary or general election, as the case may be. (1971, ch. 333.)

## BOARD OF STATE CANVASSERS

### § 18-1. Membership and duties.

(a) *Membership; secretary.* — (1) The Secretary of State, Comptroller, State Treasurer, Clerk of the Court of Appeals and Attorney General shall constitute the Board of State Canvassers, three of whom shall be a quorum.

(2) The State Administrator of Election Laws shall serve as secretary to the Board.

(3) The State Treasurer may appoint, as the Treasurer's designee, a deputy treasurer to serve on the Board of State Canvassers.

(b) *Meetings.* — (1) The State Administrator of Election Laws shall convene the meeting of the Board of State Canvassers to be held at his office within 35 days after any State election, or any election at which a candidate for member of the Congress of the United States is to be elected.

(2) If a majority does not attend, those present shall adjourn until the next day, at which time they shall proceed, without further delay, to canvass the votes.

(c) *Tabulation of votes.* — (1) The Board of State Canvassers, when thus formed, shall, from the certified copies of the statements made by the boards of city and county canvassers, make a statement of the whole number of votes given at such election for the several candidates for the federal and State offices named in the statements whose candidacy was filed with the State Administrative Board of Election Laws and of the whole number of votes for and against continuance of an appellate judge in office.

(2) The Board of State Canvassers then shall determine and declare what candidates, by the greatest number of votes, have been elected to each office and what judges, by the greater number of votes for than against, have been continued in office.

(3) The Board shall make and subscribe on a proper statement a certificate of such determination, and shall deliver the same to the Administrative Board.

(d) *Dissents and protests.* — (1) If any of the canvassers shall dissent from the decision of the Board of State Canvassers, he shall state in writing, the reason for such dissent.

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(2) If any of the acts or proceedings of the Board of State Canvassers shall appear to any one of the canvassers to be irregular and illegal, such canvassers shall protest the same, in writing, setting forth distinctly the grounds of his protest; the canvasser so dissenting or protesting shall deliver his dissent or protest, signed with his proper name, to the said State Administrative Board, which shall file the same in its office.

(3) The said Administrative Board shall also keep on file in its office the copies of the statements made by the board of city and county canvassers.

(e) *Adjournments.* — The Board of State Canvassers shall have power to adjourn, from day to day, during a period not exceeding five days. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1969, ch. 555, § 2; 1976, ch. 40; 1978, ch. 210, § 3; 1985, ch. 564; 1986, ch. 5, § 1; 1988, ch. 321.)

Cited in *Pohoryles v. Mandel*, 312 F. Supp. 334 (D. Md. 1970).

### § 18-2. Commissions of election.

(a) *Duties of State Administrative Board of Election Laws.* — The State Administrative Board of Election Laws shall record in its office, in a book kept for that purpose, each certified statement and determination which shall be delivered to it by the Board of State Canvassers, and every dissent or protest which shall have been delivered by a canvasser. The said Administrative Board shall, without delay, transmit a copy under seal of its office of such certified determination to each person thereby declared to be elected, and like copy to the Governor; and shall cause a copy of such certified statement and determinations to be published in one newspaper in the City of Annapolis and one in the City of Baltimore.

(b) *Governor to issue commissions.* — In conformity with the statements and determinations made as aforesaid by the Board of State Canvassers, or the several boards of canvassers, the Governor shall issue commissions to the different persons elected, as now provided by the Constitution and laws of this State. However, the Governor shall not issue a commission to any person unless and until he has received a certification from the State Administrative Board of Election Laws that all reports or statements of contributions and expenditures required to be filed by or for the person by § 26-11 of this article and due before the person will assume office, have been filed.

(c) *Certificates for United States Senators and members of House of Representatives.* — In addition, the said Administrative Board shall likewise without delay transmit a copy under seal of its office of such certified determination and statement as to the election of a United States Senator to represent the State of Maryland in the Senate of the United States to the Secretary and to the presiding officer respectively of the United States Senate, to inform that body of the result of the election for Senator; and such certificate shall be prima facie evidence of the right of the candidate certified as receiving the highest number of votes to be seated. A similar certificate shall be transmitted to the Secretary and to the presiding officer of the House of Representa-

tives to inform that body of the results of the elections for members of the House of Representatives. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1969, ch. 555, § 2; 1971, ch. 352, § 1; 1973, ch. 414.)

#### CONTESTED ELECTIONS

### § 19-1. Applicability.

This subtitle applies to any issue arising in any election conducted pursuant to this article. (1985, ch. 755.)

**Revision of subtitle.** — Chapter 755, Acts 1985, effective July 1, 1985, repealed former §§ 19-1 to 19-8 and enacted present §§ 19-1 to 19-5 in lieu thereof. Cited in *Snyder v. Glusing*, 307 Md. 548, 515 A.2d 767 (1986).

### § 19-2. Judicial challenges.

If no other timely and adequate remedy is provided by this article, and by filing a petition in accordance with the provisions of § 19-3 of this subtitle, any registered voter may seek judicial relief from any act or omission relating to an election, whether or not the election has been held, on the grounds that the act or omission:

- (1) Is inconsistent with this article or other law applicable to the elections process; and
- (2) May change or have changed the outcome of the election. (1985, ch. 755.)

**Maryland Law Review.** — For article, "Survey of Developments in Maryland Law, 1986-87," see 47 Md. L. Rev. 739 (1988). Quoted in *Snyder v. Glusing*, 308 Md. 411, 520 A.2d 349 (1987).

### § 19-3. Jurisdiction and timing.

The petition referred to in § 19-2 of this subtitle shall be filed in the appropriate circuit court within 20 days after the earliest of the following:

- (1) The date of the act or omission or, if later, the date the act or omission became known to the petitioner; or
- (2) The date the results of the canvass for that election are declared official. (1985, ch. 755.)

### § 19-4. Procedure.

A proceeding under this subtitle shall be conducted according to the generally applicable Rules of Civil Procedure, except that:

- (1) It shall be heard and decided without a jury and as expeditiously as the circumstances require.
- (2) Upon the request of a party or sua sponte, the chief administrative judge of the circuit court may assign the case to a 3-judge panel of the circuit court judges.



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(3) (i) Any appeal shall be taken directly to the Court of Appeals within 5 days of the date of the decision of the circuit court.

(ii) The appeal shall be given priority and shall be heard and decided as expeditiously as the circumstances require. (1985, ch. 755.)

Quoted in *Snyder v. Glusing*, 308 Md. 411, 520 A.2d 349 (1987).

Cited in *Snyder v. Glusing*, 307 Md. 548, 515 A.2d 767 (1986).

### § 19-5. Judgment.

Upon a finding, based upon clear and convincing evidence, that the act or omission involved materially affected the rights of interested parties or the purity of the elections process and:

(1) Might have changed the outcome of an election already held, the court shall:

(i) Declare null and void the election for the office, offices, question, or questions involved and order that the election be held again on a date set by the court; or

(ii) Order any other relief that will provide an adequate remedy.

(2) Might change the outcome of an election not yet held, the court may:

(i) Order whatever relief it deems appropriate under the circumstances; and

(ii) If the court determines that it is the only relief that will provide an adequate remedy, direct that the election for the office, offices, question, or questions involved be postponed and rescheduled on a date set by the court. (1985, ch. 755.)

**Cross reference.** — See revision of subtitle note to § 19-1 of this subtitle.

Applied in *Snyder v. Glusing*, 307 Md. 548, 515 A.2d 767 (1986); *Snyder v. Glusing*, 308 Md. 411, 520 A.2d 349 (1987).

**Maryland Law Review.** — For article, "Survey of Developments in Maryland Law, 1986-87," see 47 Md. L. Rev. 739 (1988).

### §§ 19-6 to 19-8. Copies and extracts as evidence; fees for depositions and witnesses; salary and mileage for contestants.

Repealed by Acts 1985, ch. 755, effective July 1, 1985.

**Cross reference.** — See revision of subtitle note to § 19-1 of this subtitle.

## PRESIDENTIAL ELECTORS

### § 20-1. Right of suffrage and conduct of election.

Each citizen of this State entitled to vote for those persons seeking federal office shall have the right to vote for the whole number of electors as provided in § 20-2 of this article. The presidential electors of the candidates for Presi-

dent and Vice-President who receive the highest number of votes shall be declared to be elected as said electors, and shall be deemed so appointed. The said election shall in all respects be conducted as other elections, except as otherwise provided in this article, and the returns thereof made and canvassed as hereinbefore directed. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1971, ch. 216.)

### § 20-2. Election by general ticket.

On the day fixed by law of the United States for choice of President and Vice-President of the United States there shall be elected by general ticket as many electors of President and Vice-President as this State shall be entitled to appoint. The names of the candidates for the office of electors of President and Vice-President of the United States shall not be printed on the ballot, but in lieu thereof the names of the candidates of each political party for the office of President and Vice-President shall be printed thereon. A vote for said candidates for President and Vice-President shall be deemed and counted as a vote for each of the presidential electors of said party filed according to the provisions of this article. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

*Cross reference.* — As to proclamation by Governor of persons elected electors to vote for President, etc., see Article 41, § 2-405.

### § 20-3. Vacancies among electors.

Upon the meeting of the persons returned elected as electors of President and Vice-President, or of as many of said persons as may attend on the day appointed by the Constitution and laws of the United States, the said electors who are present, before proceeding to perform the duties reposed in them, shall fill any vacancy which may exist in the said college of electors at such meeting, whether such vacancy be occasioned by absence or otherwise. The said person or persons so appointed to fill such vacancy or vacancies shall be entitled to all rights and privileges of those proclaimed by the Governor as duly elected electors of President and Vice-President of the United States. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 20-4. Meeting of electors.

The electors for this State shall meet in the State House in the City of Annapolis. After taking and subscribing the oath prescribed by Article I, § 9 of the Constitution, before the Clerk of the Court of Appeals, or in his absence before one of his deputies, they shall give their votes for President and Vice-President of the United States, on the day fixed by law of the United States, for meetings of electors of President and Vice-President of the United States, and shall cast their votes for the candidates who have received a plurality of the votes cast in the State of Maryland. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1987, ch. 11, § 1.)

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UNITED STATES SENATORS

**§ 21-1. General provisions.**

(a) *Date of election.* — Elections of United States Senators from Maryland, except in cases of election for the purpose of filling any vacancy or vacancies in said office hereinafter provided for, shall be held on the Tuesday next after the first Monday in November in the year 1964, and on the same day and month in every sixth year thereafter, and also on the Tuesday after the first Monday in November in the year 1968, and on the same day and month in every sixth year thereafter.

(b) *Places of voting.* — Places of voting for said United States Senators at such election shall be at the places of voting for members of the House of Representatives of the United States throughout the State, including all the congressional districts thereof.

(c) *Temporary appointment to fill vacancy.* — In the event of a vacancy in said office of Senator aforesaid, however said vacancy may arise, the Governor of the State shall make a temporary appointment of a Senator who shall serve until the people shall fill such vacancy by nomination and election as in this article provided.

(d) *Special elections.* — It shall be the duty of the Governor of the State, within ten days after such vacancy shall have been made or become known to him, to issue a proclamation accompanied by a writ of election declaring and providing that at the next ensuing primary election held under the provisions of this article for the nomination of candidates for the House of Representatives, candidates for said unexpired portion of the term of said office of Senator in which such vacancy has occurred, shall be nominated in the manner aforesaid. The election of Senator to fill such unexpired portion of said term shall take place, in the manner aforesaid, at the next ensuing general congressional election.

(e) *Suffrage.* — With respect to all elections of United States Senators both for full terms and to fill vacancies for unexpired portions of terms, every person qualified to vote for those persons seeking federal office shall be qualified and entitled to vote for United States Senators. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1971, ch. 216.)

HOUSE OF REPRESENTATIVES

**§ 22-1. General provisions.**

(a) *Date of election.* — Elections of Representatives of this State in the Congress of the United States shall be held on the Tuesday next after the first Monday in the month of November every two years commencing in the year 1966, and taking place every second year thereafter.

(b) *Vacancies.* — If a vacancy in the office of Representative in Congress should occur by death, resignation or otherwise, the Governor shall, except as hereinafter provided, issue a proclamation directing that a special primary

election and a special election be held to fill the vacancy. He shall issue this proclamation within ten days after the vacancy occurs or becomes known to him.

(1) The Governor's proclamation shall specify the date for the special primary and special elections, provided that the special primary election shall be held on any Tuesday which is at least more than thirty-five days from the date of the proclamation and that the special election shall be held on any Tuesday which is at least more than thirty-five days from the date of the special primary election.

(2) Nominations of candidates shall be as specified in § 4-1 of this article.

(3) Except as otherwise specifically provided in this article and except where such construction would be unreasonable, the provisions of this article applicable to primary elections shall be applicable to the special primary election provided for herein and the provisions of this article applicable to general elections shall be applicable to the special election provided for herein.

(4) Immediately after issuing the proclamation, the Governor shall give public notice of the proclamation and shall deliver it to the State Administrator of Election Laws. The State Administrator of Election Laws, immediately after receiving the proclamation, shall notify the boards of the counties comprising the congressional district in which the vacancy exists of the proclamation and shall forward a copy of the proclamation to each of the boards.

(5) Notwithstanding the provisions of this section, if a vacancy in the office of Representative in Congress occurs during the period beginning with sixty days before any regularly scheduled statewide primary election and ending at noon on the following third day of January, the Governor if he deems it in the best interests of the State may in his discretion decline to issue the proclamation provided for herein and may allow the office to remain vacant until it is filled pursuant to the regular election process.

(c) *Certification of candidate; special elections.* — (1) Not less than 20 days before a special primary election called pursuant to subsection (b) of this section, the State Administrative Board of Election Laws shall certify to the proper board or boards, the name, party affiliation and residence, as specified in the certificates of candidacy, of those candidates filed with the State Administrative Board of Election Laws, qualified to appear on the special primary election ballot and for whom the voters, by law, are entitled to cast their ballots.

(2) Not less than 20 days before a special election called pursuant to subsection (b) of this section, the State Administrative Board of Election Laws shall certify to the proper board or boards, the name, party affiliation and residence of each person nominated for Representative in Congress as specified in the certificates of nomination issued by the State Administrative Board of Election Laws. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1971, ch. 2, § 1; 1974, ch. 414; 1984, ch. 155; 1987, ch. 11, § 1.)

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**Cross reference.** — As to proclamation by Governor of persons elected to Congress, see Article 41, § 2-405.

**Cited in** *Mathers v. Morris*, 515 F. Supp. 931 (D. Md.), *aff'd*, 649 F.2d 280 (4th Cir.), *appeal*

*dismissed*, 454 U.S. 884, 102 S. Ct. 375, 70 L. Ed. 2d 199, *cert. denied*, 454 U.S. 895, 102 S. Ct. 393, 70 L. Ed. 2d 210, *modified*, 454 U.S. 934, 102 S. Ct. 467, 70 L. Ed. 2d 241 (1981).

### § 22-2. Number of districts.

The State of Maryland is divided into eight districts for the election of eight Representatives to the House of Representatives of the Congress of the United States. The districts are numbered respectively from one to eight, and each is entitled to elect one Representative. All references in this subtitle to election districts, wards, and precincts are to the geographical boundaries as they existed on June 1, 1981. (1957, ch. 739, § 1; 1965, ch. 371, § 1; 1967, ch. 392, § 1; 1971, ch. 353; 1972, ch. 9; 1982, ch. 106, § 1.)

**Action for racial gerrymandering.** — No cause of action for racial gerrymandering can be made out unless there is an allegation and proof that the Legislature's redistricting scheme was motivated by racial considerations. It is not sufficient merely to show that the districts are not racially balanced. *Shapiro v. Maryland*, 336 F. Supp. 1205 (D. Md. 1972).

**Federal district court has power to adopt redistricting plan** to remain in force till the General Assembly adopts its own constitutionally valid plan. *Maryland Citizens Comm. for Fair Congressional Redistricting, Inc. v. Tawes*, 253 F. Supp. 731 (D. Md.), *aff'd sub nom. Alton v. Tawes*, 384 U.S. 315, 86 S. Ct. 1590, 16 L. Ed. 2d 586 (1966).

### § 22-3. First congressional district.

(a) The first congressional district consists of the following counties in their entirety: Cecil, Kent, Queen Anne's, Caroline, Talbot, Dorchester, Wicomico, Worcester, Somerset, Calvert, Charles and St. Mary's.

(b) The district also includes the following parts of Harford County:

- (1) Election district 1, precincts 10 and 11;
- (2) Election district 2 in its entirety;
- (3) Election district 3, precinct 2;
- (4) Election district 5 in its entirety; and
- (5) Election district 6 in its entirety. (1971, ch. 353; 1982, ch. 106, § 1.)

### § 22-4. Second congressional district.

(a) The second congressional district consists of the following parts of Baltimore County:

- (1) Election districts 4, 5, 6, 7, 8, 10, 11, 12, 14, and 15 in their entirety;
- (2) Election district 2, precincts 12, 15, 16, 17, 18, and 19; and
- (3) Election district 9, precincts 2, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.

(b) The district also includes the following parts of Harford County:

- (1) Election district 1, precincts 2, 3, 4, 5, 6, and 45;
- (2) Election district 3, precincts 3, 4, 5, 10, 11, 12, 15, 16, 17, 18, and 35; and
- (3) Election district 4 in its entirety. (1971, ch. 353; 1972, ch. 9; 1982, ch. 106, § 1.)

**§ 22-5. Third congressional district.**

(a) The third congressional district consists of the following parts of Baltimore City:

- (1) Wards 1, 2, 3, 21, 22, 23, 24, 25, and 26 in their entirety;
- (2) Ward 4, precinct 1;
- (3) Ward 6, precincts 6 and 7;
- (4) Ward 8, precincts 1, 2, and 3;
- (5) Ward 9, precinct 7;
- (6) Ward 27, precincts 2 through 40, inclusive, precincts 59 through 62, inclusive, precincts 65 through 91, inclusive, and precincts 102 through 108, inclusive; and
- (7) Ward 28, precinct 1.

(b) The district also includes the following parts of Baltimore County:

- (1) Election district 1, precincts 7 through 16, inclusive;
- (2) Election district 2, precincts 6 through 10, inclusive, and precincts 13 and 14;
- (3) Election district 3, precincts 2 through 12, inclusive;
- (4) Election district 9, precincts 1, 3, and 4, and precincts 12 through 16, inclusive; and
- (5) Election district 13 in its entirety.

(c) The district also includes the following parts of Howard County:

- (1) Election district 1 in its entirety;
- (2) Election district 5, precincts 2, 3, 4, 7, 8, 9, and 10; and
- (3) Election district 6, precincts 5, 6, and precincts 8 through 14, inclusive. (1971, ch. 353; 1972, ch. 9; 1982, ch. 106, § 1.)

**§ 22-6. Fourth congressional district.**

(a) The fourth congressional district consists of all of Anne Arundel County.

(b) The district also includes the following parts of Prince George's County:

- (1) Election districts 4, 8, and 12 in their entirety;
- (2) Election district 5, precincts 1, 2, and 5;
- (3) Election district 6, precincts 2, 6, 8, 9, 12, 13, 14, 15, 17, and 18;
- (4) Election district 11, precinct 1; and
- (5) Election district 9, that part of precinct 3 that is north of a line that begins at the intersection of the centerlines of Old Alexander Ferry Road and Branch Avenue and runs in a southeasterly direction along the centerline of Old Alexander Ferry Road to the centerline of Woodyard Road, thence north-easterly along the centerline of Woodyard Road to the centerline of Dower House Road.

(c) The district also includes Howard County election district 6, precincts 1, 2, 3, 4, 7, and 15. (1982, ch. 106, §§ 2, 3.)

**§ 22-7. Fifth congressional district.**

The fifth congressional district consists of the following parts of Prince George's County:

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(1) Election districts 1, 2, 3, 7, 10, 13, 14, 15, 16, 17, 18, 19, 20, and 21 in their entirety;

(2) Election district 5, precincts 3 and 4;

(3) Election district 6, precincts 1, 3, 4, 5, 7, 10, 11, and 16;

(4) Election district 11, precinct 2;

(5) Election district 9, precincts 1, 2, 4, and 5; and

(6) Election district 9, that part of precinct 3 that is south of a line that begins at the intersection of the centerlines of Old Alexander Ferry Road and Branch Avenue and runs in a southeasterly direction along the centerline of Old Alexander Ferry Road to the centerline of Woodyard Road, thence northeasterly along the centerline of Woodyard Road to the center line of Dower House Road. (1982, ch. 106, §§ 2, 3.)

**§ 22-8. Sixth congressional district.**

(a) The sixth congressional district consists of all of Allegany, Carroll, Frederick, Garrett, and Washington counties.

(b) The district also includes the following parts of Howard County:

(1) Election districts 2, 3, and 4 in their entirety; and

(2) Election district 5, precincts 1, 5, and 6.

(c) The district also includes the following parts of Montgomery County:

(1) Election districts 1, 2, 3, 6, 11, and 12 in their entirety; and

(2) Election district 10, precincts 1, 2, 3, 7, 9, and 10. (1982, ch. 106, §§ 2, 3.)

**§ 22-9. Seventh congressional district.**

(a) The seventh congressional district consists of the following parts of Baltimore County:

(1) Election district 1, precincts 1, 2, 3, 4, 5, and 6;

(2) Election district 2, precincts 1, 2, 3, 4, 5, and 11; and

(3) Election district 3, precinct 1.

(b) The district also includes the following parts of Baltimore City:

(1) Wards 5, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 in their entirety;

(2) Ward 4, precincts 2 and 3;

(3) Ward 6, precincts 1, 2, 3, 4, and 5;

(4) Ward 8, precincts 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13;

(5) Ward 9, precincts 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17;

(6) Ward 27, precincts 41 through 58, inclusive, 63, 64, and 92 through 101, inclusive; and

(7) Ward 28, precincts 2 through 20, inclusive. (1982, ch. 106, §§ 2, 3.)

**§ 22-10. Eighth congressional district.**

The eighth congressional district consists of the following parts of Montgomery County:

(1) Election districts 4, 5, 7, 8, 9, and 13 in their entirety;

(2) Election district 10, precincts 4, 5, 6, 8, and 11. (1982, ch. 106, §§ 2, 3.)

## QUESTIONS

## § 23-1. Certification of questions.

(a) *Certification to boards.* — (1) Whenever a proposed Constitution or constitutional amendment or other question is to be submitted for popular approval to the voters of the State or local subdivisions thereof, the State Administrative Board of Election Laws shall certify the same to the boards on or before the third Monday in the month of August. Thereupon the board shall include the same in the publication provided for in § 8-5 of this article. If questions of local concern are to be submitted for approval to the vote of the people of a county or a municipality, the same shall be certified to the boards within that period by the county commissioners, county councils or treasurer of the City of Baltimore, as the case may be, and shall be advertised as in the case of nominees for county or city offices.

(2) However, in Howard County, if the questions of local concern are not certified by the third Monday of August the clerk of the Circuit Court for Howard County shall certify the questions to the boards within seven days.

(b) *Questions under Article XI-A of Constitution.* — Questions arising under Article XI-A of the Constitution of Maryland (including demands or petitions for the election of a charter board, amendments to any charter previously adopted, and any proposed charter or form of government) shall be filed with the board, Mayor of Baltimore City, or president of the board of county commissioners, or the county council as the case may be, on or before the end of the regular business day on the second Monday in the month of August in the year in which there is to be a general election at which any of these questions is to be voted upon. The filing of any of these questions with the officer or officers specified in Article XI-A shall be construed also to be a filing with the board for the purposes of this article.

(c) *Separate lists of constitutional amendments and other questions; order of listing.* — The State Administrative Board of Election Laws shall certify to the boards a list of the proposed constitutional amendments to be voted upon at any statewide election and a separate list, if any, of any other statewide referenda to be submitted to the voters. Said amendments and said referenda shall be listed in the following numerical order: (1) by years of sessions of the General Assembly at which enacted, and (2) for each such session, by chapter numbers of the Session Laws of that session. (1957, ch. 739, § 1; 1958, ch. 37; 1967, ch. 392, § 1; 1971, ch. 352, § 1; 1972, ch. 570, § 1; 1976, chs. 596, 923; 1977, ch. 462; 1985, ch. 595.)

**Editor's note.** — Section 1, ch. 512, Acts 1986, provides that "pursuant to the provisions of Article 33, §§ 16-6 and 23-1 (a), the Dorchester County Commissioners prior to August 18, 1986 are authorized to adopt legislation that directs the State Administrative and Dorchester County Boards of Election Laws to prepare and include on the ballot for the November general election of 1986 the following question: 'Should the Dorchester County alco-

holic beverages dispensary system be abolished in favor of a free enterprise system?'"

Section 2 of ch. 512 provides that "the State Administrative and Dorchester County Boards of Election Laws shall do those things necessary and proper to place this question on the ballots or voting machine labels prepared for the November general election of 1986, so that each participating voter in Dorchester County may have an opportunity to cast a vote on the



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question. The question shall be proposed, presented, tallied, and reported in general accordance with the provisions of Article 33 of the Annotated Code. The vote on this question is advisory only."

The advisory question posed by ch. 512, Acts 1986, was approved at the general election held on November 4, 1986.

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

**Legislative intent.** — The General Assembly has clearly undertaken to separately identify those referenda, arising pursuant to Md. Const., articles XI-A and XVI, from those arising upon "local questions," "questions of local concern" and "ordinances," and thereby clearly showed an intent to bring within the embrace of the procedures specified in this article, the submission of such local questions as may be properly subject to a referendum. *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

**Vote on the referendum is part of State's legislative process,** as is the passage of a bill by the General Assembly and its approval by the Governor. *Spaulding v. Blair*, 291 F. Supp. 149 (D. Md.), *aff'd*, 403 F.2d 862 (4th Cir. 1968).

**Submission of unconstitutional ordinance may be enjoined.** — The district court has power to enjoin the submission to the voters of an ordinance which would be unconstitutional if passed. *Spaulding v. Blair*, 291 F. Supp. 149 (D. Md.), *aff'd*, 403 F.2d 862 (4th Cir. 1968).

**Rights of negroes under federal Constitution not violated by submission of ch. 385, Acts 1967.** — There is a clear distinction between: (a) An ordinance, an act or a constitutional provision which expressly authorized and constitutionalized the private right to discriminate, and (b) the submission to the voters by way of referendum of a proposed act in which a state undertakes to prohibit certain discriminatory acts and to enforce such prohibition in a particular way. The mere submission of the referendum question does not create a new statutory right to discriminate, nor re-

peal any present statutory prohibition. The rejection of ch. 385, Acts 1967 (Article 49B, §§ 21-27), by a "No" vote would not nullify the Thirteenth or Fourteenth Amendment, would not deprive plaintiffs of their rights under any federal statute, now existing or to become effective on January 1, 1969, nor destroy any right plaintiffs now have under any Maryland statute. Submission of ch. 385 to referendum would not prevent the State from adopting a new statute, stronger or weaker than ch. 385, at any time in the future. *Spaulding v. Blair*, 291 F. Supp. 149 (D. Md.), *aff'd*, 403 F.2d 862 (4th Cir. 1968).

**Questions of local concern.** — It was not the purpose of the statutes to admit indiscriminately to a place on official ballots every issue which any county or city might propose to have submitted to a vote of the people. The questions of local concern to which these sections refer are those which the legislature has authorized to be voted on. *Leaving v. Board of Supvrs. of Elections*, 129 Md. 335, 99 A. 360 (1916).

**Advisory questions.** — The government of a charter county does not have the power to direct or request a local board of supervisors of elections to submit an advisory question to the electorate of the county by placing the same upon the general election ballot. 61 Op. Att'y Gen. 384 (1976).

**Failure to conform to notice requirements distinguished when raised in preelection as compared to post-election litigation.** — In its appraisal of compliance with the notice requirements contained in this article, the Court of Appeals has clearly recognized the distinction between the effects of the failure to conform with such provisions when raised in preelection litigation, as compared with the effect to be given those same provisions, when not strictly followed, and when challenged by litigation attacking the results of an election. *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

Cited in *Reeder v. Board of Supvrs. of Elections*, 269 Md. 261, 305 A.2d 132 (1973); *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

### § 23-2. Charter board.

No petition for the election of a charter board, under the provisions of Article XI-A of the Constitution of Maryland, title "Local Legislation," shall be accepted or filed by any board, unless all of the signatures attached to any such petition shall have been written thereon by the signers within six months of the date when such petition is presented to the board. In signing any such petition every signer thereto shall place to the right of his or her name as and when signed, the date of such signature in his or her own hand-

writing. No action therein shall be taken by any board unless all petitions are filed within six months of the date of the first affidavit. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1982, ch. 851; 1983, ch. 8.)

Applied in *Anne Arundel County v. McDonough*, 277 Md. 71, 354 A.2d 788 (1976).

### § 23-3. Petition — Form; filing.

(a) The State Administrative Board of Election Laws shall prescribe the form for petitions filed under Article XI-A or Article XVI of the Constitution of Maryland.

(b) Petitions filed under the provisions of Article XVI of the Constitution of Maryland shall be filed with the Secretary of State who shall forward each petition to the State Administrative Board of Election Laws. The State Administrative Board of Election Laws shall adopt procedures for their verification. (1957, ch. 739, § 1; 1962, ch. 43; 1967, ch. 392, § 1; 1976, ch. 596, § 1; 1982, ch. 851.)

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

**Purpose.** — This section is clearly designed to provide additional means by which fraudulent or otherwise improper signatures upon a referendum petition may be detected. *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

The purpose of the provision that the signer's name shall be printed or typed on the petition is to alleviate the problem caused by the fact that the handwriting of some people who sign a petition is illegible. *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

**"Shall" mandatory.** — The context in which this section occurs supports rather than negates the mandatory intent of the word "shall." *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

The word "shall" of itself demonstrates a mandatory intent unless the context indicates otherwise. *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

If the provisions of this section were only directory, laws enacted by the legislature could be suspended, even if the Secretary of State had found that the referendum petition lacked the necessary number of valid signatures. *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

**Provisions of this section are reasonable and constitute proper legislative enactments in furtherance of and not in conflict with the purposes of the article.** *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

**And they pertain only to identification of**

**signer.** *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

**This section safeguards privilege which Md. Const., article XVI, § 4, grants.** *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

The requirements that the residence of each signer and the precinct or district in which he is a registered voter must be appended to his signature are only proper means to endeavor to assure that the provisions of Md. Const., article XVI, § 4, as to who may sign referendum petitions, are met. *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

The provisions of Md. Const., article XVI, § 4, will be furthered if, by proper and reasonable means, a referendum petition is to be put upon the ballot only if it has the requisite number of genuine signatures of registered voters. *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

**It facilitates checking of petitions by interested persons, to ensure that only qualified persons have signed.** *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

**And it does not require further affidavits.** *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

This section does not affect the provision of Md. Const., article XVI, § 4, with respect to the affidavit of the person who procured the signatures, except insofar as it may provide means of checking the truth of the affidavit. *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

**No restriction as to when signatures obtained.** — From a reading of the constitutional and statutory provisions pertaining to the ef-

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fective date of legislative enactments and the right of referendum, it is clearly evident that there is no restriction pertaining to when the signatures must or may be obtained. Keeney v.

Wineland, Cir. Ct. for Montgomery County, Levine, J., June 9, 1971.

Applied in Anne Arundel County v. McDonough, 277 Md. 271, 354 A.2d 788 (1976).

### § 23-4. Same — Misrepresentation or false statements concerning contents, etc., to signer.

It is unlawful for a person, as principal or agent, in circulating or in having charge or control of the circulation of or in obtaining signatures for any petition (including an associated or related set of petitions) under the provisions of Articles XI-A and XVI of the Constitution, to misrepresent or to make any false statements concerning the contents, purport, or effect of the petition, to any person who signs, wishes to sign, is requested to sign, makes inquiry concerning the petition, or to whom the petition is presented for signature. (1962, ch. 43; 1967, ch. 392, § 1; 1982, ch. 851.)

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

This section and §§ 23-5 to 23-8, inclusive, are not requirements as to sufficiency of referendum petitions but only collateral

measures to prevent fraud, similar to the corrupt practices provisions in connection with the election laws to which they refer. Barnes v. State ex rel. Pinkney, 236 Md. 564, 204 A.2d 787 (1964).

Applied in Anne Arundel County v. McDonough, 277 Md. 271, 354 A.2d 788 (1976).

### § 23-5. Same — Other unlawful acts.

As to any petition (including an associated or related set of petitions) under the provisions of Articles XI-A and XVI of the Constitution of Maryland, it is unlawful for any person:

(1) Knowingly or wilfully to circulate, publish, or exhibit any false statement or representation concerning the contents, purport, or effect thereof, for the purpose of obtaining any signature to the petition or of persuading any person to sign it.

(2) To submit to the appropriate governmental authority a petition to which is attached, appended, or subscribed any signature which the person knows to be false or fraudulent or not the genuine signature of the person purporting to sign the petition or of the person whose name is attached, appended, or subscribed to the petition.

(3) To make a false affidavit.

(4) To give, pay, or receive any money or other valuable consideration or inducement for signing the petition or for securing the signatures thereon.

(5) To circulate or cause to be circulated a petition, knowing it to contain false, forged, or fictitious names.

(6) Knowingly as a petitioner to sign his name more than once.

(7) To sign a petition, knowing at the time he is not qualified to sign it. (1962, ch. 43; 1967, ch. 392, § 1; 1982, ch. 851.)

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

**Paragraph (4) unconstitutional.** — Provision of paragraph (4) prohibiting paying peti-

tion circulators infringes on the right to political speech guaranteed by the First Amendment. *Ficker v. Montgomery County Bd. of Elections*, 670 F. Supp. 618 (D. Md. 1985).

**Applied in** *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

### § 23-6. Same — Statement of contributions and expenditures.

(a) At the time of filing a petition (including an associated or related set of petitions) under the provisions of Articles XI-A and XVI of the Constitution, the person or association which files the petition shall file with it, on the form prescribed under § 23-3 of this article, a statement showing the contributions and expenditures for the petition. This shall be certified by the person, persons, or association which files the petition, giving (1) the name and post office address of every contributor to the expense of the petition, and the amount paid by each; and (2) the name and post office address of every person to whom, for what service, any money was paid or promised on account of the petition or which is to be paid.

(b) If such a certified statement is not filed with the petition, the appropriate governmental authority shall treat the petition as invalid and shall not certify the question.

(c) In any proceeding to test the validity of any petition filed as specified in subsection (a) of this section, the person, persons, or association certifying the statement required in this section shall be a party to such a proceeding. Such proceeding shall be filed in the county or Baltimore City where the person, persons or association resides or maintains its principal place of business, as the case may be. (1962, ch. 43; 1967, ch. 392, § 1; 1977, ch. 172; 1982, ch. 851; 1987, ch. 11, § 1.)

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

**Applied in** *Secretary of State v. McLean*, 249 Md. 436, 239 A.2d 919 (1968); *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

### § 23-7. Same — Effect of question concerning or invalidity of signature.

On any petition (including an associated or included set of petitions) submitted under the provisions of Articles XI-A and XVI of the Constitution, any question concerning, or the invalidity of, the signature of any person on the petition affects that signature only and does not affect or impair any other portion of the petition or petitions. (1962, ch. 43; 1967, ch. 392, § 1; 1982, ch. 851.)

**Applied in** *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

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**§ 23-8. Same — Separate offenses; punishment.**

In the enforcement of §§ 23-3 to 23-7, inclusive, of this subtitle, each separate violation and the invalidity or impropriety of each individual signature is a separate offense, punishable under the general penalties provided in § 24-27 of this article; and also punishable (if the offense warrants) under the laws concerning perjury. (1962, ch. 43; 1967, ch. 392, § 1.)

Applied in *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

**§ 23-9. Publication of laws.**

(a) *Generally.* — Except in the case of laws referred by the General Assembly only to voters of one county or Baltimore City, to fulfill the advertising provisions of Articles XIV and XVI of the Constitution of Maryland, the Secretary of State, by order of the Governor, shall cause the following to be published once a week for the 2 weeks immediately preceding the general election at which the questions will appear on the ballot in at least two newspapers of general circulation within each county or in one newspaper if only one is circulated in a county, and in three newspapers published in Baltimore City:

(1) The ballot title prepared by the Secretary of State of each constitutional amendment and each referendum question; and

(2) (i) A brief statement, prepared in clear and concise language, devoid of technical and legal terms to the extent practicable, summarizing each amendment and each question. (ii) Each statement shall be prepared by the Department of Legislative Reference and approved by the Attorney General unless another statement is included in the text of a bill proposing a constitutional amendment. (iii) Each approved or statutory statement shall be forwarded by the Attorney General to the Secretary of State not later than the third Monday in August immediately preceding the general election.

(b) *Laws referred to voters only in one county or Baltimore City.* — In the case of laws referred by the General Assembly to the voters in only one county or the City of Baltimore, to fulfill the advertising provisions of Article XVI of the Constitution of Maryland, a title and statement for each law shall be published once a week for 2 weeks immediately preceding the general election at which the questions will appear on the ballot as follows:

(1) In at least two newspapers of general circulation within the county;

(2) In one newspaper if only one is generally circulated in the county; or

(3) In three newspapers published in Baltimore City.

(c) *Posting text; furnishing copies.* — (1) The complete text shall be posted in the office of each board of supervisors of elections and in the State Board office for 30 days prior to the general election for public inspection during normal business hours.

(2) Copies of the complete text of all constitutional amendments and referendum questions shall be furnished by the State Administrative Board of Election Laws to the local boards of election in quantities as determined by the State Administrator of Election Laws, including quantities sufficient to

provide one copy of each for posting in each polling place and in each board office.

(3) Anyone may request a copy of the complete text of all constitutional amendments and referendum questions from any local board of election, which shall be mailed without charge to the person making the request. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1980, ch. 328.)

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

**Apprising voters of issues by nonstatutory methods.** — Achievement of the result intended by the requirement of statutes as to notice or publication — that is, the apprising of the voters of the issue to be voted on — by nonstatutory methods such as newspaper, ra-

dio and television discussions, or private advertisements or circulars, will be enough to uphold an election at which there was a full and apparently free vote. *Dutton v. Tawes*, 225 Md. 484, 171 A.2d 688, cert. denied and appeal dismissed, 368 U.S. 345, 82 S. Ct. 385, 7 L. Ed. 2d 342 (1961).

**Applied** in *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

### § 23-10. Cost of publication.

The cost of publishing in newspapers any laws upon which a referendum vote shall be taken under the provisions of Article XVI of the Constitution shall be paid as follows: If the law is submitted to the voters of the entire State, by the State Administrative Board of Election Laws out of funds appropriated for that purpose by the General Assembly in the budget bill; if the law is submitted to the voters of any county of the State, by the board of county commissioners or county council of the county, and if the law is submitted to the voters of the City of Baltimore, by the mayor and city council of Baltimore. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1976, ch. 39.)

**Applied** in *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

### § 23-11. Result of votes.

(a) *Report of results to clerk of court; clerk to certify results to State Administrative Board of Election Laws.* — It shall be the duty of the board of county commissioners, the county council, the mayor or other executive head of every municipal corporation and the executive head of any other political subdivision in this State, in which jurisdiction there is held a referendum vote on any law, ordinance or resolution, to report the results of such referendum as promptly as possible to the clerk of the court in the county or counties in which said political subdivision lies; and as promptly as possible thereafter said clerk of court shall certify the results of any such referendum to the State Administrative Board of Election Laws. The Board is directed to collect and keep careful records of such certifications.

(b) *Records to be collected and kept by State Administrative Board of Election Laws.* — It shall be the duty of the State Administrative Board of Election Laws to collect from the boards and/or other officials having the same including the several clerks of court and to keep in its office a record of all

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referendum votes taken by the voters of the State or any county therein, or the City of Baltimore, or by an incorporated city or town of the State on any proposed incorporation of a town, upon any law passed at any session of the General Assembly of the State, whether regular or extraordinary, and whether the referendum vote is taken as a result of a petition under Article XVI of the Constitution or as required by the act itself.

(c) *Certificates to be prepared by State Administrative Board of Election Laws in certain cases.* — In addition thereto, the State Administrative Board of Election Laws within ten days from the receipt of the official returns from any such referendum vote concerning a law enacted by the General Assembly, shall prepare under its hand and seal, two certificates setting forth the particular law upon which such referendum vote was taken, and the result of said vote; one of said certificates it shall forthwith deliver to the Clerk of the Court of Appeals who shall, upon receipt of the same, attach it to the original copy of said law and file in his office; the remaining certificate shall be retained by the State Administrative Board of Election Laws until the adjournment of the next succeeding session of the General Assembly, whether regular or extraordinary, and shall thereupon be delivered by it to the Department of Legislative Reference, pursuant to § 2-1309 (a) of the State Government Article. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1970, ch. 103; 1972, ch. 570, § 1; 1982, ch. 820, § 1; 1984, ch. 179; 1987, ch. 11, § 1.)

**Editor's note.** — Section 6, ch. 820, Acts 1982, provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

### OFFENSES AND PENALTIES

#### § 24-1. False registration.

Every person convicted of any offense under the provisions of this section shall be punished by a fine of not more than \$1,000 or by imprisonment in jail or in the penitentiary for not more than five years, or both, in the discretion of the court. The following offenses shall be applicable to any actions or conduct of any board acting under the provisions of this article:

- (1) Falsely to impersonate a voter or other person, and register or attempt or offer to register in the name of such voter or other person;
- (2) To register or attempt to make application to register in or under the name of any other person, or in or under any false, assumed or fictitious name, or in or under any name not his own;
- (3) To register to vote in two election districts or precincts;
- (4) Having registered in one election district or precinct, to attempt or offer to register in any other election district or precinct, not having a legal right to register therein;
- (5) Knowingly or wilfully to falsify his residence with the intent to register in the wrong district or precinct;

(6) Knowingly or wilfully to do any unlawful act to secure registration for himself or any other person;

(7) Knowingly, wilfully or fraudulently, by false impersonation or otherwise, or by any unlawful means to cause or procure or attempt to cause or procure, the name of any qualified voter in any election district or precinct to be erased or stricken, as in this article provided, from any registry of the voters of such district or precincts made in pursuance of this article or otherwise;

(8) By force, threat, menace, intimidation, bribery, reward or offer or promise thereof, or other unlawful means to prevent, hinder or delay any person having a lawful right to register or be registered from duly exercising such right;

(9) Knowingly, wilfully or fraudulently to compel or induce or attempt or offer to compel or induce, by such means or by any unlawful means, any officer of registration in any election district or precinct to register, or attempt to register any person not lawfully entitled to registration in such district or precinct;

(10) To register any false, assumed or fictitious name, or any name of any person, except as provided in this article;

(11) Knowingly, wilfully or fraudulently to interfere with, hinder or delay any officer of registration in the discharge of his duties;

(12) To counsel, advise or induce, or attempt to induce any such officer to refuse or neglect to comply with or perform his duties, or to violate any law prescribed for regulating the same;

(13) To aid, counsel, procure or advise any voter, person or officer of registration to do any act by law forbidden, or in this article constituting an offense, or to omit to do any act by law directed to be done. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1975, ch. 644; 1983, ch. 389.)

### **§ 24-2. False voting and other wilful acts.**

Every person convicted of any offense under the provisions of this section shall be punished by a fine of not more than \$2,500 or by imprisonment in jail or in the penitentiary for not more than five years, or both, in the discretion of the court. The following offenses shall be applicable to any election:

(1) Falsely impersonate any voter or other person, and vote or attempt or offer to vote in or upon the name of such voter or other person, or to vote or attempt to vote in or upon the name of any other person, whether living or dead, in or upon any false, assumed or fictitious name, or in or upon any name not his own;

(2) Knowingly, wilfully or fraudulently to vote more than once for any candidate for the same office, except as authorized by law;

(3) To vote or attempt or offer to vote in any election district or precinct without having a legal right to vote therein;

(4) To vote more than once, or vote in more than one election district or precinct;



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(5) Having once voted in an election, to vote or attempt to vote again in the same election;

(6) Knowingly, wilfully or fraudulently to do any unlawful act to secure for himself or for any other person a right or opportunity to vote;

(7) By force, threat, menace, intimidation, bribery or reward, or offer or promise thereof, or otherwise unlawfully, either directly or indirectly, to influence, or attempt to influence any voter in giving his vote, or:

(i) By such means to prevent or hinder, or attempt to prevent or hinder any qualified voter from freely exercising the right of suffrage;

(ii) By any such means, to induce, or attempt to induce any such voter to exercise any such right; or

(iii) By any such means or otherwise to compel or induce or attempt to compel or induce any judge in any election district or precinct to receive the vote of any person not legally qualified or entitled to vote at the said election in such district or precinct;

(8) Knowingly, wilfully or fraudulently to interfere with, delay or hinder in any manner any judge in the discharge of his duties;

(9) Knowingly, wilfully or fraudulently to counsel, advise, induce or attempt to induce any judge whose duty it is to ascertain, proclaim, announce or declare the result of any such election, to give or make any false certificate, document, report, return or other false evidence in relation thereof; or to refuse or neglect to comply with his duty, or to violate any law regulating the same; or to receive the vote of any person in any election district or precinct not entitled to vote therein; or to refuse to receive the vote of any persons entitled to vote therein;

(10) To aid, counsel, advise, procure or assist any voter, person or judge to do any act by law forbidden, or in this article constituted an offense; or

(11) To wilfully omit to do any act by this article directed to be done. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1983, ch. 389; 1987, ch. 11, § 1; 1988, ch. 6, § 1.)

**§ 24-3. Neglect or fraud by officials.**

If any judge, or any officer or official of registration, revision, election or canvass or any member of any committee, or of the governing body, of any political party participating in primary elections under this article, or any delegate to a convention or party executive, of whom any duty is required in this article, or by any other election law of this State shall be guilty of any wilful neglect of such duty, or any corrupt or fraudulent conduct or practice in the execution of the same, he shall, upon conviction thereof, be punished by imprisonment in jail for not less than thirty days nor more than three years, or by a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

As to civil liability of judges of election for fraudulently and maliciously refusing to register a voter, see *Hardesty v. Taft*, 23 Md. 512 (1865); *Elbin v. Wilson*, 33 Md. 135 (1870); *Friend v. Hamill*, 34 Md. 298 (1871).

#### § 24-4. Election officials not serving.

Any person selected by any board as a judge, as hereinbefore in this article provided, who shall fail or refuse to serve as such judge, or who having been notified by said board to appear for examination of his qualifications for judge, shall fail or refuse so to appear for examination, shall be fined not less than one hundred dollars (\$100) and not more than three hundred dollars (\$300), unless it shall appear that he was not qualified for such service or appearance for such examination by reason of ill health, infirmity or old age. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

#### § 24-5. Absence of election officials.

If any officer of registration shall without authorization absent himself from the place of registration during the hours prescribed by law for registering voters, or if any judge shall without urgent necessity be late at the opening of the polls at any election or shall absent himself therefrom during the election or during the canvass of ballots or the making up of the returns, he shall upon conviction thereof be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in jail for not less than ten days nor more than six months, or shall be fined not less than twenty dollars (\$20) nor more than five hundred dollars (\$500). (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

#### § 24-6. Election officials to follow majority action.

If at any registration of voters or revision thereof, any officer of registration shall knowingly and wilfully admit any person to registration, or make any entry upon any register, unless a majority of the board of registry are present and concur; or if at any election any judge shall receive any vote or proceed with the canvass of ballots, or shall consent thereto, unless a majority of the judges in said precinct are present and concur, he shall upon conviction thereof be adjudged guilty of a misdemeanor, and shall be punished in jail for not less than ten nor more than ninety days, or by a fine of not less than ten dollars (\$10) nor more than two hundred and fifty dollars (\$250), or by both such fine and imprisonment in the discretion of the court. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

#### § 24-7. False poll list.

If any election official shall wilfully keep a false registry or poll list, or shall knowingly insert in any registry or poll list any false statement, or any name or statement, or any check, alteration or mark, except as in this article provided, he shall, upon conviction thereof, be adjudged guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than one nor more than five years. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

**Art. 33, § 24-8 REGISTRATION AND ELECTION LAWS**

**§ 24-8. Illegal conduct of judges of election.**

Every judge who shall wilfully exclude any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election; or who shall wilfully receive a vote from any person who has been duly challenged in relation to his right to vote at such election without exacting from such person such oath or other proof of qualification as may be required by law; or who shall wilfully omit to challenge any person offering to vote whom he knows or suspects to be not entitled to vote, and who has not been challenged; or who shall distribute any type of listing of persons who have or have not voted at an election; or who shall wilfully refuse to permit inspection of the public counter of any voting machine, or if ballot boxes are used, to open and show the ballot box to be empty prior to the opening of the polls; or who shall permit any barricade or obstruction of any kind to be interposed, so that all who desire cannot constantly see such voting machine or ballot box, shall upon conviction thereof be punished by imprisonment in jail or in the penitentiary for not less than three months, nor more than two years. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1979, ch. 289.)

**§ 24-9. False tallies or certificates.**

Every judge or other officer or person who shall make, sign, publish or deliver any false tally or return of any election, or any false certificate or statement of the result of any such election, knowing the same to be false, or who shall wilfully deface, destroy or conceal any statement, tally or certificate entrusted to his care and custody, shall on conviction thereof be adjudged guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than one nor more than ten years. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

**§ 24-10. Adding votes to machines and stuffing ballot boxes.**

Every person convicted of an offense under this section shall be adjudged guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than one nor more than five years. Such offenses shall be as follows:

(1) If any person shall knowingly or wilfully cause or permit any vote to be recorded on a voting machine at any time other than when duly admitted to the voting machine to cast his ballot in the election district or precinct in which he is entitled to vote; or

(2) If any person other than a judge shall at any election, knowingly and wilfully put, or cause to be put, any ballot or ballots, or other paper having the semblance thereof, into any box used at such election for the reception of votes; or

(3) If any judge of election shall knowingly or wilfully cause or permit any ballot or ballots to be in said box at the opening of the polls, and before the voting shall have begun; or

(4) If any judge shall knowingly, wilfully or fraudulently put any ballot or other paper having the semblance thereof in any such box at any such election, unless the same shall be offered by a voter whose name shall have been found and kept upon the registry, as hereinbefore provided, or who shall be entitled to vote under this article; or

(5) If any judge or other officer or person shall fraudulently during the canvass of ballots in any manner change, substitute or alter any ballot taken from the ballot box then being canvassed, or from any ballot box which has not been canvassed, or shall remove any ballot or semblance thereof from or add any ballot or semblance thereof to the ballots taken from the ballot box then being canvassed, or from any ballot box which has not been canvassed. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 24-11. Defacing or removing records.

(a) *Election officials.* — Every judge or other officer or person having the custody of any record, registry of voters or copy thereof, oath, return or statements of votes, certificate, poll list, or any papers, documents, ballots, coupons or vote of any description in this article directed to be made, filed or preserved, who is guilty of concealing, wilfully destroying, mutilating, defacing, falsifying or fraudulently removing or secreting the whole or any part thereof, or who shall fraudulently make any entry, erasure or alteration therein except as allowed and directed by the provisions of this article, or who permits any other person to do so, shall upon conviction thereof be adjudged guilty of a felony and shall be punished for each and every offense by imprisonment in the penitentiary for not less than one nor more than ten years.

(b) *Other persons.* — Every person not such an official as is mentioned hereinabove in this section, who is guilty of any of the acts therein specified, or who advises, procures or abets the commission of the same, or any of them, shall upon conviction thereof be adjudged guilty of a felony. For each and every such offense he shall be punished by imprisonment in the penitentiary for not less than one nor more than ten years; and such offense shall be deemed to have been committed whether such person has or had any custody or control, rightful or otherwise, over, or is charged with any duty in relation to, said records, registers, ballots, coupons or other documents. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 24-12. Perjury.

Any person convicted of wilfully and falsely swearing or affirming in taking any oath or affirmation prescribed by or upon any examination provided for in this article, or prescribed by the State Administrative Board of Election Laws, shall be guilty of perjury, and shall be punished according to the laws of the State for such offense. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1975, ch. 286.)

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False swearing by either register or voter comes within the purview of this section. *Carter v. Applegarth*, 102 Md. 336, 62 A. 710 (1905); *Wilson v. Carter*, 103 Md. 120, 63 A. 369 (1906).

Stated in *State v. Levitt*, 48 Md. App. 1, 426 A.2d 383, cert. denied, 290 Md. 717 (1981).

Cited in *Hourie v. State*, 53 Md. App. 62, 452 A.2d 440 (1982), *aff'd*, 298 Md. 50, 467 A.2d 1016 (1983).

### § 24-13. Subornation of perjury.

Every person who shall wilfully and corruptly instigate, advise, induce or procure any person to swear or affirm falsely, as aforesaid, or to offer so to do, shall, upon conviction thereof, be adjudged guilty of subornation of perjury, and shall suffer the punishment directed by law in cases of perjury. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 24-14. Voting by person who has lost civil rights.

If any person who shall have been convicted in this or any other state or any federal court of any infamous crime as defined in this State, and who is rendered ineligible to vote pursuant to § 3-4 (c) of this article, who shall vote or offer to vote at any election in this State held at any time during which such person is not eligible to vote, he shall, upon conviction thereof be adjudged guilty of a felony. For each and every such offense, he shall be punished by imprisonment in the penitentiary for not less than one nor more than five years. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1974, ch. 299.)

**What constitutes "conviction".** — Where defendant was indicted on the charge of feloniously voting in seven elections in Maryland when he had been convicted in the state of New York of grand larceny in the first degree, the facts did not justify a finding of a previous "conviction," since the defendant in New York had pleaded guilty, been given a suspended sentence, placed on probation and ordered to make restitution, and under New York law, which was controlling, a person against whom

sentence has been suspended after verdict has not been "convicted" within the meaning of similar disfranchisement provisions. *State v. Rappaport*, 211 Md. 523, 128 A.2d 270 (1957).

**Attempt to register by ex-convict.** — There is no basis in this section for concluding that any ex-convict who merely attempts to register will put himself in jeopardy of prosecution. *Thiess v. State Admin. Bd. of Election Laws*, 387 F. Supp. 1038 (D. Md. 1974).

### § 24-15. Disobedience to election officials.

If any person shall wilfully disobey any lawful command of any judge or of any board of registry, given in the execution of his or their duty as such, at any registration or any election, he shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in jail for not less than thirty days nor more than six months, or by a fine of not less than ten dollars (\$10), nor more than two hundred and fifty dollars (\$250), or by both such fine and imprisonment, in the discretion of the court. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 24-16. Breach of the peace.

If during any registration of voters or revision thereof, or on the day of any election or during the canvass of votes cast thereat or during any subsequent

canvass by any board of canvassers, any person shall cause any breach of the peace, or be guilty of any disorder, violence or threats of violence whereby any such registration, revision, election or canvass shall be impeded or hindered, or whereby the lawful proceedings of any officer or board or registration, or of any judge or other officer of such election, or challenger or person designated to be present during the reception or canvass of any ballots, or of any canvassing board as hereinbefore provided, are interfered with, such person shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in jail for not less than thirty days nor more than one year, or by a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 24-17. Hindering election officials.

(a) The following offenses shall be misdemeanors and punishable under the provisions of this section:

(1) Any person who knowingly or wilfully shall obstruct, hinder or assault, or by bribery, solicitation or otherwise, interfere with any officer of registration, or any judge or challenger or person designated, as provided in this article, to be present at the reception or canvass of any ballots, in the performance of any duty required by him or which he may by law be authorized or permitted to perform; or

(2) Any person by any of the means before mentioned or otherwise unlawfully who shall, on any day of registration or revision of registration or on the day of any election, hinder or prevent any officer of registration, judge, challenger or person designated as provided in this article to be present at the reception or canvass of ballots, in his free attendance and presence at the place of registration or revision of registration, or of election in the election district or precinct in and for which he is appointed and designated to serve, or in his full and free access and egress to and from any such place of registration, revision of registration or of election, or to and from any room where such registration, revision of registration or election or canvass of votes or making of any return and certificates thereof may be had; or

(3) Who shall molest, interfere with, remove or eject from any such place of registration or election or of canvassing ballots cast thereat or of making returns or certificates thereof, any such officer of registration, judge, challenger or person designated as provided in this article to watch the reception or canvassing of any ballots except as otherwise provided in this article.

(b) Violation of this section is punishable by imprisonment in jail for not less than three months nor more than one year, or by a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), or by both fine and imprisonment. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 24-18. Destroying ballot box; defacing election records.

If any person upon the day of any election, or before the canvass of votes is completed, shall conceal or wilfully break or destroy any ballot box used or

## **Art. 33, § 24-19 REGISTRATION AND ELECTION LAWS**

intended to be used at such election, or shall wilfully or fraudulently conceal, secrete or remove any such box from the custody of the judges or other official in charge thereof, or shall alter, deface, injure or destroy or conceal any ballot which has been deposited in any ballot box at such election which has not been counted and canvassed, or any poll list used at such election, or any report, return, certificate or any evidence in this article required, he shall, upon conviction thereof, be adjudged guilty of a felony, and shall for each and every such offense be punished by imprisonment in the penitentiary for not less than one nor more than five years. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### **§ 24-19. Tampering with voting machines.**

Any judge or other person who shall tamper with, or damage, or attempt to damage, any voting machine to be used or being used in any election, or who shall prevent, or attempt to prevent, the correct operation of such machine, or any unauthorized person who shall make or have in his possession a key to a voting machine to be used or being used in an election, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to undergo imprisonment for not more than one year, or to pay a fine not exceeding one thousand dollars (\$1,000), or both, in the discretion of the court. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### **§ 24-20. Fraudulent certificates or endorsements.**

Whoever shall falsely make or fraudulently deface or fraudulently destroy any certificate of candidacy or certificate of nomination or any part thereof, or file any such certificate, knowing the same or any part thereof to be falsely made, or suppress any certificate of candidacy or certificate of nomination which has been duly filed, or any part thereof, or forge or falsely make the official endorsement on any ballot shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in jail for a period not exceeding three years, or by both fine and imprisonment, in the discretion of the court. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### **§ 24-21. Removal or destruction of equipment.**

Whoever shall, during any election, remove or destroy any of the equipment, supplies or other conveniences placed in the polling places, or shall during such election remove, tear down or deface any of the cards, diagrams, ballot slips, or specimen ballots printed for the instruction of voters, shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in jail for a period not exceeding one year, or by both fine and imprisonment in the discretion of the court. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### **§ 24-22. Offenses as to ballots and balloting in general.**

(a) The following offenses shall be misdemeanors and punishable under the provisions of this section, for any person except as in this article otherwise provided:

(1) To allow his ballot to be seen by any person with the apparent intention of letting it be known how he is about to vote; or

(2) To place any distinguishing mark upon his ballot; or

(3) To make a false statement as to his inability to mark his ballot, or to operate a voting machine; or

(4) To interfere or attempt to interfere with any voter when inside the enclosed space in the polling room, or when marking his ballot, or when operating a voting machine; or

(5) To endeavor to induce any voter when inside the enclosed space in the polling room before voting to show how he marks or has marked his ballot; or

(6) Between the time of the opening and the closing of the polls, to open the door or other covering concealing the counters of any voting machine, except as provided by § 16-11 (g) of this article.

(b) Violation of this section is punishable by a fine of not more than five hundred dollars (\$500), or by imprisonment in jail for a period not exceeding sixty days, or by both fine and imprisonment in the discretion of the court. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### **§ 24-23. Defacing and illegal possession of ballots; illegal electioneering.**

(a) The following offenses shall be punished as in this section provided. For any person:

(1) Wilfully to destroy or deface any ballot or, except as provided in this article, to take or remove any ballot outside of the building in which voting occurs, before the close of the polls; or

(2) Wilfully to delay the delivery of any ballot; or

(3) On or before the day of any election to have or retain in his possession any official ballot printed for said election unless such possession by him is necessary or appropriate and designed for the purpose of carrying out the true intent and meaning of this article; or

(4) (i) To canvass, electioneer or post any campaign material in the polling place or beyond a line established by signs posted in accordance with this paragraph. At each polling place, 2 election judges, 1 from each principal political party, shall be designated by the election board and, acting jointly, shall post signs outlining a line around the entrance and exit of the building closest to that part of the building in which voting occurs. The line shall be located as near as practicable to 100 feet from the entrance and exit and shall be established after consideration of the configuration of the entrance and the effect of placement on public safety and the flow of pedestrian and vehicular traffic. The signs shall contain the following or comparable language: "No Electioneering Beyond this Point".

(ii) In Anne Arundel, Cecil, Charles, Garrett, Harford, Kent, and Queen Anne's Counties, to canvass, electioneer, or post any campaign literature or material on election day in a polling place or within a 300 foot radius from the entrance and exit of the building closest to that part of the building in which voting occurs.



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(b) A person who violates a provision of this section is subject to a fine, on conviction, of not less than \$50 or more than \$500, or imprisonment for not more than 60 days, or both. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1974, ch. 473; 1975, ch. 592; 1981, ch. 340; 1983, ch. 610; 1987, ch. 11, § 1; ch. 99; 1988, chs. 145, 584.)

The giving of picture of candidate, within forbidden distance, to one about to vote would be electioneering within the pro-  
scription of the statute. *Moxley v. State*, 212 Md. 280, 129 A.2d 392 (1957).

### § 24-24. Use of alcoholic beverages.

Whoever during the hours of registration or revision of registration, or during the hours of election or canvass of votes, or of making returns thereof in any election district or precinct, shall bring, take, order or send into or shall attempt to bring or take or send into any place of registration, or revision of registration or of election, any distilled or spirituous liquors, wine, ale or beer, or who shall at any such time and place, drink or partake of such liquor, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 24-25. Wagers on elections.

Any person who shall make any bet or wager upon the result of any election to take place in this State shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty dollars (\$50), nor more than five hundred dollars (\$500), to be paid to the State. Every deposit of money in any part of this State as a bet or wager upon the result of any election of this State or elsewhere shall be forfeited and paid over to the county commissioners or county council of the county where deposited for the use of the county; or, if deposited in the City of Baltimore, to the mayor and city council. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

**Cross reference.** — As to gambling, see Article 27, § 237 et seq.

**Knowledge of law prohibiting wagering on elections is imputed** to every person having a deposit of money as such a wager. *Doyle v. Baltimore County Comm'rs*, 12 Gill & J. 484 (1842).

It is not essential that both parties

should deposit money. *Doyle v. Baltimore County Comm'rs*, 12 Gill & J. 484 (1842).

**And deposit of note of bank is deposit of money.** *Doyle v. Baltimore County Comm'rs*, 12 Gill & J. 484 (1842).

**Forfeiture attaches to deposit the moment it is made** and commissioners may recover same in their own name. *Doyle v. Baltimore County Comm'rs*, 12 Gill & J. 484 (1842).

### § 24-26. Time off for employees to vote.

(a) Except as provided in §§ 2-8 (b) (2) and 27-1 (a), at every election held in this State, every employer, whether a body corporate, firm or individual, shall allow any employee who is a registered voter in the State a period not to exceed two hours absence from work on election day, if the employee does not have two hours of continuous off-duty during the time the polls are open, with

pay, to vote, and the employee shall furnish to the employer proof that he has voted. For failure thereof, the employer shall be guilty of a misdemeanor and upon conviction thereof shall for each and every offense pay a fine not exceeding the sum of \$500 or be imprisoned in jail for a period not exceeding six months, or both, in the discretion of the court. Upon request, the judges of election shall furnish to the employee a receipt indicating such proof as required above.

(b) The receipt evidencing proof of voting by any employee shall be on a form prescribed by the State Administrative Board of Election Laws. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 614; 1973, ch. 779; 1976, ch. 174, § 1.)

**Cross reference.** — As to hours of labor generally, see Article 100.

### **§ 24-27. General penalty; candidates engaging in prohibited practices ineligible for election or appointment.**

(a) *General penalty.* — Any misdemeanor under this article for which no penalty is specially provided shall be punished by imprisonment in jail for not less than thirty days nor more than six months, or by a fine of not less than ten dollars (\$10) nor more than two hundred and fifty dollars (\$250); or by both such fine and imprisonment, in the discretion of the court. Conviction of any criminal violation of this article shall disqualify the person convicted from serving as an election judge, board member, or as an employee of an election board for a period of four years following the conviction.

(b) *Candidates engaging in prohibited practices ineligible for election or appointment.* — If any candidate shall have been found or decided to have engaged in any practice prohibited by this article, he shall be ineligible to election or appointment to any public office or employment for the period of four years from the date of said election. If there is a finding or decision that a successful candidate engaged in prohibited practices only in the person of his agent without the knowledge or consent of the candidate, and that no prohibited practice was committed with his sanction or connivance, then the election of such candidate shall not be void, nor shall the candidate be subject to any ineligibility therefor. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1975, ch. 285; 1985, ch. 755; 1987, ch. 11, § 1.)

### **§ 24-28. Defenses.**

Irregularities or defects in the mode of giving notice of holding or conducting a registration or election authorized by law shall constitute no defense to a prosecution for a violation of the provisions of this article. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

## Art. 33, § 24-29 REGISTRATION AND ELECTION LAWS

### § 24-29. Referenda.

Every act, which by the provisions of this article or other laws of the State, is made a crime when committed with reference to the election of a candidate, shall be equally criminal and subject to the same punishment when committed with reference to a proposition to be submitted to the people to be decided by the votes cast at an election. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 24-30. Enforcement duties of supervisors.

It shall be the duty of the boards to aid in the prosecution of all crimes and offenses against this article, and when, in the judgment of the board members, there is probable cause for believing that an offense has been committed, it shall be their duty to cause a prosecution to be instituted in accordance with the provisions of this article. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

**Affirmative duty of board.** — If a local board discovers what it regards as probable cause to believe that there has been a violation of any election law, it has an affirmative duty to cause a prosecution to be instituted by refer-

ring the matter to the appropriate prosecutor and to assist him in pursuing any prosecution which he deems appropriate. 62 Op. Att'y Gen. 385 (1977).

### § 24-31. Selection of jurors.

In all trials for offenses against any of the provisions of this article, or of any existing law relating to registration or elections where such offenses are punishable by imprisonment in the penitentiary, the State and the defense shall each be entitled to twenty preemptory challenges of jurors. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

## MISCELLANEOUS PROVISIONS

### § 25-1. Oaths.

(a) *Certificate of officer; who may administer; no charge.* — All oaths required by this article to be in writing shall have a certificate of the officer making the same attached and signed by him, and the board members, officers of registration and judges of election are hereby empowered to administer all oaths and affirmations required in the discharge of the duties of the respective offices and no charge shall be made for any oath or affirmation given in a polling place, place of registration, or the offices of the boards.

(b) *Presumption of oath on registration.* — The fact that a registration official has qualified a voter and signed the registration record to that effect, shall be sufficient presumption that the answers so recorded were made under oath to such registrar as required by this section. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### § 25-2. Publication of election laws.

The text of this article, with said forms and instructions so prepared, and with other provisions of the Constitution and laws touching the same matters,

and with a proper index thereto, shall be published by the State Administrative Board of Election Laws and shall be distributed by it to the boards in quantities sufficient to supply all the judges and other officers requiring the same. The expense of printing and of necessary clerical assistance shall be paid from the treasury of the State. A price shall be fixed by the State Administrative Board of Election Laws at which copies may be furnished to purchasers. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1970, ch. 103.)

### **§ 25-3. Instructions of Attorney General.**

It shall be the duty of the Attorney General to prepare instructions necessary for the officers of registration and of election created by this article. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1974, ch. 197.)

### **§ 25-4. Voter information in multifamily residential structures in Montgomery County.**

(a) As used in this section, the term "voter information material" includes only campaign literature subject to the provisions of this article or registration or voting information issued by the board of supervisors of elections.

(b) In Montgomery County, in those multifamily residential structures, including condominiums, where access to the entrance of individual residential units is restricted or denied by the owner or owners of the structure, the owner or owners of such structures shall designate a public area within the structure where, for the 60-day period immediately prior to each primary and general election, voter information material may be distributed or deposited.

(c) The public areas so designated shall be readily accessible to the residents of the structure in which access is denied or restricted.

(d) Voter information material deposited in the designated public area shall remain available for residents of the structure for a period of at least ten days.

(e) In the event of any violation of the provisions of this section, the board of supervisors of elections, upon written notification by the person who was denied access or whose rights under this section were violated, shall notify the owner or owners of the structure involved of the apparent violation, and of the provisions of this section, and request compliance. (1977, ch. 790; 1978, ch. 148.)

## **FAIR ELECTION PRACTICES**

### **§ 26-1. Elections to which applicable.**

The provisions of this subtitle shall apply to all elections in which ballots shall be cast pursuant to the provisions of this article. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 613.)

## Art. 33, § 26-2 REGISTRATION AND ELECTION LAWS

**Applicability of subtitle.** — The Fair Elections Practices Act is not applicable to committees which support a person prior to the time he becomes a candidate. 58 Op. Att'y Gen. 266 (1973).

By the terms of this subtitle, municipalities are clearly excluded from its coverage, unless there is a specific provision to the contrary. *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272, cert. denied, 284 Md. 744 (1979).

The Fair Election Practices Act was not applicable to village council election of Friendship Heights by either statutory enactment or incorporated by reference by either the Mont-

gomery County Code or the rules and procedures of Friendship Heights. *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272, cert. denied, 284 Md. 744 (1979).

**Definition of "election".** — There being no qualification of the term "election" in this section, the definition intended is that which is employed in § 1-1 (a) (6) of this article. *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272, cert. denied, 284 Md. 744 (1979).

Cited in *A.S. Abell Co. v. Barnes*, 258 Md. 56, 265 A.2d 207 (1970), cert. denied, 403 U.S. 921, 91 S. Ct. 2224, 29 L. Ed. 2d 700 (1971).

### § 26-2. Summary of election laws; forms.

The State Administrative Board of Election Laws shall summarize provisions of the election laws relating to campaign contributions and expenditures and provide for the distribution of this summary to all candidates for nomination for or election to public or party office at the time such candidates file for nomination or election and shall prepare and include in such distribution to each candidate specimen forms provided for in this subtitle and shall provide such specimen forms as shall be requested by the boards in any political subdivision. (1965, ch. 744; 1967, ch. 392, § 1; 1968, ch. 613; 1970, ch. 103.)

### § 26-3. Appointment of treasurer, subtreasurer or campaign manager; resignation of treasurer; reports of candidate, treasurer and subtreasurer; candidate joining slate.

(a) (1) (i) Except as provided in subparagraph (ii) of this paragraph, each candidate for nomination for, or election to, public or party office, upon or before, and as a condition precedent to qualifying as candidate, shall appoint one campaign treasurer and shall file the name and address of the campaign treasurer with the board or with the State Administrative Board of Election Laws as provided in subsection (c) of this section. Every treasurer so appointed shall accept the appointment, in writing, prior to the filing of his name as treasurer. The board or the State Administrative Board of Election Laws may not accept any certificate of candidacy, either finally or conditionally, unless the name of the treasurer has previously been filed with it as provided in this subsection. The candidate and treasurer shall file campaign fund reports in accordance with § 26-11.

(ii) A candidate for whom an authorized candidate campaign committee has been established is exempt from the campaign treasurer requirement of subparagraph (i) of this subsection.

(2) A treasurer who resigns shall do so on a form prescribed by the State Administrative Board of Election Laws signed by him, filed with the board or with the State Administrative Board of Election Laws where the original

appointment was filed. The candidate immediately shall appoint and file a new treasurer in accordance with this section.

(3) A member of the State Administrative Board of Election Laws, or a member of any board, or any permanent, part-time, or temporary employee of either may not be a candidate or campaign manager or treasurer or subtreasurer of any candidate, combination of candidates, or political committee during any part of his tenure in office or employment.

(b) The form for appointment of a treasurer and the acceptance of such appointment by the treasurer shall be on a form prescribed by the State Administrative Board of Election Laws.

(c) A person may not act as treasurer, subtreasurer, or campaign manager unless the form required in subsection (b) of this section is filed with the board or with the State Administrative Board of Election Laws with which the candidate is required to file his certificate of candidacy. Nothing in this subtitle shall prevent the treasurer, subtreasurer, or campaign manager of any candidate from being the treasurer, subtreasurer, or campaign manager of another candidate or political committee, but a candidate for public or party office or nomination to public or party office may not designate himself as his own treasurer, or subtreasurer or act as the campaign manager, treasurer, or subtreasurer of any other candidate or political committee. However, those candidates for party office who are members of central committees are not prohibited from being the treasurer of a central committee during their candidacy. A person may not be appointed or act as treasurer or subtreasurer or campaign manager in any election or primary election if he is not a citizen, resident, and registered voter of the State of Maryland.

(d) The treasurer of a political committee or for a candidate may appoint a separate subtreasurer for any county or political subdivision, which subtreasurer shall deposit funds, disburse and account for the same in the same manner as herein provided with respect to a treasurer. It shall be the duty of every such subtreasurer to make a report on the form prescribed in § 26-12 of this article to the treasurer appointing him. The subtreasurer's report shall be attached to and the total amounts of contributions and expenditures contained therein incorporated into the treasurer's report prescribed in said § 26-12 of this article and filed as required by § 26-11 of this article.

(e) Any candidate, after filing the name of a treasurer as prescribed in subsection (a) of this section, may choose, at any time after the filing to join a group, combination or organization of candidates, commonly known as a "slate," at which time the candidate shall notify the board of the county or Baltimore City, or the State Administrative Board of Election Laws, with which his certificate of candidacy was filed in writing, of the fact that he has joined the slate and the date on which he did so. The treasurer of the slate shall report in the same manner as the treasurer of any political committee as prescribed in § 26-4 (a) of this article. (1957, ch. 739, § 1; 1965, ch. 744; 1966, ch. 323; 1967, ch. 392, § 1; 1968, ch. 613; 1969, ch. 281; 1970, chs. 103, 104; 1971, ch. 266; 1973, chs. 86, 439, 779; 1974, ch. 4; 1976, chs. 394, 419; 1977, ch. 638, § 4; 1987, ch. 12.)

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**Maryland Law Review.** — For comment, "Maryland Campaign Finance Law: A Proposal for Reform," see 47 Md. L. Rev. 524 (1988).

**Constitutionality.** — The requirement of subsection (a) of this section does not violate the federal Constitution or any federal law enacted pursuant thereto in any manner. *Secretary of State v. McGucken*, 244 Md. 70, 222 A.2d 693 (1966).

**Legislative intent.** — Subsection (a) of this section was intended to do no more than enhance the effectiveness of those regulations requiring a full disclosure of the financial aspects of the campaign of a candidate for office, and has no bearing upon his eligibility. *Secretary of State v. McGucken*, 244 Md. 70, 222 A.2d 693 (1966).

**Section inapplicable to delegate candidates.** — The provisions of this section with respect to the filing and maintenance of a campaign treasurer should not continue to be applied to delegate candidates. 61 Op. Att'y Gen. 358 (1976).

**Additional qualifications not imposed.** —

Subsection (a) of this section does not impose additional qualifications for congressional candidates. *Secretary of State v. McGucken*, 244 Md. 70, 222 A.2d 693 (1966).

Subsection (a) of this section, requiring candidates for office to appoint a campaign treasurer, does not impose another qualification for the office of Governor in addition to those set forth in Md. Const., article II, § 5. *Secretary of State v. McGucken*, 244 Md. 70, 222 A.2d 693 (1966).

**Certification by campaign treasurer assures continuance of position.** — A campaign treasurer, both when accepting his appointment and when resigning, certifies that he will serve, or has served, until all of his duties have been performed or a "successor is duly chosen." Thus, by the terms of both the appointment and resignation, someone will always be available to perform the duties of the campaign treasurer. 62 Op. Att'y Gen. 385 (1977).

Cited in *Culotta v. Raimondi*, 251 Md. 384, 247 A.2d 519 (1968).

### § 26-4. Appointment of chairman and treasurer by political committee; reports.

(a) Every central committee, partisan organization, or political committee, as defined in §§ 1-1 (a) (4A), 1-1 (a) (12), 1-1 (a) (14) and 4D-1 (a) of this article, except political clubs, shall appoint and constantly maintain a chairman and a treasurer, whose names and residence addresses, together with the names and residence addresses of its other principal officers, shall be filed where campaign fund reports are required to be filed pursuant to § 26-11. The chairman, treasurer, and other principal officers shall all be registered voters of the State of Maryland. The treasurer shall receive, keep, and disburse all sums of money, or other valuable things, which may be collected, received, or disbursed by the committee or organization or by any of its members for any purposes for which the committee or organization exists or acts. Unless the chairman, treasurer, and other officers are appointed and filed as required in this subsection, it is unlawful and a violation of this article for a central committee, partisan organization, or political committee, or any of its members, to collect, or receive, or disburse money, or other valuable things, for such purposes. A chairman or treasurer of a committee or organization who resigns or otherwise ceases to be chairman or treasurer, as the case may be, shall notify the board or the State Administrative Board of Election Laws where the original appointment was filed on a form prescribed by the State Administrative Board of Election Laws signed by him. A new appointment must be made and filed immediately in accordance with this section. The treasurer and chairman shall file campaign fund reports in accordance with subsection (b) of this section and § 26-11 of this article.

(b) If any committee, including a political club, directly or indirectly, expends fifty-one dollars (\$51.00) or more to aid or oppose the nomination or

election of any candidate, regardless of the purpose for which the committee is formed, the treasurer of the committee, or in the case of a political club an officer thereof, shall report, on the form prescribed in § 26-12 of this article, a statement of contributions and expenditures to the treasurer appointed by the candidate being so aided, which statement shall be included in, or attached to, the statement of contributions and expenditures reported by the treasurer of the candidate as provided in §§ 26-11 and 26-12 of this article, however, a political club need only report that amount which is actually contributed to a candidate. The provisions of this subsection shall apply to any committees located outside of the State of Maryland with respect to any expenditures of funds within the State of Maryland. (1957, ch. 739, § 1; 1965, ch. 744; 1967, ch. 392, § 1; 1968, ch. 613; 1970, ch. 103; 1971, ch. 352, § 1; 1973, ch. 700; 1974, ch. 334; 1975, ch. 723, § 1; 1976, ch. 394; 1977, ch. 638, § 4; 1978, ch. 811; 1984, ch. 255; 1985, ch. 10, § 1.)

**Maryland Law Review.** — For comment, "Maryland Campaign Finance Law: A Proposal for Reform," see 47 Md. L. Rev. 524 (1988).

**All committees covered by subsection (b).** — The General Assembly intended that the word "committee" in subsection (b) of this section be separate and distinct from and broader than the phrase "political committee" used in subsection (a) of this section. The General Assembly wanted all committees to be covered by subsection (b) of this section. 59 Op. Att'y Gen. 282 (1974).

**Committee, if it intends to continue in existence from year to year, should designate itself a "continuing" committee** when it files its appointment of chairman and treasurer with the State Board pursuant to this section. 63 Op. Att'y Gen. 273 (1978).

**But there is no prohibition against a committee retroactively designating itself as "continuing"** if that was its intent from the outset. 63 Op. Att'y Gen. 273 (1978).

**Political action committee formed by bank trade association to solicit funds and use them to make political campaign contributions** is required to comply with the requirements of subsection (b) of this section and § 26-11 (c) of this article with regard to a bank account to be used for contributions to, and testimonials for, candidates for State office; however, it need not do so with regard to an account to be used for transfers to a national Bankpac which will, in turn, make political contributions to candidates for federal office. 62 Op. Att'y Gen. 374 (1977).

Stated in *Dixon v. Maryland State Admin. Bd. of Election Laws*, 686 F. Supp. 539 (D. Md. 1988).

Cited in *Culotta v. Raimondi*, 251 Md. 384, 247 A.2d 519 (1968); *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975); *Phifer v. State*, 278 Md. 72, 359 A.2d 210 (1976).

## § 26-5. Appointment and reports of subtreasurer; campaign depositories; petty cash fund.

(a) The treasurer appointed by the central committee of any party, or the treasurer appointed in any county or City of Baltimore by the members of the central committee for such county or city of any party, or the treasurer appointed by the city committee of Baltimore City of any party, may appoint one subtreasurer for each voting precinct in the said county or city, as the case may be, which subtreasurer is authorized to expend such money as may be placed in his hands by the treasurer appointing him for such purposes as are lawful under the provisions of this article and for no other purpose, and it shall be the duty of every such subtreasurer to make a report in writing under oath to the treasurer appointing him, stating in detail the amount of money placed in his hands by the said treasurer and for what purposes the said



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money was expended by him and to whom paid on the form prescribed in § 26-12 of this article and in accordance with § 26-11 of this article; and it shall be the duty of every such treasurer to file the report of every subtreasurer appointed by him along with and as a part of the account and statement required to be filed by such treasurer and to incorporate into such treasurer's report the total amount of contributions and expenditures contained in every subtreasurer's report under the provisions of §§ 26-11 and 26-12 of this article.

(b) Each candidate, political committee or central committee shall designate a campaign depository or depositories and all funds and contributions in furtherance of a candidacy, political committee or central committee shall, after receipt, be deposited by the treasurer or subtreasurer in the designated campaign depository in an account properly identifying the name of and the existence of the political candidacy, political committee or central committee. Except as provided in subsection (c), a candidate, campaign treasurer or subtreasurer may not pay any expense on behalf of a candidate, directly or indirectly, and a political committee or central committee, including political clubs, may not pay any expense of such organization except by check from the designated depository.

(c) A separate book or ledger shall be maintained for any petty cash expenditures. Expenditures from the petty cash fund shall be supported by vouchers retained by the treasurer and reported by category on the appropriate campaign fund report. The petty cash fund may not exceed \$250 at any given time and the fund may be replenished only by check as provided in subsection (b) of this section. No more than \$25 in the aggregate may be disbursed from the petty cash fund to any single recipient in any primary or general election. This section does not authorize expenditures for any purpose which is unlawful under this article. (1957, ch. 739, § 1; 1965, ch. 744; 1967, ch. 392, § 1; 1968, ch. 613; 1977, ch. 638, § 4; 1978, ch. 611; 1984, ch. 255.)

**Legislative intent.** — What the legislature intended by the "Fair Election Practices Law," as it had with its precursor, "The Corrupt Practices Act," as those subtitle names suggest, was the regulation and control of campaign financing and to ensure a system of centralized responsibility for campaign funds and expenditures. *Parker v. Junior Press Printing Serv., Inc.*, 266 Md. 721, 296 A.2d 377 (1972).

**Election Code is not designed to extend beyond regulation of campaign practices.** *Parker v. Junior Press Printing Serv., Inc.*, 266 Md. 721, 296 A.2d 377 (1972).

**And does not seek to concentrate liability for campaign expenses in candidate's treasurer.** *Parker v. Junior Press Printing Serv., Inc.*, 266 Md. 721, 296 A.2d 377 (1972).

### § 26-6. Expenditures by treasurer.

(a) *Contributions and expenditures to pass through treasurer.* — All contributions, money or other valuable things collected, received or disbursed by any candidate or committee for any purpose, shall be paid over to and made to pass through the hands of the treasurer and, except as provided in § 26-5 (c) of this article, shall be disbursed by him. It is unlawful for any candidate or any member or members of a committee, or for any member or members of a political committee, to make any expenditure, to disburse or expend money or any other valuable things, for any purposes until the money or other valuable

things so disbursed or expended has passed through the hands of the treasurer.

(b) *Presentation of statement of moneys due.* — Any statement of moneys owing by a treasurer or subtreasurer shall be presented for payment to the treasurer or subtreasurer within 30 days after the election in connection with which the liability was incurred.

(c) *Treasurer of State central committee.* — The treasurer appointed and acting for or in connection with the State central committee of the State or any political party may not expend or disburse any money or valuable thing, or incur any liability whatsoever, except by the authority and subject to the direction of the chairman of the State central committee of the State for or in connection with which the treasurer may be appointed or acting. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 613; 1976, ch. 408, § 1; 1978, ch. 611.)

**Legislative intent.** — What the legislature intended by the "Fair Election Practices Law," as it had with its precursor, "The Corrupt Practices Act," as those subtitle names suggest, was the regulation and control of campaign financing and to ensure a system of centralized responsibility for campaign funds and expenditures. *Parker v. Junior Press Printing Serv., Inc.*, 266 Md. 721, 296 A.2d 377 (1972).

**Election Code is not designed to extend beyond regulation of campaign practices.** *Parker v. Junior Press Printing Serv., Inc.*, 266

Md. 721, 296 A.2d 377 (1972).

**And does not seek to concentrate liability for campaign expenses in candidate's treasurer.** *Parker v. Junior Press Printing Serv., Inc.*, 266 Md. 721, 296 A.2d 377 (1972).

**More than just cash or checks are to be included within definition and regulation of political contributions.** 63 Op. Att'y Gen. 263 (1978).

**Applied in** *Phifer v. State*, 278 Md. 72, 359 A.2d 210 (1976).

## § 26-7. Books, records and receipts of treasurer or subtreasurer.

(a) *Account books.* — (1) Except as provided in paragraph (3) of this subsection, every treasurer and every subtreasurer shall keep detailed, full and accurate accounts in a proper book or books, to be called "account books", to be provided and preserved by the treasurer or subtreasurer, of all contributions, money or valuable things received by or promised to, and of all expenditures, disbursements and promises of payment or disbursements of money or valuable things made by any committee, or any of its officers or members, or by any person acting under its authority, or on its behalf or by the treasurer or subtreasurer, and setting forth in such statement and accounts the sum or valuable thing so received, or disbursed, or promised, as the case may be, and the date when, the name and address of the person from whom received or promised, or to whom paid or promised, as the case may be, and the object and purposes for which the sum, or other valuable thing, was received, or disbursed, or promised, as the case may be.

(2) Books and records may be destroyed or discarded at any time after two years from the date of filing the final report required by § 26-11 of this article unless a court of competent jurisdiction orders their retention for a longer period.

(3) Notwithstanding any law or regulation that prohibits an anonymous contribution, a treasurer or subtreasurer may accept and is not required to

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identify in the account books each sum of money given by each individual who purchases a spin or chance on the paddle wheel or wheel of fortune authorized by law to be operated in the State at a campaign fund-raising event if:

(i) The cost to purchase each spin or chance on the paddle wheel or wheel of fortune does not exceed \$2;

(ii) The total contributions to a political committee or a partisan organization from paddle wheels or wheels of fortune do not exceed \$2,500 per election;

(iii) The net income to the sponsoring political committee or partisan organization from a paddle wheel or wheel of fortune does not exceed \$1,500 in a 24-hour period at a single fund-raising event; and

(iv) The account books include the total net amount received and the names and addresses of the individuals who attend the fund-raising event at which the wheel is used.

(4) If a political committee or partisan organization raises or receives contributions from a paddle wheel or wheel of fortune in excess of any of the limitations established in paragraph (3) of this subsection, the political committee or partisan organization shall:

(i) Donate the excess contributions to the charity of its choice; or

(ii) Identify in the account books each sum of money given by each individual who purchases a spin or chance on the paddle wheel or wheel of fortune authorized by law to be operated in the State at a campaign fund-raising event.

(5) The State Administrative Board of Election Laws shall adopt regulations necessary to implement this subsection.

(b) *Campaign contribution receipts.* — (1) Upon receipt and before depositing a contribution, including the proceeds of ticket sales, a "campaign contribution receipt," in a form prescribed by the State Administrative Board of Election Laws, shall be issued and delivered either by mail or in person by the treasurer or subtreasurer (i) to each person or treasurer of a committee, group, or organization in whose name a contribution or contributions, other than the purchase of tickets, are made in the individual or cumulative amount of \$51 or more; (ii) to each person or treasurer of a committee, group, or organization in whose name a ticket or tickets are purchased for any dinner, testimonial, cocktail party, barbecue, crab feast or other campaign-related function in the individual amount of \$51 or more or in the cumulative amount of \$251 or more. Upon request, a receipt must be given for any lesser amount.

(2) If such contribution is received by a subtreasurer, he shall forward the contribution and a duplicate copy of the "campaign contribution receipt" with his report to the treasurer of the candidate or committee for which he is subtreasurer, as required by §§ 26-11 and 26-12 of this article.

(3) The treasurer shall retain all "campaign contribution receipts" with his books and records as required by subsection (a) of this section and report the information therein in the statement of contributions and expenditures required by §§ 26-11 and 26-12 of this article.

(4) The "campaign contribution receipt" issued to a contributor shall serve as evidence of a contribution by such contributor.

(c) *Anonymous contributions.* — Except as provided in subsection (a) of this section, any money or other thing of value received from any unknown person or source by any treasurer or any subtreasurer, or other persons or committee authorized to incur obligations or to pay or defray obligations or expenses under the provisions of this article, shall not be used for any political purpose whatsoever, but shall be paid by the treasurer, subtreasurer, or other persons or committee so receiving the same, to the Treasurer of the State of Maryland.

(d) *Disposition of surplus funds.* — Prior to the time of filing the final report required by § 26-11 of this article, any surplus funds remaining after payment of all campaign expenditures shall be:

- (1) Returned, pro rata, to the contributors by the treasurer;
- (2) Paid to the State central committee of the party of which the candidate is a member or for which the political committee is acting;
- (3) Paid to a central committee of the party of which the candidate is a member or for which the political committee is acting so long as the central committee is located in a county in which the candidate resides or seeks to represent;
- (4) Paid to the local board of education or to a recognized nonprofit organization providing services or funds for the benefit of pupils or teachers;
- (5) Paid to a charitable organization registered pursuant to § 3-202 of Article 41 or to a charitable organization exempt from such registration pursuant to Article 41, § 3-203; or
- (6) Paid to any public or private institution of higher education in this State that possesses a certificate of approval from the Maryland Higher Education Commission, to be used by that institution to award scholarships, grants, or loans to students attending the institution. (1957, ch. 739, § 1; 1965, ch. 744; 1967, ch. 392, § 1; 1968, ch. 613; 1973, chs. 365, 779, 813; 1976, ch. 365; 1978, ch. 611; 1987, ch. 11, § 2; 1988, ch. 598; 1989, ch. 5, § 1; 1990, ch. 526.)

**Effect of amendment.** — The 1989 amendment, approved Mar. 9, 1989, and effective from date of passage, transposed the punctuation following "account books" in (a) (1); and substituted "Article 41, § 3-203" for "§ 3-203 (a) of Article 41" at the end of (d) (5).

The 1990 amendment, effective July 1, 1990, in (d), added (6) and made stylistic changes.

**Editor's note.** — Section 4, ch. 5, Acts 1986, provides that "the publishers of the Annotated Code of Maryland are directed to propose a plan for the renumbering of the sections of Article 41 of the Annotated Code prior to the republication of the replacement volume containing that article. The proposal should correct numerical and similar nonnumerical cross references throughout the Annotated Code that refer to provisions found in Article 41." Pursuant to § 4 of ch. 5, "§ 3-202" was substituted for "§ 103B" and "§ 3-203 (a)" was substituted for "§ 103C (a)" in clause (5) of subsection (d).

Section 2, ch. 11, Acts 1987, approved Apr. 2,

1987, and effective from date of passage, provides, in part, that "the General Assembly of Maryland ratifies and enacts the plan for the renumbering of Article 41 undertaken by the publishers of the Annotated Code pursuant to § 4 of ch. 5 of the Acts of the General Assembly of 1986, as shown in the 1986 Replacement Volume for Volume 4 of the Annotated Code of Maryland."

**Bill review letter.** — Chapter 526, Acts 1990 (House Bill 5) was approved for constitutionality and legal sufficiency, as it was determined that the bill's title was not unconstitutionally underinclusive. (Letter of Attorney General dated Apr. 25, 1990).

**Maryland Law Review.** — For comment, "Maryland Campaign Finance Law: A Proposal for Reform," see 47 Md. L. Rev. 524 (1988).

**A testimonial dinner may be distinguished from a political fundraiser** by consideration of sponsorship, timing, advertising,

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and disposition of proceeds. 70 Op. Att'y Gen. 96 (1985).

**Testimonial deemed political contribution.** — Where a testimonial is for the purpose of raising funds for a future or past election campaign, the funds raised are a political contribution regulated by this subtitle and not a gift under the public ethics law. 71 Op. Att'y Gen. — (April 11, 1986).

**Certain committees not required by subsection (d) to dispose of remaining moneys.** — A committee formed for another purpose, which happens incidentally to give some money to a campaign, would not appear to be required by subsection (d) of this section to dispose of its remaining moneys. 58 Op. Att'y Gen. 266 (1973).

**Money received at a fund-raising event must be identified at the time the contribution is made as being for one election or another, and it must be accounted for in connection with reports for that election.** 58 Op. Att'y Gen. 266 (1973).

**There is no legal bar to holding simultaneously two fund-raising events, one for a prior election and one for a future election, provided that the announcements and other publicity adequately distinguish the functions and the tickets are clearly labeled to identify their respective purposes, and the funds are kept segregated.** 58 Op. Att'y Gen. 266 (1973).

**Cumulating ticket purchases.** — Separate ticket purchases for the same fund-raising function or for a series of different functions sponsored by the same committee or candidate in connection with the same election must be cumulated, and as soon as a particular group or organization or person or other committee has purchased tickets in a cumulative amount of \$251 or more, a receipt must thereupon be issued for the full amount of all such purchases

(for all such functions) made up to that time. 59 Op. Att'y Gen. 282 (1974).

If a function is held by a committee for the purpose of generating funds to benefit the campaign of a candidate, ticket purchases for such functions need not be cumulative with ticket purchases for other separate functions sponsored directly by the candidate or sponsored by some other committee for the purpose of benefiting the same candidate, unless the person selling the tickets in fact knows that the purchaser has previously bought other tickets for such other functions. 59 Op. Att'y Gen. 282 (1974).

**Application of subsection (d).** — If a political committee is formed to support a candidate in a given election year, even if its books should remain open for several years after his election in order to pay election debts, it is governed by subsection (d) of this section and must distribute surplus funds as required by that subsection before it files its final report as required by § 26-11 of this article. 63 Op. Att'y Gen. 273 (1978).

**Raffles.** — With respect to the raffles permitted under Article 27, § 261D, the record-keeping requirements in subsection (a) of this section must be complied with. 71 Op. Att'y Gen. 120 (1986).

**Gaming wheel proceeds.** — The proceeds of gaming wheels are not excused from the recordkeeping requirements in subsection (a) of this section. However, those who have already held gaming events and who in good faith concluded that they were authorized to conduct the event in the traditional way — using cash, without individual records — should not be subject to penalty. 71 Op. Att'y Gen. 120 (1986).

**Applied in** *Phifer v. State*, 278 Md. 72, 359 A.2d 210 (1976).

### § 26-8. Contributions and expenses of candidates; loans.

(a) **Contributions and expenses.** — The contributions of a candidate or his spouse to the candidate's own campaign are not subject to the limitations of § 26-9 (b), but must pass through the hands of the candidate's treasurer and be reported as required in other provisions in this subtitle. Personal expenses of the candidate for filing fees, telegrams, telephoning, travel, and board, shall not be considered contributions if paid for by the candidate or his spouse.

(b) **Loans.** — (1) No loan may be made to the campaign of a candidate, or accepted on behalf of the campaign, without the express written consent of the candidate. Written consent constitutes the personal guarantee of the candidate for repayment of the loan only if it expressly so provides. A copy of the consent shall be furnished to the lender at the time of the loan and attached to the appropriate campaign fund report required by §§ 26-11 and 26-12 of this article.

- (2) The terms of any loan to a candidate or political committee shall:
- (i) Be in writing;
  - (ii) Include the lender's name, address, and signature;
  - (iii) State the schedule for repayment of the loan;
  - (iv) State the interest rate of the loan; and
  - (v) Be attached to the appropriate campaign fund report. (1957, ch. 739, § 1; 1965, ch. 744; 1967, ch. 392, § 1; 1968, ch. 613; 1974, ch. 298; 1975, ch. 723, § 1; 1978, ch. 611; 1986, ch. 510.)

**Editor's note.** — The reference to § 26-9 (b) in subsection (a) appears to now be incorrect and should properly be § 26-9 (d).

**Maryland Law Review.** — For article discussing regulation of campaign finance, see 19 Md. L. Rev. 91 (1959).

For comment, "Maryland Campaign Finance Law: A Proposal for Reform," see 47 Md. L. Rev. 524 (1988).

**Legislative intent.** — What the legislature intended by the "Fair Election Practices Law," as it had with its precursor, "The Corrupt Practices Act," as those subtitle names suggest, was the regulation and control of campaign financing and to ensure a system of centralized responsibility for campaign funds and expenditures. *Parker v. Junior Press Printing Serv., Inc.*, 266 Md. 721, 296 A.2d 377 (1972).

**Election Code is not designed to extend beyond regulation of campaign practices.** *Parker v. Junior Press Printing Serv., Inc.*, 266 Md. 721, 296 A.2d 377 (1972).

**And does not seek to concentrate liability for campaign expenses in a candidate's treasurer.** *Parker v. Junior Press Printing Serv., Inc.*, 266 Md. 721, 296 A.2d 377 (1972).

**A testimonial dinner may be distinguished from a political fundraiser** by consideration of sponsorship, timing, advertising, and disposition of proceeds. 70 Op. Att'y Gen. 96 (1985).

The recipient of a bona fide nonelectoral gift from a testimonial dinner may subsequently donate a sum equal to that gift to his or her own campaign. 70 Op. Att'y Gen. 96 (1985).

**Testimonial deemed political contribution.** — Where a testimonial is for the purpose of raising funds for a future or past election campaign, the funds raised are a political contribution regulated by this subtitle and not a gift under the public ethics law. 71 Op. Att'y Gen. 108 (1986).

Cited in *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

## § 26-9. Contributions and expenses of persons not candidates.

(a) **Restrictions generally.** — Except as provided in subsections (b) and (c) of this section, no person other than a candidate shall, to aid or promote the success or defeat of any political party or principle or of any proposition submitted to vote at any public election, or of any candidate for nomination for, or election to public or party office, 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 or subtreasurer of a candidate or treasurer of a political committee in their official capacity.

(b) **Direct contributions; volunteering time, vehicles, etc.; expression of personal views.** — (1) A contribution may be made directly to a candidate provided the candidate shall report the contribution to the candidate's treasurer.

(2) Nothing contained in this subtitle shall limit or affect the right of any person to volunteer the time or personal vehicle of the person for transportation incident to any election or to expend money for proper legal expenses in maintaining or contesting the results of any election.

(3) Nothing in subsection (a) of this section shall preclude any person from expressing the person's own personal views on any subject, hiring halls, hold-

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ing receptions, buying newspaper space and radio or television time, provided, that coincident with the statement or advertising notice shall be given that the views so expressed are the person's own, and that the statement so made is a "paid political advertisement."

(c) *Payroll deductions.* — (1) An employer may accumulate in a separate, segregated account the combined, voluntary, and periodic contributions of employees made by payroll deduction.

(2) An employer shall keep and maintain detailed, full, and accurate records of all payroll deductions made under paragraph (1) of this subsection, including:

- (i) The names of the individual contributors;
- (ii) The day on which each contribution is withheld;
- (iii) The amount of each contribution withheld from an employee's paycheck; and
- (iv) The disposition of the amounts withheld.

(3) An employer may not accumulate the contributions withheld in accordance with this subsection for more than 3 months before the employer shall transfer the accumulated contributions to a treasurer or subtreasurer, in their official capacity, of a candidate or a political committee, together with the information recorded in accordance with the provisions of paragraph (2) of this subsection.

(4) In soliciting an employee for any contribution by means of a payroll deduction, an employer shall inform the employee:

- (i) Of the political purposes of the account; and
- (ii) Of the employee's right to refuse to contribute to the account without reprisal.

(5) For purposes of a payroll deduction for any contribution, an employer may not receive, accumulate, transfer, or utilize money or anything of value secured by:

- (i) Physical force;
- (ii) Job discrimination;
- (iii) Financial reprisals;
- (iv) The threat of force, job discrimination or financial reprisal;
- (v) Money obtained in any commercial transaction; or
- (vi) Dues, fees, or other money required as a condition of:
  - 1. Membership in a labor organization; or
  - 2. Employment.

(d) *Limit of contributions.* — It is unlawful for any individual, association, unincorporated association, corporation, or any other entity either directly or indirectly, to contribute any money or thing of value greater than \$1,000 to any candidate or to contribute money in excess of \$100 except by check in any primary, general or special election. Total contributions by a contributor under this subsection shall not exceed \$2,500 in any primary or general election.

(e) *Transfer of funds.* — (1) The following types of transfers are exempt from the \$1,000 and \$2,500 limitations set forth in subsection (d) of this section:

- (i) From one candidate's treasurer to another candidate's treasurer;

(ii) From the treasurer of a committee to the treasurer of another committee;

(iii) From a candidate's treasurer to the treasurer of a committee; and

(iv) From the treasurer of a committee to a candidate's treasurer.

(2) Transfers to or from political clubs are subject to the limitations of subsection (b) of this section.

(3) No transfer of any kind, in any amount, is permitted if it is intended to conceal the true identity of the actual contributor or the identity of the intended recipient.

(f) *Compliance by members of county council of Prince George's County.* — A member of the County Council of Prince George's County who receives any money, goods, or services, directly or indirectly, shall comply with the provisions of Title 6, Subtitle 6 of Article 40A of the Code. (1957, ch. 739, § 1; 1965, ch. 744; 1967, ch. 392, § 1; 1968, ch. 613; 1971, ch. 352, § 1; 1974, ch. 290, § 2; 1976, ch. 693; 1977, ch. 950; 1983, ch. 387; 1987, ch. 11, § 1; 1988, ch. 676; 1989, ch. 5, § 1; ch. 244.)

**Effect of amendment.** — Chapter 5, Acts 1989, approved Mar. 9, 1989, and effective from date of passage, added "and" in (e) (1) (iii).

Chapter 244, Acts 1989, approved May 5, 1989 and effective from date of passage, added (f).

**Editor's note.** — Section 19, ch. 5, Acts 1989, provides that "except for §§ 5, 6, 10, and 11 of this Act, the provisions of this Act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this Act."

Section 3, ch. 244, Acts 1989, approved May 5, 1989, and effective from date of passage, provides that "the net proceeds of the tax revenues derived from the Prince George's County transfer tax may be used to fund the ethics provisions under Title 6, Subtitle 6 of Article 40A of the Code."

**Maryland Law Review.** — For comment, "Maryland Campaign Finance Law: A Proposal for Reform," see 47 Md. L. Rev. 524 (1988).

**Constitutionality.** — Chapter 244, Acts 1989 which contained ethics and tax provisions violates the single subject rule of Art. III, § 29 of the Maryland Constitution; however, the ethics provisions are severable and the tax provisions remain fully effective. *Porten Sullivan Corp. v. State*, 318 Md. 387, 568 A.2d 1111 (1990).

**Local legislation.** — This article fully occupies the field of campaign finance regulation and addresses both campaign contributions and disclosure of contributions by those doing public business; accordingly, a county may not

legislate on these matters. 75 Op. Att'y Gen. — (April 4, 1990).

A prohibition against attempting to influence the vote of any member of the county council by promising future contributions, or threatening to withhold future contributions, is sufficiently distinct from the regulation of the contributions themselves to fall outside of the zone of preemption because this article does not regulate the nature of the discourse between lobbyists and officials; thus, such a county code provision would be a proper exercise of the county's power under Article 40A, § 6-301. 75 Op. Att'y Gen. — (April 4, 1990).

**Section inapplicable to campaigns for federal office.** — This section may not be applied in any way to contributions given in connection with campaigns for federal office as federal law has fully preempted this field. 61 Op. Att'y Gen. 363 (1976).

State law is "fully preempted" by the Federal Election Campaign Act and may not be applied in any way to contributions given in connection with campaigns for federal office. 70 Op. Att'y Gen. 96 (1985).

**Contributions to political action committees used in federal campaigns.** — If a contributor to a political action committee ("PAC") earmarks all or a portion of a contribution for use in a federal campaign, the contribution limitation in this section would be inapplicable to that contribution or portion. 70 Op. Att'y Gen. 96 (1985).

The full amount of an individual's contribution to a State political action committee ("PAC") would be chargeable against the \$2,500 limitation in this section, even if a pro rata portion of the contribution was ultimately transferred to a federal PAC. 70 Op. Att'y Gen. 96 (1985).



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This section's limitations on contributions are inapplicable to gifts for constituent newsletters, because the required close nexus with candidacy and elections is missing; once a constituent newsletter becomes an electoral newsletter, however, contributions for it would be subject to the limitations of this section. 68 Op. Att'y Gen. 252 (1983).

**Personal expenditures by individuals incurred in expression of purely personal political views** are not subject to the limitations on contributions. 61 Op. Att'y Gen. 363 (1976).

**Contributions used for nonelectoral purposes.** — The \$2,500 contribution limitation in this section generally applies to the full amount of contributions to continuing committees, even if the committee subsequently disburses money from its treasury for payment of its expenses or other nonelectoral purposes. 70 Op. Att'y Gen. 96 (1985).

If a contributor specifies that his or her contribution is to be used for nonelectoral purposes, and if the committee segregates such funds, the contribution limitation in this section would be inapplicable. 70 Op. Att'y Gen. 96 (1985).

**Duty of committees to assist contributors.** — Political committees, including continuing committees, have an obligation to assist contributors in complying with the contribution limitations of this section. 70 Op. Att'y Gen. 96 (1985).

**Contributor's duty of inquiry regarding limitations.** — A contributor to a political action committee ("PAC") is subject to the overall \$2,500 contribution limitation of subsection (d) and has a duty of inquiry with respect to such limitation. 70 Op. Att'y Gen. 96 (1985).

**Applicability of \$1,000 limitation to PAC contributors.** — Unless a contributor to a political action committee ("PAC") specifically earmarks his or her contribution for a particular candidate, or has some other reason to believe that the contribution will in fact go to only one or a handful of candidates, the \$1,000 campaign contribution limitation of subsection (d) is inapplicable to PAC contributions. 70 Op. Att'y Gen. 96 (1985).

**Applicability of transfer exemption.** — The "transfer" exemption of this section is available only to Maryland-based "treasurers," "committees," and "candidates" that are in compliance with the Fair Election Practices Act. 70 Op. Att'y Gen. 96 (1985).

**Testimonial deemed political contribution.** — Where a testimonial is for the purpose of raising funds for a future or past election campaign, the funds raised are a political contribution regulated by this subtitle and not a gift under the public ethics law. 71 Op. Att'y Gen. 108 (1986).

**Construction of "indirectly."** — The term "indirectly" in subsection (b) of this section (now see subsection (d)) cannot be read so as to require that contributions by officers, directors or partners be automatically attributed to their respective corporations or partnerships, and vice versa. The business entity and its principals may each contribute up to the \$2,500 maximum. The word "indirectly" does, however, comprehend any scheme or device designed to evade the \$2,500 limitation. 59 Op. Att'y Gen. 272 (1974).

**If debt is or becomes contribution, its full face value is counted** in determining if the \$2,500 limitation upon campaign contributions has been violated. 62 Op. Att'y Gen. 385 (1977).

**Contributions to various candidates in same election.** — A contributor may not contribute any more than \$2,500 in each election even if he desires to contribute to various candidates who may or may not be opposing each other. 59 Op. Att'y Gen. 282 (1974).

Since a contributor is limited to a \$1,000 contribution to a "candidate," he may contribute \$1,000 to a gubernatorial candidate and an additional \$1,000 to his lieutenant governor running mate. 63 Op. Att'y Gen. 288 (1978).

**Volunteer activities on behalf of corporation's political action committee.** — Where all explanations to the corporation's employees of the purpose and operation of the political action committee and all solicitations of employee contributions to it will be done by volunteers, and while these volunteers will be employees of the corporation, they will in no way be rewarded for performing, or coerced to perform, these activities, but all of the volunteers will be expected to carry their normal work load for the corporation and to perform these extra activities in addition to that work load, subsection (a) of this section (now see subsection (b)) provides that the contribution limitations of subsection (b) of this section (now see subsection (d)) are inapplicable to their volunteer activities. 63 Op. Att'y Gen. 263 (1978).

**"Start-up" administrative and compliance costs incurred by corporation's political committee.** — Where a corporation establishes a separate, segregated and independent political committee which will continue in existence from year to year, and which will seek voluntary contributions from the corporation's employees and make contributions to candidates for nomination and election to State and local offices, "start-up" administrative and compliance costs which are incurred by the corporation would not be chargeable against the corporation's contribution limit which is established by subsection (b) of this section (now see subsection (d)) in any election. 63 Op. Att'y Gen. 263 (1978).

**"Recurring" administrative and compliance costs incurred by corporation's political committee.** — Where a corporation establishes a separate, segregated and independent political committee which will continue in existence from year to year, and which will seek voluntary contributions from the corporation's employees and make contributions to candidates for nomination and election to State and local offices, "recurring" administrative and compliance costs which are incurred by the corporation would not be chargeable against the corporation's contribution limit which is established by subsection (b) of this section in any election. 63 Op. Att'y Gen. 263 (1978).

**Contributions to incumbent officeholders during nonelection year.** — It is lawful for individuals and corporations to contribute money to incumbent officeholders during a nonelection year. If those payments are made for purposes unrelated to the conduct of election campaigns, then they may be made without limitation as to amount. If they are made for the purpose of eliminating a prior campaign deficit or accumulating a fund for the conduct of future election campaigns, then

they will be subject to the limitations provided for in subsection (b) of this section. 61 Op. Att'y Gen. 407 (1976).

**Corporate donation to political party for use in maintaining party's headquarters and staff.** — If a corporation donates money to a political party, with that money to be specifically set aside and used for maintaining the party's normal headquarters office and staff, the corporation has made a contribution for purposes of this article, but that contribution is not chargeable against the aggregate contribution limitation of \$2,500 per election established by this section. 60 Op. Att'y Gen. 259 (1975).

**Regulation of contributions by franchisees or applicants therefor.** — Montgomery County does not have the authority to regulate campaign contributions by franchisees or applicants for a county cable communications system franchise. 66 Op. Att'y Gen. 110 (1981).

**Applied in** *Phifer v. State*, 278 Md. 72, 359 A.2d 210 (1976).

**Stated in** *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

### § 26-9.1. Payment for walk-around services on election day.

(a) *Prohibited.* — No candidate, slate of candidates, political committee, political party, or any person acting on behalf of any of the foregoing, may at any time, directly or indirectly pay, or incur any obligation to pay, nor may any person receive, directly or indirectly any sum of money or thing of value in return for a political endorsement or for walk-around services or any other services as a poll worker or distributor of sample ballots, performed on the day of the election.

(b) *"Walk-around services" defined.* — For the purpose of this section walk-around services include any of the following activities when performed for money on the day of the election, while the polls are open: (1) distributing to any person any item enumerated in § 26-16 (a) (7) of this article; (2) communicating a voting preference or choice in any manner; (3) stationing any person or object in the path of any voter; or (4) electioneering or canvassing within the meaning of § 24-23 (a) (4) of this article.

(c) *Exceptions.* — This section does not apply to:

- (1) Meals, beverages and refreshments served to campaign workers;
  - (2) Salaries of regularly employed personnel in campaign headquarters;
  - (3) Media advertising including but not limited to newspaper, radio, television, billboard, or aerial advertising;
  - (4) Rent and regular office expenses; or
  - (5) Cost of phoning voters or transporting voters to and from polling places.
- (1979, ch. 217; 1984, ch. 255; 1985, ch. 10, § 1; 1987, ch. 11, § 1.)

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**Scope of subsection (c) (1).** — Subsection (c) (1) of this section must be construed to permit candidates, political committees, political parties and those acting on their behalf only to provide meals, beverages, and refreshments for their campaign workers' consumption on election day, but not to permit the distribution of cash to those workers so that they may pur-

chase or be reimbursed for these items. 64 Op. Att'y Gen. 141 (1979).

**In order to come within exclusion of subsection (c) (1) of this section,** food need not be "served to" campaign workers at campaign headquarters or at the polling places where they are working. 64 Op. Att'y Gen. 141 (1979).

### § 26-10. Expenditures by treasurer or subtreasurer.

Repealed by Acts 1976, ch. 408, § 2, effective January 1, 1977.

### § 26-11. Election reports to be filed by candidate, treasurer and committee chairman.

(a) A candidate for nomination or election to public or party office, including write-in candidates, and the treasurer designated by that candidate shall file the report or statement of contributions and expenditures as prescribed in accordance with § 26-12 of this article with the board at which the candidate filed his certificate of candidacy. All reports or statements of contributions and expenditures shall be filed in duplicate except those filed with the State Administrative Board of Election Laws. Election reports as specified below are required by all candidates for public or party office whether or not the candidate's name appears on the primary ballot, or the candidate withdraws subsequent to filing his certificate of candidacy, or the candidate is unsuccessful in the election. Each report filed shall contain all contributions received and expenditures made in furtherance of the candidate's nomination or election by the candidate himself or, with the knowledge of the candidate, by any other person or groups of persons, which shall be complete, except as otherwise provided in this section through and including the seventh day immediately preceding the day by which that report is to be filed. The initial report filed shall contain all contributions so received and expenditures so made since the date of the last preceding election to fill the office for which he is a candidate. Each subsequent report shall contain all contributions so received and expenditures so made since the end of the period for which the last preceding report is filed. Even if no contributions or expenditures have been made since the end of the period for which the last preceding report was filed, a statement to that effect must be filed on the forms prescribed pursuant to § 26-12 of this article under the circumstances and at the times specified in this section. The initial and subsequent reports shall be consecutively filed as follows:

- (1) No later than the fourth Tuesday immediately preceding any primary election; and
- (2) No later than the second Friday immediately preceding any election which shall be complete through and including the preceding Sunday; and
- (3) No later than the third Tuesday after the general election; and
- (4) If a cash balance exists or if any unpaid bills or deficits remain to be paid as of the end of the period for which the report or statement in paragraph (3) of this subsection is filed, six months after the general election; and

(5) If a cash balance exists or if any unpaid bills or deficits remain to be paid as of the end of the period for which the report or statement in paragraph (4) of this subsection is filed, one year after the general election; and

(6) If a cash balance exists or if any unpaid bills or deficits remain to be paid as of the end of the period for which the report or statement in paragraph (5) of this subsection or any subsequent report or statement is filed, annually on the anniversary of the general election until no cash balance, unpaid bill, or deficit remains; and

(7) If a cash balance or outstanding debts or deficits were reflected on the last preceding report, but have all been eliminated by the date on which the next report is due, then a report clearly marked as "final" shall be filed on or before such date showing all transactions since the last report; and

(8) If a candidate does not intend to receive contributions or make expenditures of \$300 or more, exclusive of his filing fee, he and his treasurer may jointly execute an affidavit to that effect on a form prescribed by the State Administrative Board of Election Laws. If he does not in fact receive contributions or make expenditures of \$300 or more, no further reports need be filed pursuant to this section. The affidavit shall be filed not later than the date by which the first report is due. If at any time the cumulative contributions to or expenditures by a candidate who has filed such an affidavit equal or exceed \$300, he and his treasurer shall thereafter file all reports required by this section and failure to do so constitutes a failure to file and the commission of a misdemeanor subject to the penalties prescribed in § 26-20 of this article.

(b) It is the responsibility of the candidate and treasurer, jointly and severally, if it is the statement of a candidate, and the chairman and treasurer, jointly and severally, if it is the statement of a committee, to file all reports or statements in full and accurate detail.

(c) (1) The chairman and the treasurer of any central committee and the chairman and the treasurer of any political committee which continues in existence from year to year, excluding the chairmen and treasurers of political clubs, shall file the report or statement of contributions and expenditures as prescribed in accordance with § 26-12 of this article with the State Administrative Board of Election Laws at each of the times and for the respective periods specified in subsection (a) (1), (2), and (3) of this section and, in a year in which a general election is not held, on the anniversary of the date of the last general election.

(2) (i) In any election year, on or before the dates specified in subsection (a) of this section, in lieu of the scheduled reports required to be filed under that subsection, a political committee which continues in existence from year to year may file an affidavit stating that since the date covered by the last report the committee has not been involved in raising or spending, and does not intend to raise or spend, money for that election.

(ii) A political committee which continues in existence from year to year that files an affidavit under this paragraph shall also file an annual report on the anniversary date of the last general election giving a statement of all contributions received and expenditures made since the end of the period for

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which the last preceding report is filed, as prescribed in § 26-12 of this article, with the State Administrative Board of Election Laws.

(iii) If, subsequent to the filing of the affidavit provided in this paragraph, a political committee which continues in existence from year to year receives contributions or makes expenditures in connection with the election for which it filed the affidavit, the committee shall file all scheduled reports on the dates specified in subsection (a) of this section. If the contributions were received or expenditures made after any scheduled reporting dates, the committee is liable for all of the penalties for the late-filing of each of the required reports.

(iv) The State Administrator of Election Laws shall establish by regulations the form of the affidavit to be filed under this paragraph.

(d) The chairmen and the treasurers of all other committees shall file the report or statement of contributions and expenditures, as prescribed in accordance with § 26-12 of this article, at each of the times and for the respective periods specified in subsection (a) of this section. Each report, filed in accordance with paragraphs (1) and (2) of this subsection, shall be filed in duplicate. This report or statement shall be filed with:

(1) The local board of the county or Baltimore City at which a candidate supported or opposed by a committee has filed his certificate of candidacy; and

(2) The local board of the county or Baltimore City in which the committee has promoted the success or defeat of a local principle or local proposition submitted to a vote at an election only in that county or Baltimore City; and

(3) The State Administrative Board of Election Laws if a candidate supported or opposed by a committee has filed his certificate of candidacy with the State Administrative Board of Election Laws; and

(4) The State Administrative Board of Election Laws if the committee has promoted the success or defeat of a political party, statewide principle, statewide proposition, or other principle or proposition submitted to a vote at an election in a county or Baltimore City and all or part of another county or counties; and

(5) The local board of the county or Baltimore City and the State Administrative Board of Election Laws if the committee supported or opposed candidates filing their certificates of candidacy with both the local board and the State Administrative Board of Election Laws; and

(6) The local board and the State Administrative Board of Election Laws if the committee has promoted the success or defeat of a local principle or local proposition submitted to a vote at an election in that county or Baltimore City and has promoted the success or defeat of a political party, statewide principle, statewide proposition, or other principle or proposition submitted to a vote at an election in more than one county or Baltimore City.

(e) Each candidate, the treasurer of each candidate, and the chairman and treasurer of each committee shall be notified by the elections board with which that person files reports under this section, by first class mail and no more than 20 nor less than 10 days prior to the applicable filing date, of each report that person is required to file. The notice shall include the filing date, the place for filing, the penalty for failure to file a timely report, and the

telephone number and business hours of the office where the report is to be filed.

(f) Any report shall be considered timely if it is mailed on or before the filing deadline, regardless of when it is actually received, if the United States Postal Service has provided verification of that fact by affixing a mark so indicating on either the envelope or any receipt therefor. Unless a report is mailed, the boards and the State Administrative Board of Election Laws shall provide a receipt for each report received.

(g) The provisions of this section shall apply to all committees and treasurers for candidates for public or party office located outside of the geographic boundaries of the State with respect to all expenditures of funds within the State of Maryland.

(h) For purposes of this section, the failure to provide all of the information required by the forms prescribed in accordance with § 26-12 of this article, to the extent applicable, is a failure to file.

(i) Within ten days after the deadline for the filing of any report which is required to be filed with the State Administrative Board of Election Laws, the Board shall compile a list of every candidate or committee which failed to file the report and shall distribute the list to the appropriate local election boards. Within ten days after the deadline for the filing of any report which is required to be filed with a local election board, the local board shall compile a list of every candidate or committee which failed to file the report and shall send the list to the State Administrative Board of Election Laws.

(j) The provisions of this section are not applicable to a candidate or candidates for election or elected to a public office of the United States. This candidate or candidates shall file all reports and statements according to federal laws or regulations. (1957, ch. 739, § 1; 1963, ch. 225; 1965, ch. 744; 1967, ch. 392, § 1; 1968, ch. 613; 1970, chs. 103, 438; 1971, ch. 226; ch. 352, §§ 1, 2; 1974, ch. 341; 1975, ch. 102; ch. 723, § 1; 1976, chs. 41, 42, 45; ch. 378, § 2; ch. 582, § 1; 1977, ch. 340; ch. 638, § 4; 1979, ch. 163; 1980, ch. 11; 1981, ch. 354; 1982, ch. 332; 1983, chs. 404, 487; 1984, ch. 462; 1985, ch. 385; 1986, ch. 5, § 1; 1987, ch. 11, § 1; ch. 63.)

**Maryland Law Review.** — For comment, "Maryland Campaign Finance Law: A Proposal for Reform," see 47 Md. L. Rev. 524 (1988).

**Contributions to political action committees are subject to limitations.** — A contributor to a political action committee ("PAC") is subject to the overall \$2,500 contribution limitation of Article 33, § 26-9, and has a duty of inquiry with respect to such limitation. 70 Op. Att'y Gen. 96 (1985).

Unless a contributor to a political action committee ("PAC") specifically earmarks his or her contribution for a particular candidate, or has some other reason to believe that the contribution will in fact go to only one or a handful of candidates, the \$1,000 campaign contribution limitation of Article 33, § 26-9 is inap-

plicable to PAC contributions. 70 Op. Att'y Gen. 96 (1985).

**Provisions applicable to officeholder only when candidate.** — An entity that benefits an incumbent solely in his or her capacity as an officeholder, but does not aid the incumbent as a candidate, is not governed by this subtitle. 68 Op. Att'y Gen. 252 (1983).

**No end to duty to report implied or contemplated in section.** — Outstanding deficits of a campaign committee or candidate's treasury are to be reported annually until no deficit remains, and there is no end to the duty to report implied or contemplated in this section. 62 Op. Att'y Gen. 385 (1977).

**And as long as indebtedness remains indebtedness, it must be reported by the candidate and treasurer.** 62 Op. Att'y Gen. 385 (1977).

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**Delegate candidates.** — The reporting requirements of this section should not be enforced relative to delegate candidates and such candidates will not be generally subject to the various restrictions contained in Maryland's Fair Election Practices Act with respect to the manner in which they report their campaign funds. 61 Op. Att'y Gen. 358 (1976).

**"Committee which continues in existence from year to year"** means committees which intend from the outset to continue to exist and be active, not just for one election year but from year to year and from election to election. 63 Op. Att'y Gen. 273 (1978).

**Intent of committee.** — Whether a political committee is one "which continues in existence from year to year" is largely a question of the committee's intent at the time of its organization, which intent is demonstrated by the committee's activity. 63 Op. Att'y Gen. 273 (1978).

**There is no prohibition against committee retroactively designating itself as "continuing"** if that was its intent from the outset. 63 Op. Att'y Gen. 273 (1978).

**Distribution of surplus funds by committee required before filing final report.** — If a political committee is formed to support a candidate in a given election year, even if its books should remain open for several years after his election in order to pay election debts, it is governed by § 26-7 (d) of this subtitle and must distribute surplus funds as required by that section before it files its final report as required by this section. 63 Op. Att'y Gen. 273 (1978).

**To permit campaign committee to distribute surplus funds to "continuing committee"** would be to permit it to circumvent the clear filing and reporting requirements which form the heart of the Fair Election Practices Act. 63 Op. Att'y Gen. 273 (1978).

**Political action committee formed by bank trade association to solicit funds and use them to make political campaign contribution** is required to comply with the requirements of § 26-4 (b) of this subtitle and subsection (c) of this section with regard to a bank account to be used for contributions to, and testimonials for, candidates for State office; however, it need not do so with regard to an account to be used for transfers to a national Bankpac which will, in turn, make political contributions to candidates for federal office. 62 Op. Att'y Gen. 374 (1977).

**Contributions to political action committees are subject to limitations.** — A contributor to a political action committee ("PAC") is subject to the overall \$2,500 contribution limitation of Article 33, § 26-9, and has a duty of inquiry with respect to such limitation. 70 Op. Att'y Gen. 96 (1985).

Unless a contributor to a political action committee ("PAC") specifically earmarks his or her contribution for a particular candidate, or has some other reason to believe that the contribution will in fact go to only one or a handful of candidates, the \$1,000 campaign contribution limitation of Article 33, § 26-9 is inapplicable to PAC contributions. 70 Op. Att'y Gen. 96 (1985).

**Testimonial deemed political contribution.** — Where a testimonial is for the purpose of raising funds for a future or past election campaign, the funds raised are a political contribution regulated by this subtitle and not a gift under the public ethics law. 71 Op. Att'y Gen. 108 (1986).

Applied in *Phifer v. State*, 278 Md. 72, 359 A.2d 210 (1976).

Cited in *Culotta v. Raimondi*, 251 Md. 384, 247 A.2d 519 (1968); *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

### § 26-12. Forms for report of contributions and expenditures and schedule of receipts and disbursements; statements by candidates for federal office.

(a) The forms for the "Report or Statement of Campaign and Election Contributions and Expenditures" and the "Schedule of Receipts and Disbursements" shall be prescribed by the State Administrative Board of Election Laws.

(b) A candidate or candidates for election or elected to a public office of the United States shall file a copy of each statement required by federal laws or regulations with the State Administrative Board of Election Laws. Additional campaign report filings by the candidate are not required. (1965, ch. 744; 1967, ch. 392, § 1; 1968, chs. 187, 613; 1971, ch. 270; 1973, ch. 779; 1976, ch. 378, § 1.)

**Political action committee formed by bank trade association.** — Individual contributors would have to be disclosed on any of the reports of a political action committee, formed by a bank trade association to solicit

funds and use them to make political campaign contributions, filed with the State. 62 Op. Att'y Gen. 374 (1977).

Cited in *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

### § 26-13. Requirements of election reports and statements.

(a) *Payment of late filing fee.* — There is a late filing fee for each report or statement of expenditures and contributions which is not filed within the time prescribed in § 26-11. The fee is \$10 for each day or part of a day, excluding Saturdays, Sundays and holidays, that a report is overdue. An additional fee of \$10 is due for each of the first six days, excluding Saturdays, Sundays and holidays, that a preelection report is overdue pursuant to §§ 26-11 (a) (1) and (2), 26-11 (c) and 26-11 (d). The maximum fee payable with respect to any single report is \$250. A board or its officer shall receive an overdue report or statement even if any late filing fee due has not been paid but the report or statement shall not be considered officially filed until all fees have been paid. Upon the receipt by the board of an overdue report or statement, no further late filing fees shall be incurred, notwithstanding the fact that the report or statement is not considered officially filed. The late filing fee is the joint and several personal liability of the candidate and treasurer as to the report of a candidate, or of the chairman and treasurer as to the report of a committee. A late filing fee may not be paid, directly or indirectly, from contributions to the candidate or committee and, when paid, may not be treated as a contribution or an expenditure for purposes of this article.

(b) *Prerequisites to becoming candidate or treasurer.* — A person may not become a candidate for public or party office in any election in this State, a certificate of candidacy may not be accepted on his behalf, and he may not become a treasurer for a candidate or committee unless (1) the person has filed or had filed on his behalf all reports or statements required by § 26-11 of this article and subsection (d) of this section to be filed by him, as a candidate, chairman, or treasurer, during the five calendar years preceding the election in which the person seeks to become a candidate or treasurer, and (2) any late filing fees due in connection with such reports and statements have been paid.

(c) *Notice when report or statement is overdue.* — Each board shall promptly notify the State Administrative Board of Election Laws of any report or statement required by § 26-11 to be filed which is more than 30 days overdue. Whenever it learns that a required report or statement is more than 30 days overdue, the State Administrative Board of Election Laws shall issue a notice to the candidate and treasurer, if the report is the statement of a candidate, or to the chairman and treasurer if the report is that of a committee, to show cause why the appropriate State's Attorney should not be requested to prosecute them as provided in § 26-20 for violation of the provisions of this subtitle, unless the failure to file is remedied and late filing fees paid within 30 days of service of the notice. Any candidate, chairman, or treasurer who fails to file the report or statement and pay the late filing fee due within 30 days after service of the show cause notice is guilty of a misde-



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meanor and subject to the penalties prescribed in § 26-20 of this article. Any such prosecution must be commenced within three years of the date on which the report or statement was originally due.

(d) *Failure to provide information called for.* — For the purposes of this section, the failure to provide all of the information called for on the forms prescribed pursuant to § 26-12, to the extent applicable, is a failure to file if the State Administrative Board of Election Laws has notified the candidate and treasurer, or chairman and treasurer, in writing, of the particular deficiencies and a properly corrected report has not been filed within 30 days of service of such notice. After the 30th day, and in the absence of a filed corrected report, daily late filing fees are thereafter payable, and all sanctions provided for herein and in § 26-20 shall be fully applicable without the necessity of further notice to the candidate, chairman, or treasurer under this subsection or subsection (c).

(e) *Successful candidates.* — A person may not be deemed elected to any public or party office under the laws of this State, or enter upon the duties of the office or receive any salary or emoluments therefrom until all of the reports and statements of contributions and expenditures required to be filed by the person pursuant to § 26-11 (a) of this article and subsection (d) of this section and due before the person may take office, have been filed. A candidate may not be sworn in until the State Administrative Board of Election Laws certifies that all the reports and statements required by § 26-11 (a) of this article and subsection (d) of this section have been filed. An official of the State or any of its political subdivisions may not issue a commission or administer an oath of office to a candidate until that official has received this certification from the State Administrative Board of Election Laws.

(f) *Withholding salary payments.* — If any person elected to public office has been notified pursuant to subsection (c) or (d) and has failed to file a report or statement required by § 26-11 (a) of this article or subsection (d) of this section in the time required, or failed to pay any late filing fee due, the board shall cause an investigation to be undertaken and shall notify the elected official and afford him the opportunity to be heard. If the board determines, after hearing, that a report or statement required by § 26-11 (a) of this article or subsection (d) of this section was not timely filed, that the official was notified pursuant to subsection (c) or (d), and that the failure to file has not been corrected and late filing fees have not been paid, then it shall direct the appropriate financial officers to withhold the salary of the elected official until the report or statement is filed and all late fees paid and to withhold from future salary payments a sum or sums which equal any amount previously paid to the elected official for a period during which his report or statement was in default.

(g) *Distribution of late filing fees.* — All late filing fees paid shall be treated as a special fund and shall be paid and distributed as follows:

(1) Fees pertaining to reports or statements required to be filed with the State Administrative Board of Election Laws shall be first applied to pay the expenses of collection and of any audits of financial reports and statements performed at the direction of the State Administrator. Any balance remaining

at the end of each fiscal year shall be remitted to the State treasury as part of the general funds of the State; and

(2) Fees pertaining to reports or statements required to be filed only with a county board shall be paid to the county board which shall, in turn, pay over all amounts received to the county.

(h) *Section mandatory; waiver of late filing fee.* — (1) The provisions of this section, and the provisions of § 26-11 with respect to the filing of reports or statements, are mandatory and not directory. However, no sanctions may be imposed for failure to file a report or statement or to pay a late filing fee if the failure is found by a court of competent jurisdiction to be for just cause.

(2) In addition, upon request of the person required to file, a late filing fee may be waived for just cause by the State Administrator of Election Laws subject to the approval of the State Administrative Board of Election Laws.

(3) (i) The decision of the State Administrator to waive or not to waive a late filing fee shall be in writing and shall set forth the circumstances surrounding the late filing and the reasons for the decision.

(ii) The decision to waive or not to waive may be made without notice or hearing. (1957, ch. 739, § 1; 1965, ch. 744; 1967, ch. 392, § 1; ch. 591; 1968, ch. 613; 1971, ch. 352, § 1; 1974, ch. 341; 1976, ch. 582, § 1; 1977, ch. 533; 1980, ch. 11; 1981, ch. 807; 1982, ch. 16; 1984, ch. 255; 1987, ch. 11, § 1.)

If local board discovers what it regards as probable cause to believe that there has been violation of any election law, it has an affirmative duty to cause a prosecution to be

instituted by referring the matter to the appropriate prosecutor and to assist him in pursuing any prosecution which he deems appropriate. 62 Op. Att'y Gen. 385 (1977).

### § 26-14. Preservation of reports, statements, and accounts; inspection; certified copies.

Every officer or board shall receive, file and preserve all reports, statements, and accounts relating to campaign contributions and expenditures which are required to be filed by this article. These reports, statements, and accounts shall be kept as part of the records of the officer or board for a period not to exceed five years or for at least one year beyond the length of the term of the public or party office for which every candidate to whom these reports, statements, or accounts apply, has offered himself for nomination or election, regardless if the candidate is successful, unsuccessful, or resigns, or for a longer period if ordered by a court of competent jurisdiction. These reports, statements, and accounts shall be subject and open to inspection by any citizen of this State during the hours in which the office in which the reports, statements, and accounts are kept is open. Thereafter, the reports, statements, and accounts shall be transferred to the State Archives. Before transferring any reports, statements or accounts to the State Archives, the officer or board with whom they were filed shall make a permanent record of all election reports required to have been filed by § 26-11 but which have not been filed. The permanent record shall include the name of the candidate or the committee, the treasurer, an identification of the missing report, and, if a final report, a notation of the amount of any outstanding balance, bills or

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deficits as shown on the last report filed. The officer or board shall file a copy of this permanent record with the State Administrative Board of Election Laws and with the State Archives. Copies of these reports, statements and accounts certified by the principal administrative officer in whose office they are kept under the seal of his office shall be evidence in any court to the same extent as the original report, statement or account would be if produced and proved. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 613; 1974, ch. 341; 1976, chs. 365, 699; 1984, ch. 285, § 1; ch. 286, § 5.)

**Editor's note.** — Section 10, ch. 286, Acts 1984, provides that "all employees or officials of the Hall of Records Commission on June 30, 1984, other than employees or officials of the Records Management Division, and the Commission on Artistic Property are hereby transferred to the State Archives and the Commission on Artistic Property created by this act, and all employees and officials of the Records Management Division of the Hall of Records Commission on June 30, 1984 are hereby transferred to the Records Management Division of the Department of General Services, without any change or loss of rights or status, and without further examination, qualification, or probationary period, and these employees and officials shall retain their merit system and retirement system status. Such employees and officials shall not suffer any diminution of salary, wages, accrued leave, or seniority rights and status as a result of such transfer. However, whenever the State Archivist serving on January 1, 1984 ceases to hold office, the successor shall be in the unclassified service and shall serve at the pleasure of the Governor."

Section 11 of ch. 286 provides "except as otherwise provided in this act, nothing in this act affects the term of office of an appointed member or an official of any board, commission, committee, or other agency or unit. A person who is a member or official of such a unit on the effective date of this act shall remain a member for the balance of the term to which the person was appointed, unless the person sooner dies, resigns, or is removed pursuant to the provisions of law."

Section 12 of ch. 286 provides that "any transaction affected by or flowing from any statute here amended, repealed, or transferred, and validly entered into before the effective date of this act and every right, duty, or inter-

est flowing from it remains valid after the effective date and may be terminated, completed, consummated, or enforced pursuant to law."

Section 13 of ch. 286 provides that "all rules and regulations, proposed rules and regulations, standards and guidelines, proposed standards and guidelines, orders and other directives, forms, plans, memberships, special funds, appropriations, grants, applications for grants, contracts, property investigations, administrative and judicial proceedings, rights to sue and be sued, and all other duties and responsibilities associated with those functions transferred by this act shall continue in effect under the State Archivist, State Archives, Hall of Records Commission, Commission on Artistic Property or Department of General Services until completed, withdrawn, cancelled, modified, or otherwise changed pursuant to law."

Section 14 of ch. 286 provides that "the repeal of Article 54, § 5 (a) of the Annotated Code of Maryland (1983 Replacement Volume) by this act does not affect the recovery of any records that were not transferred in accordance with the requirements of that provision and the Archives may proceed to recover those records as if Article 54, § 5 (a) were still in effect."

Section 15 of ch. 286 provides that "except as expressly provided in this act, this act does not affect the State Archives Fund or the Consolidated Publication Account."

Section 18 of ch. 286 provides that "§§ 1 through 5 and 10 through 17 of this act shall take effect July 1, 1984."

Section 19 of ch. 286 provides that "contingent on the taking effect of Senate Bill 50 of the Acts of the General Assembly of 1984, §§ 6 through 9 of this act shall take effect October 1, 1984." Senate Bill 50 was enacted as ch. 284, Acts 1984.

### § 26-15. Perjury.

Any wilfully false, fraudulent, or misleading statement or entry made by any candidate for office, treasurer, or subtreasurer, or by any member or officer of any political committee, in any statement or account under oath required by this article, shall constitute the crime of perjury, and be punish-

able as such according to the laws of this State. (1957, ch. 739, § 1; 1965, ch. 744; 1967, ch. 392, § 1; 1968, ch. 613.)

Stated in *State v. Levitt*, 48 Md. App. 1, 426 A.2d 383, cert. denied, 290 Md. 717 (1981).

### § 26-16. Offenses constituting prohibited practices.

(a) *Enumerated.* — The following persons shall be guilty of prohibited practices and shall be punished in accordance with the provisions of this section:

(1) *Offering Bribe, etc.* Every person who shall, directly or indirectly, by himself or by another, give or offer or promise to any person any money, gift, advantage, preferment, aid, emolument or any valuable thing whatever, for the purpose of inducing or procuring any person to vote, or refrain from voting, for or against any person, or for or against any measure or proposition at any election or political convention or for or against the election of any officer by the General Assembly of Maryland.

(2) *Accepting or Soliciting Bribe, etc.* Every person who shall, directly or indirectly, receive, accept, request or solicit from any person, candidate, committee, association, organization or corporation, any money, gift, advantage, preferment, aid, emolument, or any valuable thing whatsoever, for the purpose of inducing or procuring any person to vote, or refrain from voting, for or against any person, or for or against any measure or proposition at any election or political convention.

(3) *Acting on Bribe, etc.* Every person who, in consideration of any money, gift, advantage, preferment, aid, emolument, or any valuable thing whatsoever, paid, received, accepted, or promised to the advantage of himself or any other person, shall vote or refrain from voting for or against any person, or for or against any measure at any such election or political convention.

(4) *Making Contribution Other Than to Treasurer or Subtreasurer.*

(i) Except as provided in subparagraph (ii) of this paragraph, every person who shall, directly or indirectly, pay, give, contribute or promise any money or other valuable thing, to defray, or towards defraying the costs or expenses of any campaign or election, to any person, committee, company, organization or association, other than to a treasurer or a subtreasurer.

(ii) Subparagraph (i) of this paragraph may not apply to:

1. Dues regularly paid for membership in any political club if all money expended by the club or in connection with the costs or expenses of any campaign or election shall be paid out by it only through a treasurer or subtreasurer as provided in this article;

2. Volunteered time or personal vehicles or personal advertising or costs and expenses incident to the expression of personal views in accordance with the provisions of § 26-9 (a) of this article; or

3. An employer's accumulation of employee contributions in accordance with § 26-9 (c) of this article.

(5) *Political Contributions in False Name.* Every person who shall, directly or indirectly, by himself or through another person, make a payment, or

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promise of payment, to a treasurer or subtreasurer, or candidate, in any other name than his own, and every treasurer or subtreasurer or candidate who shall knowingly receive a payment, or promise of payment, and enter the same or cause the same to be entered in his accounts in any other name than that of the person by whom such payment or promise of payment is made.

(6) **Coercing Employees.** Every person who, being an employer, pays his employees the salary or wages due in "pay envelopes," upon which there is written or printed or in which there is enclosed any political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees, or within ninety days of an election puts, or otherwise exhibits in the establishment or place where his employees are engaged in labor, any handbill or placard containing any threat, notice or information that if any particular ticket or candidate is elected or defeated, work in his place or establishment, will cease, in whole or in part, his establishment be closed up or the wages of his employees reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees.

(7) **Campaign Literature.** Every person who publishes or distributes or causes to be published or distributed any pamphlet, circular, card, sample ballot, dodger, poster, advertisement or any printed, multigraphed, photographed, typewritten or written matter or statement or any matter or statement which may be copied by any device or method now known for printing or copying or which may hereafter be used for making copies of printed or written matter in any form whatever for publication or distribution, relating to or concerning any candidate, including a write-in candidate, or prospective candidate for public or party office or for the acceptance or defeat of any proposition unless such pamphlet, circular, card, sample ballot, dodger, poster, advertisement, or other form of publication herein described clearly indicates the name of the candidate or committee responsible for the literature and contains, but set apart therefrom, an authority line which shall include the name and address of the person, treasurer, or campaign manager responsible for the publication or distribution of the same, except that if the person, treasurer, or campaign manager has furnished his address to the appropriate board the literature need not contain an address.

(8) **Contribution or Expenditure in Violation of § 26-8.** Every person who, being a candidate, makes any payment, contribution, expenditure or promotes or incurs any liability to pay, contribute or expend from his own personal financial resources any money or thing in value in a manner not authorized by § 26-8 of this article.

(b) **Penalties.** — Every person who shall be guilty of any prohibited practices described in this section shall be fined not more than \$1,000 or be imprisoned for not more than one year, or both, and shall be ineligible for any public or party office, for the period of four years from and after the time of the commission of such offense.

(c) **Prosecution.** — It shall be the duty of the State's Attorney of Baltimore City and of the State's Attorney of each county of this State to prosecute, by the regular course of criminal procedure, any person whom he may believe to

be guilty of having wilfully violated any of the provisions of this section within the city or county for which said State's Attorney may be acting as such. (1957, ch. 739, § 1; 1965, ch. 744; 1967, ch. 392, § 1; 1968, chs. 613, 659; 1969, ch. 281; 1970, ch. 28; 1973, ch. 249; 1975, ch. 723, § 1; 1976, chs. 418, 419; 1984, ch. 255; 1987, ch. 11, § 1; 1988, ch. 676; 1989, ch. 5, § 1; chs. 288, 289.)

**Effect of amendment.** — Chapter 5, Acts 1989, approved Mar. 9, 1989, and effective from date of passage, substituted "Subparagraph" for "Item" in the introductory language of (a) (4) (ii).

Chapters 288 and 289, both effective July 1, 1989, made identical changes. Each deleted the second sentence of (c).

**Editor's note.** — Section 19, ch. 5, Acts 1989, provides that "except for §§ 5, 6, 10, and 11 of this Act, the provisions of this Act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this Act."

**Power of legislature to enact corrupt practices legislation is very broad.** It is a fundamental doctrine that all reasonable regulations which the legislature deems important to guard against corruption and to preserve the purity of elections are not only within the constitutional power of the legislature but commendable if not absolutely essential. *Smith v. Higinbothom*, 187 Md. 115, 48 A.2d 754 (1946).

**Construction of remedial and penal provisions.** — This subtitle is a remedial measure and should be liberally construed in the public interest to carry out its purpose of preserving the purity of elections. But, while the statute should be given a liberal construction as to its remedial provisions, it should be strictly construed as to its penal provisions. There is no impropriety in putting a liberal construction on a remedial clause, and a literal construction

on a penal clause in the same statute. *Smith v. Higinbothom*, 187 Md. 115, 48 A.2d 754 (1946).

**"Prohibited practices".** — The absence in § 1-1 of this article of any definition of "prohibited practices" is an indication that the words were to be given their ordinary general meaning rather than to be construed as words of art with an attendant limited application. *Culotta v. Raimondi*, 251 Md. 384, 247 A.2d 519 (1968).

**Campaign literature.** — Section would be unconstitutional if it were read as requiring anyone who published praised or criticism of an elected official during a campaign to also publish an identifying line; rather, the State may compel that disclosure only when a publication that is made independently of any candidate expressly advocates someone's election or defeat. 69 Op. Att'y Gen. 145 (1984).

Advertisement concerning congressman contained no express advocacy of the election or defeat of any candidate; therefore, assuming that the ad was prepared and published independently of any candidate, subsection (a) (7) does not apply to it. 69 Op. Att'y Gen. 145 (1984).

**Applied in** *Snyder v. Glusing*, 307 Md. 548, 515 A.2d 767 (1986).

**Quoted in** *Duffy v. Conaway*, 295 Md. 242, 455 A.2d 955 (1982); *Snyder v. Glusing*, 308 Md. 411, 520 A.2d 349 (1987).

**Cited in** *Bowie v. State*, 14 Md. App. 567, 287 A.2d 782 (1972); *Campbell v. State*, 37 Md. App. 89, 376 A.2d 866 (1977); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272, cert. denied, 284 Md. 744 (1979); *Butler v. State*, 55 Md. App. 409, 462 A.2d 1230 (1983).

## § 26-17. Requirements concerning advertising; rates.

(a) It is unlawful for any person, candidate, campaign manager, treasurer or subtreasurer, partisan organization, political committee, including political clubs, or party committee to expend any money for printing, publication, or broadcasting of any political matter whatsoever unless such matter purports on its face to be a paid political advertisement and printed, published, or broadcast by the authority of the person, campaign manager, treasurer or subtreasurer for the named candidate, partisan organization, party committee, or political committee, including political clubs.

(b) No person or corporation within the State, publishing a newspaper or other periodical, shall charge a candidate for State or local public office for

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political advertising a rate in excess of the regular local rate regularly charged by such person or corporation for commercial advertising except that when such political advertising is placed with the person or corporation through the medium of an advertising or press agency, then the regular national rate regularly charged by such person or corporation for commercial advertising may be charged.

(c) Violation of this section is a misdemeanor and any person so convicted is subject to the penalties provided in § 26-20 of this article. (1965, ch. 744; 1967, ch. 392, § 1; 1968, ch. 613; 1969, ch. 559; 1973, ch. 249; 1976, chs. 418, 419; 1984, ch. 255.)

Cited in *Phifer v. State*, 278 Md. 72, 359 A.2d 210 (1976).

### **§ 26-17.1. Retention of samples of political matter published or distributed.**

(a) Each candidate or treasurer or subtreasurer and every person who publishes or distributes or causes to be published or distributed any pamphlet, circular, card, sample ballot, dodger, poster, advertisement, buttons, matchbooks, nail files, balloons, or any other printed, multigraphed, photographed, typewritten, written matter or statement or any matter or statement which may be copied by any device or method or which may hereafter be used for making copies of printed or written matter in any form whatever for publication or distribution, relating to or concerning any candidate or prospective candidate for public or party office or for the acceptance or defeat of any proposition, shall maintain for a period of one year following each election a complete file of sample copies of all matter printed, published, or distributed by his authority.

(b) "Distributor" includes any person or persons, partnership, or corporation engaged in the distribution of circulars, pamphlets, and other advertisements by hand delivery or direct mail for profit but does not include salaried employees, agents, or volunteers of the person or persons, partnerships, or corporations.

(c) A person subject to the requirements of subsection (a) is not required to maintain sample copies of billboards and placards. (1969, ch. 559; 1976, ch. 418.)

### **§ 26-18. Procedure on petition.**

(a) *Petition.* — Repealed.

(b) *Notice and answer.* — Repealed.

(c) *Trial.* — Repealed.

(d) *Judge to file findings with State Administrative Board of Election Laws; duty of Board.* — Repealed.

(e) *Findings and decisions of court to be filed with Governor in certain cases.* — Repealed.

(f) *Void elections.* — Repealed.

(g) *Effect of violation upon candidate.* — Transferred. (1957, ch. 739, § 1; 1958, ch. 38; 1967, ch. 392, § 1; 1968, chs. 187, 613; 1970, ch. 103; 1971, ch. 2, § 1; ch. 352, § 1; 1982, ch. 820, § 1; 1985, ch. 755.)

**Editor's note.** — Section 1, ch. 755, Acts redesignated subsection (g) to be subsection (b) 1985, repealed subsections (a) to (f) and also of § 24-27 of this article.

### § 26-19. Witnesses and costs in court proceeding.

Repealed by Acts 1985, ch. 755, effective July 1, 1985.

### § 26-20. Penalty for violations.

Any person who violates any of the provisions of this subtitle is guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars (\$1,000.00), or be imprisoned for not more than one year, or both, in the discretion of the court. If a different penalty is specifically prescribed for violation of any section in this subtitle and expressly set forth therein, the specific penalty applies and the penalty set forth in this section does not apply. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1968, ch. 613; 1970, ch. 105.)

**Maryland Law Review.** — For article, "The Court of Appeals of Maryland: Roles, Work and Performance — Part II: Craftsmanship and Decision-Making," see 38 Md. L. Rev. 148 (1978).

For comment, "Maryland Campaign Finance Law: A Proposal for Reform," see 47 Md. L. Rev. 524 (1988).

Stated in *Duffy v. Conaway*, 295 Md. 242, 455 A.2d 955 (1982).

Cited in *A.S. Abell Co. v. Barnes*, 258 Md. 56, 265 A.2d 207 (1970), cert. denied, 403 U.S. 921, 91 S. Ct. 2224, 29 L. Ed. 2d 700 (1971); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272, cert. denied, 284 Md. 744 (1979).

### § 26-21. Injunction.

The Secretary of State may seek an immediate injunction against any violation of the provisions of this subtitle. Anyone violating the injunction is guilty of criminal contempt and upon conviction shall be sentenced to not more than thirty days in jail and fined not more than two hundred and fifty dollars (\$250.00). (1969, ch. 559.)

Stated in *Duffy v. Conaway*, 295 Md. 242, 455 A.2d 955 (1982).

## ABSENTEE VOTING

### § 27-1. Who may vote.

(a) Any employee of the State Board or a board of supervisors of elections, including any judge appointed under § 2-7 of this article who, as a condition of his employment on any election day, is required to be absent from the election district, ward, or precinct in which he is registered to vote who chooses to vote shall cast his vote by an absentee ballot provided by the board.



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(b) A registered voter may vote by absentee ballot under this subtitle if the voter:

(1) May be absent for any reason from the county or Baltimore City where the voter is registered to vote on election day;

(2) Is a full-time student at a college or university located outside the precinct but within the county in which the student is registered to vote and whose academic requirements preclude the student from being present at the polls on any election day;

(3) Has a physical disability or is confined in or restricted to an institution which precludes the voter from being present and personally voting at the polls on any election day;

(4) Is unable to be present at the polls on election day because of a death or serious illness in the voter's immediate family; or

(5) Is unable to be present at the polls on election day as a result of illness or accident. (1957, ch. 739, § 1; 1958, ch. 33; 1962, ch. 120; 1963, ch. 385; 1967, ch. 392, § 1; 1971, ch. 216; 1975, ch. 35; 1976, ch. 174, §§ 2, 3; 1985, ch. 598; 1990, ch. 89.)

**Effect of amendment.** — The 1990 amendment, effective July 1, 1990, in (b), rewrote (3), and added (4) and (5).

**University of Baltimore Law Review.** — For article, "Federal Jurisdiction Over Local Vote Fraud," see 13 U. Balt. L. Rev. 1 (1983).

**§ 27-2. Emergency absentee ballots; voter assistance.**

(a) *Application for ballot.* — (1) After the Tuesday preceding an election and on the day of the election prior to the time the polls close, any person registered and otherwise qualified to vote may apply, in person or through a duly authorized agent, as authorized in paragraph (4) of this subsection, who appears in person, at the office of the board of supervisors of elections for an emergency absentee ballot if the voter is within the provisions of § 27-1 of this article or eligible for an absentee ballot under § 3-21A of this article.

(2) The application shall be made under penalty of perjury but without formal oath, setting forth the reason why the voter is unable to be present at the polls on the day of the election.

(3) Upon receipt of the application, the board, if satisfied that the person cannot, in fact, be present at the polling place on the day of the election, shall issue to the applicant, or his duly authorized agent, an absentee ballot which shall be marked by the voter, placed in a sealed envelope, and returned to the board.

(4) If the applicant does not apply in person, the applicant shall designate a voter registered in the same county or Baltimore City as agent for the purpose of delivering the absentee ballot to the voter, and the agent shall execute an affidavit under penalty of perjury that the ballot was delivered to the voter who submitted the application, was marked by the voter in the agent's presence, was placed in a sealed envelope in the agent's presence, and returned, under seal, to the board by the agent.

(5) Any emergency absentee ballot received by the board shall be considered timely if received in accordance with § 27-9 (c). (1957, ch. 739, § 1; 1967,

ch. 392, § 1; 1968, ch. 224; 1971, ch. 216; 1972, ch. 671; 1973, chs. 421, 520; 1976, ch. 37, ch. 174, § 4; ch. 390, § 1; 1983, ch. 372; 1984, ch. 2; 1985, ch. 10, § 1; 1990, ch. 89.)

**Effect of amendment.** — The 1990 amendment, effective July 1, 1990, deleted former (a), redesignated former (a-1) as present (a) and rewrote (1) therein.

### § 27-3. Elections in which absentee voters may vote.

This subtitle applies to elections for all candidates, constitutional amendments and other questions at any election held in any year, but, with the exception of Baltimore City, it does not include municipal elections in any municipal corporation. (1957, ch. 739, § 1; 1958, ch. 33; 1962, ch. 120; 1963, ch. 385; 1967, ch. 392, § 1.)

**Quoted in** *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272, cert. denied, 284 Md. 744 (1979).

### § 27-4. Applications for absentee ballots; issuance.

Except as provided in § 27-2 of this article, a qualified voter desiring to vote at any election as an absentee voter shall make application in writing to the board for an absentee ballot, which application must be received not later than the Tuesday preceding the election. The application shall contain an affidavit, which need not be under oath but which shall set forth such information, under penalty of perjury, as may be required by the State Administrative Board of Election Laws. Upon receipt of the application the Board shall issue, to the voter or a duly authorized agent, an absentee ballot. (1957, ch. 739, § 1; 1958, ch. 33; 1962, ch. 120; 1963, ch. 385; 1967, ch. 392, § 1; 1969, ch. 245; 1971, ch. 216; 1972, ch. 671; 1976, ch. 37; ch. 174, § 5; ch. 390, § 1; 1977, ch. 533; 1990, ch. 89.)

**Effect of amendment.** — The 1990 amendment, effective July 1, 1990, rewrote the exception at the beginning of the first sentence, and added the last sentence.

### § 27-5. Application forms.

(a) Printed forms of application for absentee ballots in accordance with the requirements of this subtitle shall be provided by the boards and shall be available to any qualified voter upon request.

(b) The State Administrative Board of Election Laws shall prescribe all forms of applications for absentee ballots including "Application for Absentee Registration and Ballot," "Application for Absentee Ballot by Registered Voter," "Application for Emergency Absentee Ballot by Registered Voter," and related affidavits and statements.

(c) Repealed by Acts 1976, ch. 390, § 2, effective July 1, 1976. (1957, ch. 739, § 1; 1958, ch. 33; 1962, chs. 70, 120; 1963, ch. 385; 1967, ch. 392, § 1; 1969, ch. 245; 1971, ch. 216; 1972, chs. 10, 671; 1973, ch. 779; 1976, ch. 390, §§ 1, 2.)

**§ 27-6. Determination of absentee voters' applications; delivery of ballots.**

(a) *Rejection of application.* — Upon receipt of an application containing the affidavit, the board shall reject the application only upon the unanimous vote of the entire board and when rejected shall notify the applicant of the reason therefor if it determines upon inquiry that the applicant is not legally qualified to vote at the election as an absentee voter.

(b) *Delivery of ballot.* — If the applicant is a qualified voter as stated in his affidavit, the board shall, as soon as practicable thereafter, deliver to him at the office of the board, or mail to him at an address designated by him, an absentee voter's ballot and an envelope therefor. If the applicant is one with respect to whom free postage privileges are provided for by the Federal Voting Assistance Act of 1955, or any other federal law, rule, or regulation, the board shall take full advantage of these privileges; in all other instances, postage for transmitting ballot material to voters shall be paid by the board, and postage for the return of ballots shall be paid by the voters. If the ballots are to be sent by mail, the determinations required in subsection (a) of this section shall be made in such time as will allow for the sending and return of the ballots by regular mail, or airmail, depending on the mailing address and including at least one secular day for marking the ballots and completing the affidavit. All investigations shall be concluded and any determinations made as to all absentee ballot applications not later than five days before election day.

(c) *Record of applications received and ballots delivered.* — (1) The board shall keep a record of applications for absentee voters' ballots as they are received, showing the date and time received, the names and residences of the applicants, and such record shall be available for examination by any registered voter on written application to the board.

(2) After approval of an application for an absentee ballot and the mailing to the applicant of an absentee ballot, then, unless an electronically reproduced precinct register is used, the voter's record card in the precinct binder shall be removed and placed in a separate binder marked "Registered Absentee Voters" and retained in the office of the board. A marker shall be placed in the regular precinct binder with the voter's name and recording the fact that an absentee ballot has been mailed, which shall show the date on which the ballot was sent. If an electronically reproduced precinct register is used, a distinctive line shall be drawn through the voter's name on the list and marked "Absentee Voter." No such voter shall vote or be allowed to vote in person at any polling place.

(d) *One ballot to an applicant.* — Not more than one absentee ballot shall be mailed to any one applicant unless the board has reasonable grounds to believe that the absentee ballot previously mailed has been lost, destroyed or spoiled. (1957, ch. 739, § 1; 1962, ch. 120; 1967, ch. 392, § 1; 1969, ch. 245; 1974, chs. 336, 380; 1976, ch. 820.)

**§ 27-7. Ballots for absentee voters.**

(a) *Printing of ballots, envelopes and instructions; use of punchcard ballots.* — In sufficient time prior to any election, the boards shall have printed an

adequate number of absentee ballots, the three kinds of envelopes described in this section, and the instructions to absentee voters as set out in § 27-8 of this article.

(1) Absentee ballots in the discretion of the board may be in the form either of paper ballots or of one or more punchcards or other computer read documents kept together in a covering folder, provided that all absentee ballots in any one county or Baltimore City shall be in the same form. The form and arrangement of all absentee ballots shall be as prescribed by the State Administrative Board of Election Laws.

(2) Notwithstanding any provision in this subsection, before any board may use punchcard ballots or ballots that are other computer read documents, the particular ballot system, including the form of ballot arrangement, the nature of the ballot used, the method of marking ballots, and any sorting or counting devices must be approved for use in the State by the State Administrative Board of Election Laws. Before approving a punchcard or other computer read document ballot system for use in the State, the State Administrative Board of Election Laws shall be satisfied that the system is accurate, efficient and free from the likelihood of mechanical breakdowns and understandable by voters, that it is subject to recount by some other system, and that it complies with the laws of Maryland.

(b) *Form of ballots.* — All ballots shall contain the words "Absentee Ballot" or "Official Ballot" printed in large letters in a clear space at the top of each ballot and on any covering folder instructions to the voters shall be printed as follows:

(1) If paper ballots are used, underneath the words "Absentee Ballot" or "Official Ballot" shall be printed the following warning: "Mark ballot by placing X in proper blank after each candidate or question. Do not erase or make identifying mark. If your vote for a candidate or question is marked in such a manner that your intent is not clearly demonstrated, your vote for that office or question shall not be counted. In order to protect the secrecy of your vote, do not put your name, initials, or any identifying mark on your official ballot. If it is determined that a ballot is intentionally marked with an identifying mark the entire ballot will not be counted."

(2) If punchcard ballots or other computer read documents are used, clear directions shall be provided to the voter, either on the ballot itself or in the instructions required by § 27-8 of this article. These instructions shall include information as to how to mark the ballot, and also shall contain a warning to the voter not to repair the ballot or make an identifying mark on it. If both sides of a ballot are used to list candidates or questions to be voted on, the words "Vote both sides" shall appear on both sides of the ballot. The designation of the election district or ward and the precinct shall be left blank on paper ballots on the back and outside of said ballots, on punchcard ballots on each punchcard, on ballots that are other computer read documents and on the outside of the covering folders for said ballots, and such designation may be filled in by the appropriate board before being sent to any registered absentee voter.

**Art. 33, § 27-8 REGISTRATION AND ELECTION LAWS**

(c) *Envelopes.* — The State Administrative Board of Election Laws shall prescribe the size, form and printed content of the absentee ballot material envelopes, providing for a “covering envelope,” a “ballot envelope,” and a “return envelope.” (1957, ch. 739, § 1; 1962, chs. 70, 120; 1967, ch. 392, § 1; 1969, ch. 245; 1971, ch. 263; 1972, ch. 201, § 1; 1973, chs. 16, 779; 1975, ch. 324; 1978, ch. 63; 1984, ch. 2; 1987, ch. 398.)

**§ 27-8. Instructions to voters.**

The printed instructions for the casting of absentee ballots shall be prescribed by the State Administrative Board of Election Laws and it shall prescribe separate instructions for paper ballots, all types of punchcard ballots and ballots that are other computer read documents. (1957, ch. 739, § 1; 1962, chs. 70, 120; 1967, ch. 392, § 1; 1969, ch. 245; 1971, ch. 262; 1972, ch. 201, § 1; 1973, ch. 779; 1987, ch. 398.)

**Improper instructions.** — Election officials cannot effectively change the law by giving erroneous, ambiguous, or misleading instructions to the voters, and a court cannot com-

mand a board of canvassers to credit the improper instructions rather than the law. *Lamb v. Hammond*, 308 Md. 286, 518 A.2d 1057 (1987).

**§ 27-9. Canvassing of ballots.**

(a) *Opening or unfolding ballots.* — The board shall not open or unfold any absentee ballot at any time prior to the closing of the polls.

(b) *Duties of boards.* — (1) Subject to the provisions of paragraph (2), at any time after 4 p.m. on the Wednesday following election day and not later than the canvass of the votes cast at the regular voting places in this State at any election, the several boards shall meet at the usual place for holding the circuit court for the county or at the usual offices of the board and shall proceed to count, certify and canvass the absentee ballots contained in the ballot envelopes. Each board of canvassers shall keep the ballots safe from tampering until the canvass is completed. The State Administrative Board of Election Laws and the several boards shall take all appropriate and feasible steps to protect the privacy of all absentee ballots.

(2) The canvass may not be completed until all absentee ballots that have been received timely have been counted.

(c) *Timely receipt of ballot.* — (1) Except as provided in subsection (d), a ballot shall be considered as received timely provided:

(i) It has been received by the board prior to the closing of the polls on election day; or

(ii) 1. It was mailed before election day;

2. The United States Postal Service, an Army Post Office, a Fleet Post Office, or the postal service of any other country, has provided verification of that fact by affixing a mark so indicating on the covering envelope; and

3. The board receives the ballot from the United States Postal Service not later than 4 p.m. on the Wednesday following election day.

(2) Except as provided in subsection (d), any ballot received after the deadline established in this subsection may not be counted.

(d) *Ballots received from locations outside United States.* — (1) In a general or special election, or a primary election in the year in which the President of the United States is elected, a ballot received from a location outside the United States shall be considered as received timely provided:

(i) It has been received by the board from the United States Postal Service not later than 4 p.m. on the second Friday following the election day; and

(ii) 1. It was mailed before election day; and

2. The United States Postal Service, an Army Post Office, a Fleet Post Office, or the postal service of any other country, has provided verification of that fact by affixing a mark so indicating on the covering envelope.

(2) Any ballot received by mail after the deadline established in this subsection may not be counted.

(3) The commencement of the counting and canvassing process may not be delayed to await receipt of ballots under this subsection.

(4) For the purposes of this subsection, "United States" includes the several states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands, but does not include American Samoa, the Canal Zone, Guam, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, an Army Post Office address, or a Fleet Post Office address.

(e) *Voter's affidavit.* — For the purposes of subsections (c) and (d), a voter's affidavit that the ballot was completed and mailed before election day shall suffice if the postal service of the country from which the ballot was mailed does not provided a postmark on that ballot.

(f) *Procedure generally.* — (1) A ballot may not be rejected by the board except by the unanimous vote of the entire board.

(2) If the intent of the voter is not clearly demonstrated, only the vote for that office or question shall be rejected.

(3) If the board of canvassers determines a ballot is intentionally marked with an identifying mark the entire ballot shall not be counted.

(4) Any ballot received by mail after the deadlines established in subsections (c) and (d) of this section may not be counted.

(5) This canvass shall be conducted by election district or ward or by congressional, councilmanic, or legislative districts.

(6) Absentee ballots may not be separately disclosed or reported by precinct.

(7) All voters' applications, affidavits, certifications, ballot envelopes and ballots shall be kept separate and apart from ballots cast at the regular voting places and retained after the date of election at which they were cast for the time required by federal law, unless prior to that time, the board is ordered by a court of competent jurisdiction, to keep the same for any longer period.

(8) The several boards may appoint such numbers of temporary judges as the boards may deem necessary to adequately and promptly carry out the provisions of this section.

(g) *Ballot voted for person who has ceased to be a candidate.* — Any absentee ballot voted for a person who has ceased to be a candidate shall not be counted for such candidate but such vote shall not invalidate the remainder of such ballot.

**Art. 33, § 27-9 REGISTRATION AND ELECTION LAWS**

(h) *Ballot delivered to wrong board.* — If an absentee ballot envelope is delivered to the wrong board, such board shall immediately send said ballot envelope unopened, unmarked and unchanged in any way to the proper board.

(i) *Voter dying before election day.* — (1) Whenever any board shall determine from proof or investigation that any person who has marked and transmitted or deposited in person with the board an absentee ballot, whether under act of Congress or the provisions of this subtitle, has died before election day, said board shall not count the ballot of the said deceased voter, but it shall be preserved by the board for the time required by federal law, and may then be destroyed, unless prior to that time the board is ordered by a court of competent jurisdiction to keep the same for any longer period.

(2) If at or prior to the time of such counting and canvassing the board shall not have determined that the absentee resident who marked a ballot had died before election day, said ballot shall be counted, and the fact that said absentee resident may later be shown to have been actually dead on election day shall not invalidate said ballot or said election.

(j) *Placing ballot in ballot box and entry in registry; more than one ballot in envelope; marking ballots.* — (1) If the board determines that the provisions for filling out and signing the oath on the outside of the ballot envelope have been substantially complied with and that the person signing the voter's oath is entitled to vote under this subtitle in any precinct of their respective county or city, as the case may be, and has not already voted therein on election day, they shall open the ballot envelope and remove the ballot therefrom and the ballot shall be placed by the board in a secure place to which the public has no access.

(2) When any ballot envelope is opened, the board shall enter in the appropriate register the fact that the voter whose name appears thereon has voted, using the initials "A.B." to indicate the vote has been by absentee ballot.

(3) If there be more than one ballot in the ballot envelope, all shall be rejected except when two elections are held on the same day and a voter is voting in both elections and the voter returns both absentee ballots in the ballot envelope provided.

(4) Absentee ballots may be marked by any kind of pencil or ink.

(k) *More than one ballot received from same person.* — If any board receives from the same person prior to the deadline for receipt of absentee ballots more than one absentee ballot, it shall count, certify and canvass only the absentee ballot contained in the ballot envelope on which the voter's oath was first executed, and if the oath on two or more of the ballot envelopes containing absentee ballots are dated the same or if both are undated, none of the ballots received from such person shall be counted. (1957, ch. 739, § 1; 1963, ch. 689; 1967, ch. 392, § 1; 1972, ch. 570, § 1; 1976, ch. 172; 1981, ch. 249; 1982, ch. 44; 1984, ch. 2; 1985, ch. 564; 1987, ch. 11, § 1; chs. 398, 674.)

**Improper instructions.** — Election officials cannot effectively change the law by giving erroneous, ambiguous, or misleading instructions to the voters, and a court cannot com-

mand a board of canvassers to credit the improper instructions rather than the law. *Lamb v. Hammond*, 308 Md. 286, 518 A.2d 1057 (1987).

**§ 27-10. Contests and appeals.**

(a) *Decision by board.* — Contests concerning registration, voting or the validity of any ballot under this subtitle shall be decided by the board having jurisdiction of the matter.

(b) *Unanimous vote by board.* — No registration shall be denied and no ballot rejected except by the unanimous vote of the entire board.

(c) *Right to appeal.* — Any candidate or absentee voter aggrieved by any decision or action of such board shall have the right of appeal to the circuit court for the county to review such decision or action, and jurisdiction to hear and determine such appeals is hereby conferred upon said courts.

(d) *Procedure for appeal.* — Such appeals shall be taken by way of petition filed with the appropriate court within five days from the date of the completion of the official canvass by any board of all the votes cast at any election and shall be heard de novo and without a jury by said court as soon as possible.

(e) *Appeal to Court of Special Appeals.* — There shall be a further right of appeal to the Court of Special Appeals, provided such appeal shall be taken within 48 hours from the entry of the decision of the lower court complained of, and all such appeals shall be heard and decided on the original papers, including a typewritten transcript of the testimony taken in such cases, by the Court of Special Appeals, as soon as possible after the same have been transmitted to that Court.

(f) *Transmission of record to Court of Special Appeals.* — The original papers, including the testimony, shall be transmitted to the Court of Special Appeals within 5 days from the taking of the appeal. (1957, ch. 739, § 1; 1958, ch. 38; 1967, ch. 392, § 1; 1976, ch. 472, § 8; 1982, ch. 820, § 1; 1985, ch. 564; 1987, ch. 11, § 1.)

**Editor's note.** — Section 6, ch. 820, Acts all purposes to be treated as the circuit court 1982, provides that "it is the intent of this act for a county." that the Circuit Court for Baltimore City is for

**§ 27-11. General powers of State Administrative Board of Election Laws and boards.**

The State Administrative Board of Election Laws and the boards are hereby severally authorized and empowered to do any and all acts, the carrying out of which is committed to them by any act of Congress providing for voting by persons who are absentee voters, and to accept and expend any funds made available to them or to the State of Maryland by Congress for the purpose of defraying the costs and expenses incurred in connection therewith, including their services. The State Administrative Board of Election Laws and the several boards are hereby severally authorized and empowered to use any and all facilities that may be furnished by the United States or any department, commission or agency thereof, pursuant to any act of Congress or otherwise, for the purpose of transmitting to and from absentee voters applications for absentee ballots, envelopes, instructions and all other printed matter that



## **Art. 33, § 27-12 REGISTRATION AND ELECTION LAWS**

may be permitted to be transmitted by any act of Congress and generally to cooperate in every way with military and civil officers of the United States and with all such departments, commissions and agencies thereof in order to enable such persons to vote. (1957, ch. 739, § 1; 1967, ch. 392, § 1; 1970, ch. 103; 1972, ch. 570, § 1.)

### **§ 27-12. Authority to change ballots and materials to conform to congressional act.**

If any act or acts of Congress, now or hereafter in effect, providing for voting by mail of all or any of the persons who are absentee residents or voters, as defined in this subtitle, requires the execution of an oath on the ballot envelope, or otherwise, or requires other printing on any of said ballot material, which is different from that required on the ballot envelope or other ballot material as provided in this subtitle, such ballot if completed in accordance with such act of Congress, whether or not completed in accordance with this subtitle, shall be accepted as having complied with the requirements of this subtitle, provided any such change does not conflict with any provision of the Constitution of this State and shall not provide or prescribe any oath which would not furnish the information needed to enable any board to register the affiant as a qualified voter under the Constitution of this State. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

### **§ 27-13. Compensation of supervisors.**

Whenever the provisions of this subtitle are enforced at any election the board in Baltimore City shall be entitled to receive, in addition to the compensation now paid to them, the further sum of \$200 for each member for every such election, and the board members in the several counties and their respective clerks, in addition to the compensation now allowed them, shall each be entitled to receive such additional sum for services actually rendered in the performance of their duties under this subtitle as shall be allowed them by the county commissioners or county councils of the several counties, but in no event less than \$10 per diem for such services. Each board shall be allowed such further sum for expenses and clerical hire in the performance of the duties imposed upon them by this subtitle as may be reasonable and necessary. All said expenses shall be paid by the Mayor and City Council of Baltimore and the county commissioners or county councils of the several counties, respectively, in precisely the same way as compensation and similar election expenses are now provided to be paid by law. (1957, ch. 739, § 1; 1961, ch. 522; 1967, ch. 392, § 1; 1968, ch. 371.)

### **§ 27-14. Penalties.**

Any person who shall violate any of the provisions of this subtitle shall, upon conviction, be sentenced to pay a fine of not more than one thousand

dollars (\$1,000), or be sentenced to imprisonment for not more than two years, or both, in the discretion of the court. (1957, ch. 739, § 1; 1967, ch. 392, § 1.)

POLITICAL ACTIVITIES OF STATE EMPLOYEES

**§ 28-1. Participation in campaigns and free expression of opinions not prohibited; certain activities prohibited.**

Participation in politics or political campaigns and the free expression of political opinions by employees of this State or of any county, municipal corporation, city, political subdivision, public authority, body political or board of education shall not be prohibited, and each employee shall retain all rights and obligations of citizenship provided in the Constitution and laws of the State of Maryland, and in the Constitution and laws of the United States of America; however, no such employee shall:

- (1) Engage in political activity while on the job during working hours;
- (2) Advocate the overthrow of the government by unconstitutional and violent means; or
- (3) Be obligated to contribute or render political service. (1973, ch. 796.)

This subtitle is not public local law within the meaning of Md. Const., article XI-A, § 4, and article XI-F, § 4. 63 Op. Att'y Gen. 284 (1978).

But it is general law applicable to the entire State. 63 Op. Att'y Gen. 284 (1978).

And as such, it would repeal any provision to the contrary adopted by code or charter county. 63 Op. Att'y Gen. 284 (1978).

Applicability of subtitle should not be limited to unpaid political activity. 62 Op. Att'y Gen. 425 (1977).

**Legislative intent.** — There is not the slightest indication that the legislature, by the passage of paragraph (3) of this section, intended to eliminate or to amend the common-law offense of misconduct in office. *Chester v. State*, 32 Md. App. 593, 363 A.2d 605 (1976).

**Nonpartisan political organizations.** —

State and local employees generally are entirely free to hold office in nonpartisan political organizations. 60 Op. Att'y Gen. 215 (1975).

**County ordinance unauthorized.** — The Queen Anne's County Commissioners do not have the authority pursuant to county ordinance "to require employees to resign their jobs before running for an elective office." 63 Op. Att'y Gen. 284 (1978).

**Professional staff members of Division of Parole and Probation.** — It would be permissible for certain professional staff members of the Division of Parole and Probation to run for elective office or act as campaign managers and treasurers for other candidates. 63 Op. Att'y Gen. 296 (1978).

Cited in *Blount v. Mandel*, 400 F. Supp. 1190 (D. Md. 1975).

**§ 28-2. Conflicting laws; exclusiveness of provisions.**

All statutes, laws, and ordinances within this State, both general and local, which are in conflict with these sections are repealed, and the limitations set forth in these sections shall be the only restrictions on the political activities of such employees, excepting, however, the provisions of Article 64A, § 9G, Article 33, § 2-6, and guidelines promulgated in accordance with § 2-1207 (c) or § 2-1307 (c) of the State Government Article. (1973, ch. 796; 1982, ch. 818, § 1; 1984, ch. 285, § 4.)

**Art. 33, § 28-3 REGISTRATION AND ELECTION LAWS**

This subtitle is not public local law within the meaning of Md. Const., article XI-A, § 4, and article XI-F, § 4. 63 Op. Att'y Gen. 284 (1978).

But it is general law applicable to the entire State. 63 Op. Att'y Gen. 284 (1978).

And as such, it would repeal any provision to the contrary adopted by code or charter county. 63 Op. Att'y Gen. 284 (1978).

Applicability of subtitle should not be

limited to unpaid political activity. 62 Op. Att'y Gen. 425 (1977).

County ordinance unauthorized. — The Queen Anne's County Commissioners do not have the authority pursuant to county ordinance "to require employees to resign their jobs before running for an elective office." 63 Op. Att'y Gen. 284 (1978).

Cited in *Blount v. Mandel*, 400 F. Supp. 1190 (D. Md. 1975).

**UNIFORM ACT FOR VOTING BY NEW  
RESIDENTS IN PRESIDENTIAL  
ELECTIONS**

**§§ 28-3 to 28-8. Voting by new residents in presidential elections.**

Repealed by Acts 1972, ch. 255.

**§§ 28-9, 28-10. List to be furnished and used at polls; challenge; powers of judges of election.**

Repealed by Acts 1968, ch. 615, § 1.

**§§ 28-11 to 28-14. Penalties; absentee voting; information by officials; definitions.**

Repealed by Acts 1972, ch. 255.

**FINANCIAL DISCLOSURE ACT**

**§§ 29-1, 29-2. Declaration of purpose; definitions.**

Repealed by Acts 1979, ch. 513, § 2, effective July 1, 1979.

Editor's note. — Section 2, ch. 513, Acts 1979, also repealed the subtitle heading "Financial Disclosure Act."

**§§ 29-3 to 29-6. Persons required to file statements; statement of financial interests required to be filed; forwarding to Secretary of State; public inspection; forms; content of statement of financial interests; interests attributable to person making statement.**

Transferred.

**Editor's note.** — Chapter 513, Acts 1979, effective July 1, 1979, transferred former § 29-3 to be present § 4-101 of Article 40A and rewrote the section. Chapter 513 also transferred former §§ 29-4 to 29-6 to be present §§ 4-102 to 4-104 of Article 40A and amended them.

**§§ 29-7, 29-8. Maryland Public Disclosure Advisory Board; enforcement of subtitle.**

Repealed by Acts 1979, ch. 513, § 1, effective July 1, 1979.

**§ 29-9. Judges and candidates for judgeships.**

Transferred.

**Editor's note.** — Chapter 513, Acts 1979, effective July 1, 1979, transferred this section to be § 4-105 of Article 40A and amended the section.

**§§ 29-10 to 29-12. Local officials; appointees in executive branch; members of Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission and Washington Suburban Transit Commission.**

Repealed by Acts 1979, ch. 513, § 1, effective July 1, 1979.

DISCLOSURE BY PERSONS DOING PUBLIC BUSINESS

**§ 30-1. Definitions.**

(a) In this subtitle, the following words have the meanings indicated.

(b) "Business" means any one or combination of sales, purchases, leases, or contracts, involving consideration of \$10,000 or more on a cumulative basis entered into during the twelve months immediately preceding the end of the reporting period for which the statement required under this subtitle is filed. If an agreement calls for the consideration to be paid over a period extending beyond one reporting period, the total ascertainable consideration to be paid under the agreement shall be included as business done during the period in which the agreement was entered into. Business of less than \$10,000 with an agency or governmental entity shall be reported if the aggregate business done with all agencies and governmental entities amounts to more than \$10,000. Business does not include salaries paid by the State, a county, an incorporated municipality, or other political subdivision of the State.

(c) "Business entity" includes a firm, corporation, trust, unincorporated association, or other organization, whether or not conducted for profit.

(d) "Candidate" includes an incumbent office holder and a political committee for a candidate.

## Art. 33, § 30-2 REGISTRATION AND ELECTION LAWS

(e) "Contribution" means any gift, donation, or payment of money in excess of \$100. It includes the purchase of a ticket or tickets, or payment for admission to a dinner, barbeque, fish fry, or other like event. It does not include a bona fide gift by a spouse or relative within the third degree of consanguinity, or to honorary memberships in a social, service, or fraternal organization presented as a courtesy by the organization.

(f) "County" includes the City of Baltimore.

(g) "Person" includes an individual and a business entity.

(h) "State," "county," and "incorporated municipality" include agencies of them.

(i) "Subsidiary" means a firm or corporation of which a parent firm or corporation owns or controls 30% or more of the equity. (1974, ch. 290, § 3.)

**Doing "business".** — Governmental demand deposit balances kept by a bank would be doing "business" within the meaning of this section inasmuch as there is a contractual relationship established between the bank and the depositor. 60 Op. Att'y Gen. 223 (1975).

The purchase of obligations of the State and its political subdivisions directly from them would be construed as doing "business" with the State under the definition of this section since "purchases" are included. 60 Op. Att'y Gen. 223 (1975).

The handling and accounting of State lottery funds would fall within the definition of the term doing "business." 60 Op. Att'y Gen. 223 (1975).

The purchase by a local board of education of a certificate of deposit would constitute doing "business" with a county agency. 60 Op. Att'y Gen. 223 (1975).

A corporate entity withholding income taxes on behalf of the employee and subsequently forwarding them to the State and the collection of sales or real estate taxes would not ordinarily constitute doing "business." 60 Op. Att'y Gen. 223 (1975).

**Local legislation.** — This article fully occu-

pies the field of campaign finance regulation and addresses both campaign contributions and disclosure of contributions by those doing public business; accordingly, a county may not legislate on these matters. 75 Op. Att'y Gen. — (April 4, 1990).

A prohibition against attempting to influence the vote of any member of the county council by promising future contributions, or threatening to withhold future contributions, is sufficiently distinct from the regulation of the contributions themselves to fall outside of the zone of preemption because this article does not regulate the nature of the discourse between lobbyists and officials; thus, such a county code provision would be a proper exercise of the county's power under Article 40A, § 6-301. 75 Op. Att'y Gen. — (April 4, 1990).

**Contributions to be used in forthcoming election campaign.** — Contributions are clearly reportable whenever made if they are made under circumstances which suggest or make it clear that the money will be used in a forthcoming election campaign and if the recipient later becomes a filed candidate. 60 Op. Att'y Gen. 223 (1975).

### § 30-2. Statement of contributions.

(a) *Time of filing; period covered.* — The statement required by this subtitle shall be filed on or before February 1 of each year and shall cover the reporting period which consists of the preceding calendar year.

(b) *Persons required to file.* — Every person who has done business with the State, or with a county, incorporated municipality, or other political subdivision of the State during a reporting period shall file the statement required by this subtitle if during the reporting period or during the preceding reporting period he made or caused to be made a contribution to a candidate for an elective office of the State or for an elective office of a county or incorporated municipality of the State in any primary or general election.

(c) *Contents and oath.* — The statement shall be under oath and shall contain:

(1) The names of all candidates to whom a contribution was made or caused to be made during the reporting period and, if not reported previously, during the preceding reporting period and the office for which the candidate sought election;

(2) The amount of the aggregate contributions made to each candidate;

(3) The name of each agency of the State, a county, incorporated municipality, or other political subdivision with which the person did business during the reporting period. However, this information may be omitted upon the written approval of the Attorney General. The Attorney General may grant approval if he finds that it would be unduly burdensome to require this information, that the public interest would not be substantially impaired by its omission, and that the person submitting the statement stipulates that he has done the requisite business in the amount of \$10,000 or more during the period in question;

(4) The nature and amount of business done with each agency. However, information concerning the amount of business done with each agency may be omitted upon the written approval of the Attorney General. The Attorney General may grant approval if he finds that it would be unduly burdensome to require this information, that the public interest would not be substantially impaired by its omission, and that the person submitting the statement stipulates that he has done the requisite business in the amount of \$10,000 or more during the period in question; and

(5) If the business was done or the contribution was made by another person and is attributed to the person filing the statement under § 30-3, the name of the person who did the business or made the contribution, and the relationship of that person to the person filing the statement.

(d) *Where filed; period of retention; inspection.* — The statement shall be filed with the Secretary of State, and shall be retained as a public record for at least two years from the date of its receipt. The Secretary of State shall make the statements available for examination and copying by the public during normal office hours, subject to such reasonable fees and administrative procedures as he may establish from time to time.

(e) *Forms.* — The Secretary of State shall prepare and make available forms for the statements required by this subtitle. (1974, ch. 290, § 3; 1977, ch. 518; 1979, ch. 112; 1980, ch. 349; 1987, ch. 11, § 1.)

Stated in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272, cert. denied, 284 Md. 744 (1979).

### § 30-3. Contributions required to be included in statement.

(a) Each officer, director, and partner of a business entity who makes or causes to be made a contribution which, if made by the business entity, would have to be disclosed under this subtitle, shall report the contribution to the

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chief executive officer of the business entity so that it may be included in the statement filed by the business entity.

(b) Each employee, agent, or other person who makes or causes to be made a contribution at the suggestion or direction of a business entity shall report the contribution to the chief executive officer of the business entity so that it may be included in the statement filed by the business entity.

(c) A contribution made by an officer, director, or partner of a business entity, and a contribution made by an employee, agent, or other person at the suggestion or direction of a business entity, shall for purposes of this subtitle be attributed to the business entity and shall be included in the statement filed by the business entity as though made directly by it.

(d) Business done with the State, or a county, incorporated municipality, or other political subdivision of the State by a subsidiary business entity shall be attributed to the parent and shall be included in the statement filed by the parent. Contributions made by, caused to be made by, or attributed to a subsidiary shall for purposes of this subtitle be attributed to the parent and shall be included in the statement filed by the parent.

(e) If under this section a contribution made by a director is attributed to a business entity of which the director is an officer, partner or employee and must be included in a statement filed by a business entity, the contribution may not be attributed to, and need not be included in a statement of, any other nonprofit business entity solely because the contributor is a director of it. (1974, ch. 290, § 3; 1976, ch. 291, § 1.)

Terms "officer" and "director" are not defined in the section, and it is neither possible nor appropriate to attempt to define or limit the terms on the basis of a distinction between "real" and "titular" officers and directors. 60 Op. Att'y Gen. 223 (1975).

**§ 30-4. Penalty; liberal construction of subtitle; first report.**

(a) Any person who knowingly and willfully fails to comply with the requirements of this subtitle is guilty of a misdemeanor, and, upon conviction, is subject to a fine of not more than \$1,000 or imprisonment for not more than one year, or both. If the person is a business entity and not a natural person, each officer and partner of the business entity who knowingly authorized or participated in the violation is guilty of a misdemeanor and, upon conviction, is subject to the same penalties as the business entity.

(b) This subtitle shall be liberally construed to require full disclosure.

(c) The first report under this subtitle shall be due on or before September 1, 1975, for the reporting period of twelve months ending July 31, 1975. (1974, ch. 290, § 3.)

**FAIR CAMPAIGN FINANCING ACT**

**§ 31-1. Purpose of subtitle.**

The General Assembly of Maryland, recognizing that our system of representative government depends in part on guaranteeing that election cam-

paings are funded by the people and for the people and on eliminating the corrupting and undemocratic effects of large private contributions, finds and declares that an equitable means of public campaign financing is necessary in these times for the continued effective functioning of representative democracy. (1974, ch. 729, § 1.)

### § 31-2. Definitions.

(a) In this subtitle the following terms have the meanings indicated unless otherwise provided.

(b) "Candidate" means a Governor-Lieutenant Governor unit.

(c) "Comptroller" means the State Comptroller of the treasury.

(d) "Eligible candidate" means a candidate who has qualified to receive a public contribution.

(e) "Eligible private contribution" means that portion of a campaign contribution, or series of contributions, from an individual that does not exceed \$250.

(f) "Fund" means the "Fair Campaign Financing Fund".

(g) "Public contribution" means a sum disbursed from the Fair Campaign Financing Fund to a candidate according to the provisions of this subtitle.

(h) "Seed money" means a sum of lawfully raised eligible private contributions that is 15 percent of the maximum campaign expenditure limit provided under § 31-3 for an election.

(i) "State Administrator" means the State Administrator of Election Laws.

(j) "State Board" means the State Administrative Board of Election Laws.

(k) "Treasurer" includes a campaign subtreasurer. (1974, ch. 729, § 1; 1975, ch. 102; 1982, ch. 263, § 1; 1984, ch. 255; 1986, ch. 104.)

### § 31-3. Limitations on campaign expenditures.

(a) *Candidate's expenditure limits.* — A candidate who applies for and accepts a public contribution from the Fair Campaign Financing Fund may not expend, in the applicable election, an amount in excess of the product of 20 cents multiplied by the population of the State.

(b) *Determination of population.* — For purposes of this section, the population of the State shall be determined on January 1 of the year in which the election is to be held in accordance with the most recent decennial United States census, or a more recent population estimate prepared for the State by the State Department of Health and Mental Hygiene if this is available.

(c) *Liability for violations.* — The candidate, and any chairman or treasurer associated with the expenditure, are jointly and severally liable civilly and criminally for any expenditure made in violation of this section.

(d) *Applicability.* — Provisions in this section shall not be applicable to any election held prior to January 1, 1991. (1974, ch. 729, § 1; 1975, ch. 102; 1977, chs. 533, 787; 1982, ch. 263, § 1; 1984, ch. 255; 1986, ch. 104; 1989, ch. 699.)



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**Effect of amendment.** — The 1989 amendment, effective July 1, 1989, substituted "1991" for "1990" in (d).

**Expenditure limitations presently embodied in this section are unconstitutional**

as applied to candidates generally. 61 Op. Att'y Gen. 363 (1976).

**Stated in County Council v. Montgomery Ass'n, 274 Md. 52, 333 A.2d 596 (1975).**

**§ 31-4. Fair Campaign Financing Fund.**

(a) *Established; administration; initial disbursements.* — (1) There is established the "Fair Campaign Financing Fund" which shall be administered by the Comptroller in accordance with the provisions of §§ 31-11 and 31-12 of this article.

(2) The Comptroller shall credit to the Fund all money collected pursuant to these provisions.

(3) No disbursements may be made from the Fund prior to January 1, 1991.

(b) *General allocation of funds.* — Subject to the other requirements of this subtitle, the State Board shall distribute one-half of the money in the Fund to eligible candidates in the primary election and the remaining money in the Fund to eligible candidates in the general election.

(c) *Regulations.* — No later than January 1, 1988, the State Administrator shall promulgate comprehensive regulations to carry out the purposes and requirements of this subtitle. The regulations shall include provisions regarding:

(1) The manner and date by which candidates shall notify the State Board that they intend to qualify for public contributions;

(2) The deadline for candidates to submit requests for public contributions;

(3) The dates upon which the State Board is to order, and the Comptroller is to make, disbursements of public contributions to candidates;

(4) Pro rata distributions if there is not, or may not be, sufficient money in the Fund;

(5) A formula for distributing supplementary public contributions to the other eligible candidates if, because an eligible candidate fails to request a public contribution, withdraws as a candidate, becomes disqualified, or dies, additional funds become available;

(6) The standards by which expenditures by political committees and slates with which an eligible candidate is affiliated are applied to the expenditure limit of the candidate as specified in § 31-3 of this subtitle;

(7) The specification of thresholds for in-kind contributions that will not be deemed contributions or expenditures for the purposes of this subtitle;

(8) Distributions to:

(i) Unopposed candidates;

(ii) Candidates who are not members of the 2 principal political parties; and

(iii) Write-in candidates; and

(9) The purposes for which public contributions may not be used.

(d) *Insufficient money in Fund.* — If the State Board determines that there is not, or may not be, sufficient money in the Fund to provide a full public contribution to all eligible candidates in either the primary or general election, the State Board then shall allocate the available money so that all

eligible candidates in that election will receive a pro rata share of the full public contribution to which they would otherwise be entitled.

(e) *State Board to request assistance of Comptroller; statement of Fund's balance.* — (1) The State Board may request the assistance of the Comptroller in the administration of this subtitle.

(2) The Comptroller shall submit a statement of the Fund's balance to the State Board at the State Board's request and on May 15 of each year.

(f) *Disbursement made to depository; responsibility for ordering disbursement.* — (1) The Comptroller shall disburse public contributions to a single campaign depository of an eligible candidate, as provided in § 26-5 (b) of this article.

(2) The State Board has the sole right and responsibility for ordering a disbursement from the Fund. (1974, ch. 729, § 1; 1977, ch. 787; 1982, ch. 263, § 1; 1986, ch. 104; 1987, ch. 11, § 1; 1989, ch. 699.)

**Effect of amendment.** — The 1989 amendment, effective July 1, 1989, substituted "1991" for "1990" in (a) (3).

**Editor's note.** — Section 3, ch. 263, Acts 1982, provides that "the check-off system used on personal State income tax returns to designate funds for the Fair Campaign Financing Fund may not be utilized for the income tax returns covering the calendar year 1982 and thereafter."

Section 4 of ch. 263 provides that "any State records relating to the Fair Campaign Financing Commission shall be transferred to, and retained by, the State Administrative Board of Election Laws."

**State can, and has, legally entered into contract with its citizens to use the Fund contributions for public election campaigns.** 66 Op. Att'y Gen. 56 (1981).

**Money in Fund not transferable to general funds.** — Money that has been credited to the Fair Campaign Financing Fund, established by this section, may not be transferred by action of the General Assembly to the general funds of the State. 66 Op. Att'y Gen. 56 (1981).

**Cited in Dixon v. Maryland State Admin. Bd. of Election Laws,** 686 F. Supp. 539 (D. Md. 1988).

### § 31-5. Public contribution — Generally.

(a) *Qualifying for public contribution.* — On the date specified by regulation pursuant to § 31-4 (c) of this article, a candidate is entitled to a public contribution if:

(1) The required seed money has been raised;

(2) The seed money is refundable only in the event of the withdrawal of the candidate's name from the ballot; and

(3) As certified by the candidate's treasurer, on forms prescribed by the State Board, the seed money was raised in accordance with the provisions of this subtitle and received subsequent to September 1 of the year immediately preceding the year of the election.

(b) *Disbursements in primary.* — (1) The State Board shall order disbursement of funds, designated for disbursement in the primary, as provided in this subsection.

(2) Candidates who are opposed in the primary shall receive \$1 in public contributions for every \$2 in eligible private contributions.

(3) Candidates who are unopposed in the primary shall receive \$1 in public contributions for every \$3 in eligible private contributions.

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(c) *Disbursements in general election.* — (1) The State Board shall order disbursement in the general election of all money remaining in the Fund, including money remaining from the portion designated for the primary, as provided in this subsection.

(2) All eligible candidates who are nominees shall receive equal shares of the Fund.

(3) If a candidate is unopposed on the general election ballot, the candidate shall receive no public contributions.

(4) An eligible candidate who did not receive public contributions in the primary, but is a nominee in the general election, may only receive public contributions in the general election if the candidate did not spend more than the maximum expenditure limit in the primary.

(5) The State Board shall disburse public contributions promptly after the certification of primary results.

(d) *Amount of public contribution.* — Repealed by Acts 1986, ch. 104, approved Apr. 8, 1986, and effective from date of passage.

(e) *Independents and unopposed nominees.* — Repealed by Acts 1986, ch. 104, approved Apr. 8, 1986, and effective from date of passage. (1974, ch. 729, § 1; 1986, ch. 104.)

### § 31-6. Same — Limitations on expenditure; return or repayment.

(a) *Limitations on expending public contribution.* — A public contribution may be expended only:

(1) With the authority of the candidate or his treasurer;

(2) To further the candidate's nomination or election;

(3) For expenses incurred not later than 30 days after the election for which these were made; and

(4) For purposes that are not violative of State law.

(b) *Return of unspent public contribution.* — Any unspent portion of a public contribution shall be repaid to the Comptroller for redeposit in the Fund not later than 60 days following the election for which the public contribution was granted. When computing whether there is an unspent part of a public contribution, all private contributions to the candidate shall be presumed as spent prior to any expenditure of the public contribution.

(c) *Liability for repayment.* — A candidate and his treasurer are jointly and severally personally liable for repaying to the Comptroller any part of a public contribution which was unspent or which is spent in violation of subsection (a) of this section. (1974, ch. 729, § 1.)

### § 31-7. Fair Campaign Financing Commission.

Repealed by Acts 1982, ch. 263, § 2, effective May 20, 1982.

### § 31-8. Penalty for violation.

On conviction of each violation of this subtitle, the violator shall be fined not more than \$5,000 or imprisoned for not more than one year, or both. On

conviction a person shall be prohibited from holding office for a period of five years. (1974, ch. 729, § 1.)

### § 31-9. Short title.

This subtitle may be cited as the Fair Campaign Financing Act. (1974, ch. 729, § 1.)

### § 31-10. Termination of subtitle; disposition of remaining money.

(a) *Effective July 1, 1995.* — The provisions of §§ 31-1 through 31-9 of this article known as the Fair Campaign Financing Act and providing for a system of fair campaign financing are of no effect and may not be implemented or enforced after July 1, 1995.

(b) *Surplus in Fund.* — Any money remaining in the Fund after disbursements to candidates, as provided by law and regulations, shall be used to offset the expenses of the disbursement and any remaining after that shall be transferred to the State Administrative Board of Election Laws to be used for voter education purposes. (1982, ch. 263, § 1; 1986, ch. 104; 1989, ch. 699.)

**Effect of amendment.** — The 1989 amendment, effective July 1, 1989, substituted "1995" for "1991" in (a).

**Editor's note.** — Section 3, ch. 263, Acts 1982, provides that "the check-off system used on personal State income tax returns to designate funds for the Fair Campaign Financing Fund may not be utilized for the income tax

returns covering the calendar year 1982 and thereafter."

Section 4 of ch. 263 provides that "any State records relating to the Fair Campaign Financing Commission shall be transferred to, and retained by, the State Administrative Board of Election Laws."

### § 31-11. Preservation of Fund.

The Fair Campaign Financing Fund created by Chapter 729 of the Acts of 1974 shall be preserved and maintained until the Fund has been disbursed as provided by law and regulations. (1982, ch. 263, § 1; 1986, ch. 104.)

### § 31-12. Continued administration of Fund by Comptroller.

The Comptroller shall continue to administer the Fund and shall invest the money in the Fund, subject to the usual investing procedures for State funds. (1982, ch. 263, § 1.)

**Cross reference.** — See Editor's note to § 31-10 of this article.

## COUNTY BOARDS OF EDUCATION

### § 32-1. Application of nomination and election provisions.

The provisions of this article relating to the nomination and election of candidates to public office shall apply to and govern the nomination and

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election of candidates for an elected county board of education except as otherwise provided in this subtitle and in Title 3 of the Education Article. (1982, ch. 338.)

**§ 32-2. Election of members on nonpartisan basis.**

Members of boards of education shall be elected on a nonpartisan basis. Candidates for nomination or election to boards of education shall file certificates of candidacy, be certified to the ballot, appear on the ballot, be voted upon, and be nominated and elected without party designation and without regard to party affiliation. No provision of this article shall apply to elections for membership on boards of education if the provision requires for its operation a contest between or the existence of political parties. (1982, ch. 338.)

**§ 32-3. Qualification as candidate for board of education membership.**

No individual may be a candidate for nomination or election to a board of education unless the qualifications therefor in the Education Article and this article are satisfied. Before certifying the name of a candidate to appear on the ballot, the board shall determine that the candidate satisfies the requirements of law therefor. No individual shall be required or permitted to qualify as a candidate by filing a petition. (1982, ch. 338; 1985, ch. 405.)

**§ 32-3A. Garrett County.**

Repealed by Acts 1982, ch. 338, effective May 20, 1982.

**Cross reference.** — As to provisions regard- for elected county boards of education, see  
ing the nomination and election of candidates §§ 32-1 to 32-6 of this article.

**§ 32-4. Nomination of candidates at primary elections.**

(a) *In general.* — Subject to the other provisions of this section, in each year that one or more members of a board of education are to be elected, candidates therefor shall be nominated at a primary election held in conjunction with the primary election provided for in §§ 5-1 through 5-3 of this article.

(b) *Issuance of certification of nomination.* — If, at any time after the deadline for the withdrawal of candidacies and before the primary election, the number of candidates having filed certificates of candidacy in any contest does not exceed twice the number of offices to be filled, a certificate of nomination shall be issued immediately to each candidate. The names of the candidates and the office shall be omitted from the primary ballot.

(c) *Vote for office on ballot and candidates for office.* — In a primary election held pursuant to the provisions of this subtitle, each registered voter, with or without a party affiliation is eligible to vote:

(1) In the contest or contests for the office or offices that appear on his ballot; and

(2) In each contest, for the number of candidates for which there are offices to be filled.

(d) *Number of votes necessary for nomination.* — The candidates in each contest, equal in number to twice the number of offices to be filled, who receive the largest number of votes in the primary election shall be the nominated candidates. If 2 or more candidates each receive the lowest number of votes necessary to qualify for nomination, thereby creating a tie for the last nomination or nominations for the office or offices to be filled, each shall be a nominated candidate.

(e) *Void votes.* — If a candidate dies or becomes disqualified for an office too late for his name to be removed from the ballot, any votes cast for that candidate shall not be counted. (1982, ch. 338; 1987, ch. 11, § 1.)

### **§ 32-5. General election of members of boards of education.**

(a) *In general.* — In a general election at which 1 or more members of a board of education are to be elected, each registered voter is eligible to vote and, subject to the provisions of § 32-6, may vote in each contest for a number of nominees equal to the number of offices to be filled that appear on his ballot.

(b) *Election results.* — In each contest, the nominees equal in number to the number of offices to be filled, who receive the largest number of votes in a general election shall be declared elected. If 2 or more nominees each receive the lowest number of votes necessary to qualify for election, thereby creating a tie for the last office or offices to be filled, the office or offices shall be considered vacant, and each vacancy shall be filled as if it had occurred during the term of office for which the election is being held, by the selection of one of those nominees. (1982, ch. 338.)

### **§ 32-6. Filling of vacancies in nominations.**

(a) *Fewer candidates than number of offices.* — If, at or any time after the deadline for the withdrawal of candidacies, the number of candidates or nominees in any contest is, or is reduced to, less than the number of offices to be filled:

(1) The name of any candidate or nominee who died, declined a nomination, or became disqualified, shall not appear on the ballot.

(2) Certificates of nomination shall be issued to the filed candidates not theretofore nominated.

(3) Subject to the provisions of this section, the offices to be filled for which there is no nominee shall be considered vacant, and the vacancy in each shall be filled as if it had occurred during the term of office for which the election is being held.

(4) In Prince George's County, if, after the primary election and before the general election, only 1 candidate has been certified by the board of elections in any contest and that candidate is unable to continue as a candidate for any

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reason, the county executive, subject to confirmation by the county council, shall appoint a duly qualified person to assume the candidacy.

(5) At the general election, each voter eligible to vote for that office is entitled to vote, by any method authorized by law, for a number of nominees equal to the number of nominees appearing on the ballot.

(b) *Sudden vacancies.* — If a nominee dies, declines a nomination, or becomes disqualified for an office too late for the foregoing provisions of this section to be implemented, the name of the nominee shall remain on the ballot and, if that nominee receives a number of votes sufficient for election pursuant to § 32-5 of this article had he not died or been disqualified, the vacancy in office shall be filled as if the vacancy had occurred during the term of office for which the election is being held. (1982, ch. 338; 1984, ch. 255.)

**§§ 32-7 to 32-8. Prince George's County; Somerset County; Washington County.**

Repealed by Acts 1982, ch. 338, effective May 20, 1982.

**Cross reference.** — As to provisions regarding the nomination and election of candidates for elected county boards of education, see §§ 32-1 to 32-6 of this article.

## MISCELLANEOUS LAWS

The following laws of Maryland pertain to elections, but are not parts of Article 33 of the Code. The references are to the Annotated Code of Maryland, 1957, except as otherwise indicated.

### ARTICLE 1.

## RULES OF INTERPRETATION.

Sec.

7. One gender includes the other.
10. Form of oath.
11. Manner of administering oaths.

Sec.

14. County to include City of Baltimore; Circuit Court thereof.
26. Meaning of "may not."

### § 7. One gender includes the other.

Unless the General Assembly specifically provides otherwise in a particular statute, all words in this Code importing one gender include and apply to the other gender as well. (An. Code, 1951, § 7; 1939, § 7; 1924, § 7; 1912, § 6; 1904, § 6; 1888, § 6; 1979, ch. 185.)

*Quoted in Beard v. American Agency Life Ins. Co., 314 Md. 235, 550 A.2d 677 (1988).*

### § 10. Form of oath.

The form of judicial and all other oaths to be taken or administered in this State, and not prescribed by the Constitution, shall be as follows: "In the presence of Almighty God I do solemnly promise or declare," etc. And it shall not be lawful to add to any oath the words "So help me God," or any imprecatory words whatever. (An. Code, 1951, § 10; 1939, § 10; 1924, § 10; 1912, § 9; 1904, § 9; 1896, ch. 113; 1898, ch. 75.)

**Surplusage not vitiating affidavit.** — A mortgage sale will not be set aside because the tax affidavits to the assignments of mortgage state the affiant "made oath on the Holy Evangely of Almighty God and in due form of law." The reference to "the Holy Evangely of Almighty God" may be regarded as surplusage not vitiating the affidavits. *Tolson v. Williams*, 136 Md. 611, 110 A. 881 (1920).

**The Maryland religious test for public officers and witnesses violates the Fourteenth Amendment** because a state cannot constitutionally force a person to profess a belief or disbelief in any religion. *White v. State*, 244 Md. 188, 223 A.2d 259 (1966).

Since June 19, 1961, a declaration of belief in the existence of God cannot be required in Maryland of one, otherwise qualified, seeking to become finally qualified as a public official, or of a witness. *White v. State*, 244 Md. 188, 223 A.2d 259 (1966).

**Quoted in State v. Broadwater**, 317 Md. 342, 563 A.2d 420 (1989).

**Stated in Bar Ass'n v. District Title Ins. Co.**, 224 Md. 474, 168 A.2d 395 (1961).

**Cited in Fine v. Kolodny**, 263 Md. 647, 284 A.2d 409 (1971), cert. denied, 406 U.S. 928, 92 S. Ct. 1803, 32 L. Ed. 2d 129 (1972).



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**§ 11. Manner of administering oaths.**

The manner of administering oaths shall be by requiring the person making the same to hold up his hand in token of his recognition of the solemnity of the act, except in those cases wherein this form is not practicable, or when it shall appear that some other mode is more binding upon the conscience of the swearer. (An. Code, 1951, § 11; 1939, § 11; 1924, § 11; 1912, § 10; 1904, § 10; 1896, ch. 113; 1898, ch. 75.)

**Quoted in** *White v. State*, 244 Md. 188, 223 A.2d 259 (1966).      110 A. 881 (1920); *Fine v. Kolodny*, 263 Md. 647, 284 A.2d 409 (1971), cert. denied, 406 U.S. 928, 92 S. Ct. 1803, 32 L. Ed. 2d (1972).

**Cited in** *Tolson v. Williams*, 136 Md. 611,

**§ 14. County to include City of Baltimore; Circuit Court thereof.**

(a) The word county shall be construed to include the City of Baltimore, unless such construction would be unreasonable.

(b) Circuit court for the county includes the Circuit Court for Baltimore City unless the context clearly requires otherwise. (An. Code, 1951, § 14; 1939, § 14; 1924, § 14; 1912, § 13; 1904, § 13; 1888, § 11; 1982, ch. 820, § 1.)

**Applied in** *Chappell v. Lacey*, 77 Md. 172, 26 A. 499 (1893); *Frederick County Comm'rs v. Mayor of Frederick*, 88 Md. 654, 42 A. 218 (1898); *Valle v. Pressman*, 229 Md. 591, 185 A.2d 368 (1962).      *Lee, Goldstein, Burch Re-Election Comm.*, 280 Md. 575, 374 A.2d 1130 (1977).

**Cited in** *Callan v. State*, 156 Md. 459, 144 A. 350 (1929); *Austin v. Mayor of Baltimore*, 286 Md. 51, 405 A.2d 255 (1979).

**Quoted in** *Comptroller of Treas. v. Mandel*,

**§ 26. Meaning of "may not."**

In this Code and any rule, regulation, or directive adopted under it, the phrase "may not" or phrases of like import have a mandatory negative effect and establish a prohibition. (1976, ch. 268, § 1.)

**University of Baltimore Law Review.** — **Applied in** *Baltimore City Police Dep't v. Andrew*, 318 Md. 3, 566 A.2d 755 (1989).  
For article, "Pressing out the Wrinkles in Maryland's Shield Law for Journalists," see 8 U. Balt. L. Rev. 461 (1979).

## ARTICLE 2B.

## ALCOHOLIC BEVERAGES.

## Hours and Days for Sale

Sec.

88. Election days.

## HOURS AND DAYS FOR SALE

## § 88. Election days.

(a) *Generally.* — (1) It is unlawful for the keeper of any hotel, tavern, store, drinking establishment or any other place where liquors are sold, or for any person or persons, directly or indirectly, to sell, barter, give or dispose of any spirituous or fermented liquors, ale or beer, or intoxicating drinks of any kind within any election district or precinct of this State on the day of any general, special or primary election to be held in any district or precinct during the hours when the polls are open. Any person violating the provisions of this section is liable for indictment, and upon conviction is fined not less than \$50 nor more than \$100 for each offense.

(2) On the day of any election any restaurant holding any license issued under the provisions of this article may dispense those alcoholic beverages that are in accordance with that license for consumption on the premises only.

(b) *Sales permitted in certain counties.* — In the enumerated subdivisions below the holder of any license issued under the provisions of this article is permitted to exercise all of the privileges conferred by that license on the day of any election in that subdivision:

(1) Allegany County, but an alcoholic beverage licensee whose premises are also used as a polling place may not exercise any privilege conferred by that license on the day of any election during those hours the polls are open;

(2) Anne Arundel County;

(3) Baltimore City;

(4) Baltimore County;

(5) Calvert County;

(6) Caroline County;

(7) Carroll County;

(8) Cecil County;

(9) Charles County;

(10) Dorchester County;

(11) Frederick County;

(12) Garrett County;

(13) Harford County;

(14) Howard County;

(15) Kent County;

(16) Montgomery County;

(17) Prince George's County;

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(18) Queen Anne's County;

(19) St. Mary's County;

(20) Somerset County;

(21) Washington County;

(22) Wicomico County; and

(23) Worcester County.

(d) *Baltimore County*. — Repealed by Acts 1977, ch. 275; ch. 837, § 2.

(e) *Howard County*. — Repealed by Acts 1977, ch. 275; ch. 837, § 2.

(f) *Anne Arundel and Frederick counties*. — Repealed by Acts 1977, ch. 275; ch. 837, § 2.

(g) *Prince George's County*. — Repealed by Acts 1977, ch. 275; ch. 837, § 2.

(h) *Worcester County*. — Repealed by Acts 1977, ch. 275; ch. 837, § 2.

(i) *Charles and Montgomery counties*. — Repealed by Acts 1977, ch. 275; ch. 837, § 2.

(j) *St. Mary's County*. — Repealed by Acts 1980, ch. 619, effective July 1, 1980.

(k) *Caroline County*. — Repealed by Acts 1980, ch. 619, effective July 1, 1980. (An. Code, 1951, § 85; 1947, ch. 501, § 80; 1961, ch. 441; 1963, ch. 105; 1972, ch. 577; 1975, ch. 513, § 2; ch. 518, § 2; ch. 524, § 2; ch. 866, §§ 1, 2; 1976, chs. 315, 475, 493; ch. 688, § 2; ch. 868, § 3; 1977, chs. 182, 275, 481; ch. 837, §§ 1-3; 1978, ch. 812; 1979, ch. 75; 1980, ch. 619; 1981, ch. 376; 1984, ch. 317; 1987, ch. 675; 1988, ch. 6, §§ 1, 3.)

**Cross reference.** — As to illegal use of intoxicating liquors with respect to elections, see Article 33, § 24-24.

**Editor's note.** — Section 3, ch. 6, Acts 1988, repealed a former subsection (b) as amended by chs. 481 and 837, Acts 1977, the effect of such amendments having been to repeal the former subsection (b).

**Subsection (a) (1) must be strictly construed.** — As a criminal statute, subsection (a) (1) of this section must be strictly construed in favor of the accused and against the State. 63 Op. Att'y Gen. 10 (1978).

**Sale of lottery tickets cannot be prohib-**

**ited.** — The Baltimore City liquor board, although empowered to ban the sale, gift or any other disposition of alcoholic beverages by liquor licensees during the hours on election days when the polls are open, and although authorized to shut down and stop the liquor business of licensees to whom the ban is applicable during voting hours, is not authorized to prohibit the sale of lottery tickets by licensees who are Maryland State Lottery sales agents. 63 Op. Att'y Gen. 10 (1978).

Cited in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272, cert. denied, 284 Md. 744, — A.2d — (1979).

## ARTICLE 23A.

**CORPORATIONS—MUNICIPAL.**

## Elections—Absentee Ballot

Sec.

47. Right to vote by absentee ballot; powers and duties of municipalities.

## ELECTIONS—ABSENTEE BALLOT

**§ 47. Right to vote by absentee ballot; powers and duties of municipalities.**

(a) Any qualified voter registered to vote in a municipality is entitled to vote in the municipal election by absentee ballot. All municipal corporations shall provide the procedure to vote by absentee ballot.

(b) The municipalities are generally authorized and empowered to do any and all acts providing for voting by persons who are absentee voters. They are severally authorized and empowered to use any of their facilities to transmit and receive applications for absentee ballots, envelopes, instructions and printed matter to enable absentee voters to vote. (1973, ch. 816.)

Cited in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

ARTICLE 25A.  
CHARTERED COUNTIES OF  
MARYLAND.

Referendum

Sec.

8. Reservation in charter of power of referendum.

REFERENDUM

§ 8. Reservation in charter of power of referendum.

(a) The citizens of a chartered county have the right to reserve to themselves the power of referendum by which they may, by petition, submit to the registered voters of the county any local law, or portion of any local law, enacted in accordance with the legislative procedure of the county council. If reserved, this right shall be set forth in the charter of the county which shall specify the types of local laws which may be petitioned to referendum and whether portions of laws may be petitioned to referendum.

(b) In implementing procedures relating to the power of referendum, the county charter or the local laws enacted in accordance with the legislative procedure of the county council shall provide adequate details with respect to time, notice, and form. However, in no event may the initial notice that a local law, or a portion of a local law, which is to be the subject of a referendum vote, be less than 30 days before the election at which the law, or a portion thereof, is submitted to the voters of the county. (1976, ch. 83.)

**Purpose of section.** — The General Assembly enacted ch. 83, Acts 1976, codified as this section, which amended the Express Powers Act, in an attempt to give statutory support to the exercise of the right of referendum by citizens of chartered counties. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Authority to mandate referendum not clearly conferred.** — The Express Powers Act does not clearly confer on a county council the authority to mandate a referendum vote on

specified types of legislation. 63 Op. Att'y Gen. 291 (1978).

**Section not retroactive.** — Chapter 83, Acts 1976, codified as this section, could not retroactively affect the validity of a 1974 election. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Cited in** *City of Takoma Park v. Citizens for Decent Gov't*, 301 Md. 439, 483 A.2d 348 (1984).

ARTICLE 27.

**CRIMES AND PUNISHMENTS.**

I

Posters, etc.

CRIMES AND PUNISHMENTS

Sec.

Bribery; Obstructing Justice

452. Placing political posters, etc., in certain counties prohibited.

Sec.

28. Bribery, etc., of voters.

I

CRIMES AND PUNISHMENTS

BRIBERY; OBSTRUCTING JUSTICE

**§ 28. Bribery, etc., of voters.**

If any candidate at an election to be held under the Constitution and laws of this State, or any other person whatever, shall at any time before or on the day of any election give or bestow, or directly or indirectly promise any gift or reward to secure any person's vote or ballot at any election, or shall keep or suffer to be kept any house, tent, booth, or other accommodation in any part of any district at any time during the day of holding such election, and before the close thereof, at his expense, where any intoxicating liquors shall be gratuitously given or dealt out to voters, every such person or candidate so offending shall, on conviction thereof in the court of the county or city wherein such offense may be committed, be fined at the discretion of the court a sum not exceeding five hundred dollars, and suffer such imprisonment as the court may adjudge, not exceeding six months and such other penalties as are prescribed by the Constitution. (An. Code, 1951, § 34; 1939, § 31; 1924, § 34; 1912, § 31; 1904, § 29; 1888, § 26; 1799, ch. 50, § 18; 1805, ch. 97, § 29; 1811, ch. 204; 1979, ch. 288.)

Stated in *Duffy v. Conaway*, 295 Md. 242, 455 A.2d 955 (1982).

A.2d 988 (1976); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

Cited in *State v. Canova*, 278 Md. 483, 365

POSTERS, ETC.

**§ 452. Placing political posters, etc., in certain counties prohibited.**

(a) It shall be unlawful for any person or persons to place or cause to be placed upon any property of the State, county, city or town, or upon any property in which the person or persons have no right, title, interest, or estate, any political poster, placard, picture, sign, transparency, or advertisement.

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(b) Any person or persons so doing shall, upon conviction thereof, be fined not more than \$50 nor less than \$10 and costs.

(c) The requirements of this section apply only in the following counties:

- (1) Allegany County
- (2) Anne Arundel County
- (3) Baltimore County
- (4) Carroll County
- (5) Charles County
- (6) Harford County
- (7) Howard County
- (8) Prince George's County
- (9) Queen Anne's County
- (10) Washington County
- (11) Worcester County
- (12) Wicomico County.

(1955, ch. 276; 1963, ch. 660; 1966, ch. 383; 1967, ch. 520; 1972, ch. 181, § 28; 1979, ch. 193.)

Cited in *Morris v. Schoonfield*, 310 F. Supp. 554 (D. Md. 1969); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

## ARTICLE 41.

**GOVERNOR—EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS.**

## Title 1.

## General Provisions

*Subtitle 3. General Public Ethics Provisions.*

Sec.

1-302. Employee not to require another to make political contribution.

## Title 2.

## Executive Department—Generally.

*Subtitle 4. Additional Powers of Governor.*

Sec.

2-405. Proclamation of names of electors.

## TITLE 1.

## GENERAL PROVISIONS.

*Subtitle 3. General Public Ethics Provisions.***§ 1-302. Employee not to require another to make political contribution.**

(a) No employee shall require any other employee, whether in an exempt or nonexempt position, to make a political contribution.

(b) Nothing in this section shall be interpreted as to abridge the constitutional right of any citizen to voluntarily participate in the political process.

(c) Political contributions means the gift, transfer or promise of a gift or transfer of money or other thing of value to any candidate or his representative, or a representative of any political party or partisan organization, to promote or assist in the promotion in the success or defeat of any candidate, political party, principle or proposition submitted to a vote in any election. (1974, ch. 443; 1986, ch. 5, § 4.)

## TITLE 2.

## EXECUTIVE DEPARTMENT—GENERALLY.

*Subtitle 4. Additional Powers of Governor.***§ 2-405. Proclamation of names of electors.**

The Governor upon receiving the returns of election for electors to choose a President and Vice-President of the United States and for members to represent this State in the Congress of the United States shall enumerate and ascertain the number of votes given for each person voted for as member of Congress, and shall enumerate and ascertain the number of votes given for each candidate for President and Vice-President of the United States, declaring elected the presidential electors of such candidates as received the highest



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number of votes; and shall thereupon declare by proclamation signed by him, the name or names of the person or persons duly elected, and shall cause such proclamation to be inserted in such newspapers as he may direct. (An. Code, 1951, § 56; 1939, § 54; 1924, § 27; 1912, § 15; 1904, § 15; 1888, § 15; 1805, ch. 97, § 33; 1890, ch. 67; 1937, ch. 232, § 27; 1986, ch. 5, § 4.)

**ARTICLE 64A.**  
**MERIT SYSTEM.**

Sec.

9G. Employees of boards of supervisors of elections.

**§ 9G. Employees of boards of supervisors of elections.**

(a) On and after January 1, 1972, all permanent employees of the boards of supervisors of elections, both full time and part time, shall be registered voters in the State of Maryland and shall be in the classified service of the State and subject to the jurisdiction of the Secretary of Personnel.

(b) Nothing herein contained is intended in any way to alter the present method by which the salaries of these employees are presently funded by the various county commissioners, county councils, or the Mayor and City Council of Baltimore, as set forth in Article 33, § 2-4, Annotated Code of Maryland.

(c) All employees of the boards of supervisors except judges of elections as of December 31, 1971, as well as other applicants for positions held by such employees, shall no later than January 31, 1972, be administered a competitive qualifying examination by the Secretary of Personnel. Any incumbent employee, who passes the examination shall be retained in his position. Any existing employee, who fails to pass the examination shall be terminated from employment with the board no later than March 1, 1972, and a vacancy shall be deemed to exist.

(d) Upon the occurrence of a vacancy, the Secretary of Personnel shall certify to the board of supervisors a list of five (5) qualified eligibles for such vacancy, or such lesser number as may be on the eligible list. The board of supervisors shall select from the list a person to fill the vacancy, who shall hold the position for the probationary period established by the Secretary of Personnel.

(e) In those counties which have administered qualifying examinations to incumbent employees of the boards of supervisors of elections, under a local merit system, which examinations are approved by the Secretary of Personnel, it shall not be necessary for the incumbent employees to be reexamined for qualification under the provision of this section and the employees shall be retained in their position and considered to be qualified under this section.

(f) In any county where employees of the government of the county are covered by a merit system, the board for that county may choose, by resolution dated no later than August 1, 1971, to apply to be covered by the local merit system rather than the State classified service. The aforesaid resolution of application shall be forwarded to the Secretary of Personnel of the State of Maryland and to the State Administrative Board of Election Laws. The Secretary of Personnel shall determine whether or not the local merit system is a bona fide one, providing appropriate standards for qualification, employment and compensation of employees. On or before October 1, 1971, he shall com-

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municate his decision to the board which made aforesaid application and to the State Administrative Board of Election Laws. If the Secretary of Personnel rules that the local system meets appropriate standards, the board's application to be included in the local rather than State classified service shall be deemed approved and, beginning January 1, 1972, all permanent employees of said board shall be in the classified service of the local personnel system.

(g) All employees who elect to transfer to the leave system of the State shall be given credit for prior service with such prior employer for purposes of determining future annual and sick leave.

(h) (1) As of July 1, 1973, all permanent employees of the Howard County board of supervisors of elections, both full time and part time, who are members of the local merit system, shall be in the classified service of the State and subject to the jurisdiction of the Secretary of Personnel.

(2) Nothing herein contained is intended in any way to alter the present method by which the salaries of these employees are presently funded.

(3) Those employees shall become classified employees of the State, subject to the provisions of the State Merit System Law under this article, without need of further examination or qualification, and without diminution or loss of any benefits to which entitled prior to July 1, 1973. They shall be credited with the years of service rendered in Howard County for purposes of determining future annual and sick leave.

(i) (1) As of July 1, 1973, all permanent employees of the Harford County board of supervisors of elections, both full time and part time, who are members of the local merit system, shall be in the classified service of the State and subject to the jurisdiction of the Secretary of Personnel.

(2) Nothing herein contained is intended in any way to alter the present method by which the salaries of these employees are presently funded.

(3) Those employees shall become classified employees of the State, subject to the provisions of the State Merit System Law under this article, without need of further examination or qualification, and without diminution or loss of any benefits to which entitled prior to July 1, 1973. They shall be credited with the years of service rendered in Harford County for purposes of determining future annual and sick leave.

(j) (1) As of July 1, 1975, all permanent employees of the Baltimore County board of supervisors of elections, both full time and part time, who are members of the local merit system, shall be in the classified service of the State and subject to the jurisdiction of the Secretary of Personnel.

(2) These provisions are not intended in any way to alter the present method by which the salaries of these employees are funded presently.

(3) Those employees shall become classified employees of the State, subject to the provisions of the State Merit System Law under this article, without need of further examination or qualification, and without diminution or loss of any benefits to which entitled prior to July 1, 1975. They shall be credited with the years of service rendered in Baltimore County for purposes of determining future annual and sick leave.

(4) Effective July 1, 1978, those employees of the Baltimore County board of supervisors of elections who were employed continuously in a temporary

capacity, either on a full-time or part-time basis, prior to July 1, 1975 and who have remained employed continuously in the same manner, shall be administered a qualifying examination by the Secretary of Personnel no later than September 30, 1978. Any temporary employee as described above who passes the examination shall become a classified employee of the State without need of further examination or qualification. These appointments shall be limited to five. Any temporary employee as described above who fails to pass the examination shall be terminated from employment with the board no later than December 31, 1978. (1971, ch. 351, § 1; 1973, chs. 480, 576; 1975, ch. 278; 1978, ch. 200.)

**Purpose of Acts 1971, ch. 351,** was to place all continuously employed permanent employees of the boards of supervisors of elections in the various subdivisions of the State in the State's classified service and, therefore, under the jurisdiction of the Secretary of Personnel. *State Admin. Bd. of Election Laws v. Billhimer*, 72 Md. App. 578, 531 A.2d 1298 (1987), rev'd on other grounds, 314 Md. 46, 548 A.2d 819 (1988).

**Applicability.** — This section relates solely to the local boards of supervisors of elections and has no application to the employment status of State Administrative Board of Elections

employees. *State Admin. Bd. of Election Laws v. Billhimer*, 314 Md. 46, 548 A.2d 819 (1988).

**County could treat personnel of board as its employees for purposes of its Code of Ethics.** — It is within the power of Prince George's County to treat personnel of the board of supervisors of elections as its employees for purposes of its Code of Ethics because, pursuant to State law, the county was authorized to prescribe the terms and conditions of their employment to such a significant degree. 58 Op. Att'y Gen. 285 (1973).

Cited in *Secretary, Md. Dep't of Personnel v. Bender*, 44 Md. App. 714, 411 A.2d 107 (1980), aff'd, 290 Md. 345, 430 A.2d 66 (1981).

ARTICLE 73B.  
PENSIONS.

In General

Sec.  
3. Membership.

IN GENERAL

§ 3. Membership.

The membership of the retirement system shall consist of the following:

\* \* \*

(6) *Employees of boards of supervisors of elections.* — (a) All full-time and part-time permanent employees of the boards of supervisors of elections of the counties and in Baltimore City shall become members of the Employees' Retirement System of the State of Maryland as a condition of employment, except those board employees who have elected to remain in the local merit system under the provisions of § 9G of Article 64A of this Code. Employees who become members of the Employees' Retirement System under this subsection may receive credit for any service performed with the county or Baltimore City prior to January 1, 1972. Credit for service performed by an employee with a county or Baltimore City between January 1, 1972 and July 1, 1975 may be granted, if the member files an application for this credit at any time prior to retirement and deposits with the system the amount of contributions required for this credit, with interest to the date of deposit. The rate of the contributions is that rate which would have been applicable to the member if that person had been a member of the system for the period of the credit. Credit for service performed by an employee with a county or Baltimore City before January 1, 1972 shall only be granted if an amount equal to the reserves required to fund the prior service is paid into the retirement system. The reserves may be paid by:

- (i) The county or Baltimore City;
- (ii) The employee; or
- (iii) A combination of subparagraphs (i) and (ii) above.

The balance of the contributions with interest which the board of trustees determines is due to fund all the reserves required for such member's service shall be paid by the county or Baltimore City.

(b) The county, or Baltimore City, where the member is employed, shall pay to the Employees' Retirement System the contributions required to be made by the State on behalf of the service of the member.

(c) The county, or Baltimore City, shall deduct the appropriate contribution required to be made by the member on account of the service from the compen-

sation payable to the member and shall pay these amounts to the Employees' Retirement System.

\* \* \*

(An. Code, 1951, § 3; 1941, ch. 377, § 3; 1943, ch. 330, § 3; 1945, ch. 793; 1949, ch. 133, § 3 (6); 1953, ch. 56; 1955, chs. 601, 678; 1956, ch. 101; 1957, ch. 313; 1959, ch. 805, § 1; 1961, ch. 107; 1962, ch. 111; 1963, chs. 145, 331, 601, 734; 1964, chs. 119, 178; 1967, ch. 669, § 1; 1969, ch. 130; 1970, ch. 549; ch. 691, § 1; 1971, chs. 229, 578; 1972, ch. 382; ch. 645, § 1; 1973, ch. 459, § 1; ch. 460, § 1; ch. 667; 1974, ch. 603, § 2; 1975, chs. 264, 557, 685; 1977, ch. 765, § 16; 1978, ch. 550; 1979, ch. 23, § 1; ch. 24, § 1; chs. 142, 690; 1980, chs. 590, 602; 1981, ch. 165; 1982, ch. 508, § 1; chs. 794, 827; 1984, chs. 7, 255, 418.)

**Editor's note.** — As only the introductory language and paragraph (6) are applicable, the remainder of the section is not set forth above.

**Modification of substantive statutory provisions.** — Neither the Governor nor any other official has authority to modify the substantive statutory provisions which govern the operation of the retirement system. 62 Op. Att'y Gen. 791 (1977).

**Retired member of system may serve in General Assembly,** if elected, and continue to draw a service retirement allowance from the system. 61 Op. Att'y Gen. 759 (1976).

**Quoted in** *Cohen v. Goldstein*, 58 Md. App. 699, 474 A.2d 229 (1984); *Maryland State Retirement & Pension Sys. v. Martin*, 75 Md. App. 240, 540 A.2d 1188 (1988).

# **BUSINESS OCCUPATIONS AND PROFESSIONS.**

**Title 14.**

**Professional Engineers.**

*Subtitle 3. Licensing.*

Sec.  
14-317. Denials, reprimands, suspensions, and revocations — Grounds.

**Title 15.**

**Professional Land Surveyors.**

*Subtitle 3. Licenses.*

Sec.  
15-318. Denials, reprimands, suspensions, and revocations — Grounds.

*Subtitle 6. Prohibited Acts; Penalties.*

15-606. Prohibited use of seal.  
15-607. Giving false information to Board.

**TITLE 14.**

**PROFESSIONAL ENGINEERS.**

*Subtitle 3. Licensing.*

Sec.  
14-317. Denials, reprimands, suspensions, and revocations — Grounds.

*Subtitle 3. Licensing.*

## **§ 14-317. Denials, reprimands, suspensions, and revocations — Grounds.**

Subject to the hearing provisions of § 14-319 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if:

\* \* \*

(3) the applicant or licensee pleads guilty or nolo contendere with respect to, receives probation before judgment with respect to, or is convicted of:

- (i) a crime involving moral turpitude; or
- (ii) a violation of any election law of the State;

(4) during the course of an official investigation by an authorized public official or public body and regardless of whether the matter is prosecuted, the applicant or licensee has admitted, in writing or under oath, to:

- (i) a crime involving moral turpitude; or
- (ii) a violation of any election law of the State;

\* \* \*

(An. Code 1957, art. 75<sup>1/2</sup>, § 17; 1989, ch. 3, § 1.)

## REVISOR'S NOTE

Items (3) and (4) of this section are new language derived without substantive change from former Art. 75 1/2, § 17(a).

In the introductory language of this section, the power to "deny a license to any applicant" is a standard provision added to state expressly that which only was implied in the former law — i.e., the Board may deny a license to an applicant who violates a disciplinary provision under this section.

Also in the introductory language of this section, express reference to the members "then serving" is substituted for the former reference to the "entire" Board, to clarify the proportion of the Board at a given time.

Also in the introductory language of this section, the former power to "refuse to renew" a license is deleted as needless and misleading. Under SG § 10-404, if a licensee makes timely application for renewal, the license does not expire until the Board has acted on the appli-

cation and the time for appeal has run. Under both SG § 10-405 and § 14-319 of this subtitle, ordinarily the Board must give the licensee an opportunity for a hearing before taking disciplinary action under this section. If the Board finds grounds for disciplinary action, it may suspend or revoke the license, and there is no need for a power to refuse renewal.

In item (3) of this section, the references to probation before judgment and to pleading guilty are added to clarify that receipt of probation before judgment on a crime covered under this item or pleading guilty, even in the absence of a conviction, is adequate to trigger disciplinary action under this section.

**Defined terms:**

|                         |          |
|-------------------------|----------|
| "Board":                | § 14-101 |
| "License":              | § 14-101 |
| "Practice engineering": | § 14-101 |
| "State":                | § 1-101  |

**Editor's note.** — As only the introductory language and paragraphs (3) and (4) of subsection (a) are applicable, the remainder of the section is not set forth above.

**Maryland Law Review.** — For article, "The Law of Disbarment and Reinstatement in Maryland," see 36 Md. L. Rev. 703 (1977).

**Quasi-judicial function.** — When the Board, in a disciplinary action, suspends a license, it performs a quasi-judicial function because it makes factual determinations and decides contested issues. Maryland Bd. of Registration v. Armacost, 286 Md. 353, 407 A.2d 1148 (1979).

**Quasi-legislative function.** — When the Board makes rules and adopts a code of ethics governing the practice of engineering and land surveying, or exercises its limited powers of enforcement, it performs quasi-legislative functions. Maryland Bd. of Registration v. Armacost, 286 Md. 353, 407 A.2d 1148 (1979).

**Criminal conduct.** — Although criminal

conduct may be involved in disciplinary proceedings before the Board, the focus is upon a registrant's fitness to continue as a professional engineer rather than upon the criminality of his prior acts. Thus, the grounds for suspension, revocation or nonrenewal of a certificate are not defined in terms of, or necessarily the result of, criminal conduct by the registrant. Childs v. McCord, 420 F. Supp. 428 (D. Md. 1976), aff'd sub nom. Childs v. Schlitz, 556 F.2d 1178 (4th Cir. 1977).

**Revocation order deemed remedial.** — Rather than enforcing a criminal statute, the Board if it acts will be exercising the power of the State to protect its citizenry from fraud and deception and will be endeavoring to preserve public confidence in the integrity of the engineering profession. Any revocation order by the Board would thus be remedial rather than punitive in nature. Childs v. McCord, 420 F. Supp. 428 (D. Md. 1976), aff'd sub nom. Childs v. Schlitz, 556 F.2d 1178 (4th Cir. 1977).



**BO, § 15-318 REGISTRATION AND ELECTION LAWS**

**TITLE 15.**

**PROFESSIONAL LAND SURVEYORS.**

*Subtitle 3. Licenses.*

*Subtitle 6. Prohibited Acts; Penalties.*

Sec.  
15-318. Denials, reprimands, suspensions, and  
revocations — Grounds.

Sec.  
15-606. Prohibited use of seal.  
15-607. Giving false information to Board.

*Subtitle 3. Licenses.*

**§ 15-318. Denials, reprimands, suspensions, and revocations — Grounds.**

Subject to the hearing provisions of § 15-320 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if:

\* \* \*

(3) the applicant or licensee pleads guilty or nolo contendere with respect to, receives probation before judgment with respect to, or is convicted of:

- (i) a crime involving moral turpitude; or
- (ii) a violation of any election law of the State;

(4) during the course of an official investigation by an authorized public official or public body and regardless of whether the matter is prosecuted, the applicant or licensee has admitted, in writing or under oath, to:

- (i) a crime involving moral turpitude; or
- (ii) a violation of any election law of the State;

\* \* \*

(An. Code 1957, art. 56, § 341; 1989, ch. 3, § 1.)

**REVISOR'S NOTE**

Items (3) and (4) of this section are new language derived without substantive change from former Art. 56, § 341(a).

In the introductory language of this section, express reference to the members "then serving" is added to clarify the proportion of the Board at a given time.

Also in the introductory language of this section, the power to "deny a license" is a standard provision added to state expressly that which only was implied in the former law — i.e., the Board may deny a license to an applicant who violates a disciplinary provision under this section.

Also in the introductory language of this section, the former power to "refuse to renew" a

license is deleted as needless and misleading. Under SG § 10-404, if a licensee makes timely application for renewal, the license does not expire until the Board has acted on the application and the time for appeal has run. Under both SG § 10-405 and § 15-320 of this subtitle, ordinarily the Board must give the licensee an opportunity for a hearing before taking disciplinary action under this section. If the Board finds grounds for disciplinary action, it may suspend or revoke the license, and there is no need for a power to refuse renewal.

In item (3) of this section, the references to probation before judgment and to pleading guilty are added to clarify that receipt of probation before judgment on a crime covered un-

der this item or pleading guilty, even in the absence of a conviction, is adequate to trigger disciplinary action under this section.

"License": § 15-101  
 "Practice land surveying": § 15-101  
 "Practice property line surveying": § 15-101

**Defined terms:**  
 "Board": § 15-101

**Editor's note.** — As only the introductory tion (a) are applicable, the remainder of the language and paragraphs (3) and (4) of subsection is not set forth.

*Subtitle 6. Prohibited Acts; Penalties.*

**§ 15-606. Prohibited use of seal.**

Other than a professional land surveyor or licensed property line surveyor who obtains a seal as authorized under this title, a person may not use or attempt to use a seal. (An. Code 1957, art. 56, § 343; 1989, ch. 3, § 1.)

**REVISOR'S NOTE**

This section is new language derived without substantive change from former Art. 56, § 343(a)(3), as that item restricted use of a seal.

**Defined terms:**  
 "Licensed property line surveyor": § 15-101  
 "Person": § 1-101  
 "Professional land surveyor": § 15-101

**§ 15-607. Giving false information to Board.**

A person may not give false information to the Board in an attempt to obtain a license. (An. Code 1957, art. 56, § 343; 1989, ch. 3, § 1.)

**REVISOR'S NOTE**

This section is new language derived without substantive change from former Art. 56, § 343(a)(4).

**Defined terms:**  
 "Board": § 15-101  
 "License": § 15-101  
 "Person": § 1-101

## COURTS AND JUDICIAL PROCEEDINGS.

### Title 1.

#### Court Structure and Organization.

##### *Subtitle 4. Court of Special Appeals.*

Sec.

1-402. Composition.

### Title 5.

#### Limitations and Prohibited Actions.

##### *Subtitle 1. Limitations.*

5-106. Prosecution for misdemeanors; manslaughter by automobile, motorboat, etc.; homicide by motor vehicle.

### Title 8.

#### Juries.

##### *Subtitle 1. General Provisions.*

Sec.

8-104. Source of prospective jurors.

##### *Subtitle 2. Juror Selection.*

8-204. Availability of voter registration lists.

## TITLE 1.

### COURT STRUCTURE AND ORGANIZATION.

#### *Subtitle 4. Court of Special Appeals.*

Sec.

1-402. Composition.

#### *Subtitle 4. Court of Special Appeals.*

### § 1-402. Composition.

(a) *Number of judges; Chief Judge.* — The Court of Special Appeals consists of 13 judges, one of whom shall be designated by the Governor as Chief Judge.

(b) *Selection, appointment, removal, retirement, residency, terms, etc., of judges.* — Except as otherwise provided in this section, the judges of the Court of Special Appeals shall be selected, appointed, retained, removed from office, or retired as provided in Article IV of the Constitution with respect to judges of the Court of Appeals. One judge of the Court of Special Appeals shall be a resident respectively of each of the appellate judicial circuits defined in Article IV, § 14 of the Constitution, except that two judges shall be residents of the sixth appellate judicial circuit. When election to judicial office is required by the Constitution, each of these judges shall be elected by the qualified voters of his circuit of residence. The remaining judges of the Court of Special Appeals may be residents of any part of the State and, when election to judicial office is required by the Constitution, shall be elected by the qualified voters of the entire State. The term of a judge of the Court of Special Appeals begins on the date of his qualification for office. (An. Code 1957, art. 26, § 130; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 706; 1977, ch. 252.)

## TITLE 5.

## LIMITATIONS AND PROHIBITED ACTIONS.

*Subtitle 1. Limitations.*

Sec.

5-106. Prosecution for misdemeanors; manslaughter by automobile, motorboat, etc.; homicide by motor vehicle.

*Subtitle 1. Limitations.*

**§ 5-106. Prosecution for misdemeanors; manslaughter by automobile, motorboat, etc.; homicide by motor vehicle.**

\* \* \*

(e) *Offenses under election laws or conflict of interest laws, criminal malfeasance, misfeasance or nonfeasance.* — A prosecution for the commission of or the attempt to commit a misdemeanor constituting: (1) a criminal offense under the State election laws; or (2) a criminal offense under the State conflict of interest laws; or (3) criminal malfeasance, misfeasance, or nonfeasance in office committed by an officer of the State, or of an agency of the State, or of a political subdivision of the State, or of a bicounty or multicounty agency in the State shall be instituted within two years after the offense was committed.

(f) *Conspiracy to commit offenses enumerated in subsection (e).* — A prosecution for conspiracy to commit any of the offenses enumerated in subsection (e) shall be instituted within two years after the offense was committed.

\* \* \*

(An. Code 1957, art. 57, §§ 11, 12; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 846; 1977, ch. 320; 1978, chs. 202, 445; 1979, ch. 276; 1980, ch. 97; 1986, chs. 235, 434, 768; 1987, ch. 11, § 1; ch. 161; ch. 306, § 15; 1988, ch. 6, § 11; ch. 110, § 1; 1989, ch. 515.)

**Editor's note.** — As only subsections (e) and (f) are applicable, the remainder of the section is not set forth above.

**Maryland Law Review.** — For article, "The Law/Equity Dichotomy in Maryland," see 39 Md. L. Rev. 427 (1980).

For comment discussing sovereign immunity from statutes of limitation in Maryland, see 46 Md. L. Rev. 408 (1987).

**University of Baltimore Law Review.** — For note, "The 1977 Maryland Wiretapping and Electronic Surveillance Act," see 7 U. Balt. L. Rev. 374 (1978).

**When section applicable.** — Prosecutions for conspiracies or other misdemeanors not "placed along with felonies" by grades of pun-

ishment fixed for them by common law or statute are within this section and must be begun within one year. *Archer v. State*, 145 Md. 128, 125 A. 744 (1924).

Prosecution was "commenced" or "instituted" upon the issuance of the arrest warrant in the District Court. Since this took place less than one year from the date of the offense, it followed that the prosecution was not barred by the statute of limitations. *McMorris v. State*, 277 Md. 62, 355 A.2d 438 (1976); *State v. Mars*, 39 Md. App. 436, 386 A.2d 1234 (1978).

**Proof of relevant acts or crimes.** — This section forbids commencement of prosecution for crime beyond one year from its commission but does not forbid offering evidence of rele-

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vant acts or crimes which occurred a year before commission of crime. *Purviance v. State*, 185 Md. 189, 44 A.2d 474 (1945).

Although the statute of limitations forbids the commencement of a prosecution for a crime not commenced within the statutory period, it does not forbid offering in evidence other facts which occurred a year before the commission of the offense charged if those acts have a natural tendency to establish the fact at issue. *Duncan v. State*, 282 Md. 385, 384 A.2d 456 (1978).

**"Punished" construed as "punishable".** — There is authority holding that this section, which limits prosecutions for misdemeanors "except those punished by confinement in the penitentiary" to one year, is properly interpreted by viewing the word "punished" to

mean "punishable" by confinement in the penitentiary. *Duvall v. State*, 5 Md. App. 484, 248 A.2d 401 (1968).

**Applied** in *Agnew v. State*, 51 Md. App. 614, 446 A.2d 425 (1982).

**Quoted** in *In re James S.*, 286 Md. 702, 410 A.2d 586 (1980); *In re Dewayne H.*, 290 Md. 401, 430 A.2d 76 (1981).

**Stated** in *State v. Brown*, 21 Md. App. 91, 318 A.2d 257 (1974).

**Cited** in *Thompson v. Thompson*, 40 Md. App. 256, 390 A.2d 1139 (1978), *aff'd*, 285 Md. 488, 404 A.2d 269 (1979), appeal dismissed, 444 U.S. 1062, 100 S. Ct. 1002, 62 L. Ed. 2d 745 (1980); *Smallwood v. State*, 51 Md. App. 463, 443 A.2d 1003 (1982).

### TITLE 8.

### JURIES.

#### *Subtitle 1. General Provisions.*

Sec.

8-104. Source of prospective jurors.

#### *Subtitle 2. Juror Selection.*

Sec.

8-204. Availability of voter registration lists.

#### *Subtitle 1. General Provisions.*

### § 8-104. Source of prospective jurors.

The jury commissioner or the clerk of the court shall select the names of prospective jurors from among those persons 18 years old or older whose names appear on the voter registration lists, and from such additional sources permitted by a plan adopted under § 8-201. Volunteers for jury service shall be refused, and recommendations, if made, may not be accepted. (An. Code 1957, art. 51, § 3; 1973, 1st Sp. Sess., ch. 2, § 1.)

**There is no constitutional requirement that persons 18 to 21 years old must serve on juries.** *Hopkins v. State*, 19 Md. App. 414, 311 A.2d 483 (1973).

**Party asserting discrimination must show purposefulness.** — In order to establish a prima facie case of discrimination the party

asserting such must show that the use of voter registration lists in the selection of jurors resulted in purposeful discrimination. *Colvin v. State*, 299 Md. 88, 472 A.2d 953, cert. denied, 469 U.S. 873, 105 S. Ct. 226, 83 L. Ed. 2d 155 (1984).

#### *Subtitle 2. Juror Selection.*

### § 8-204. Availability of voter registration lists.

Any State or local official who has custody, possession, or control of voter registration lists shall make the lists and records available to the jury commissioner or clerks for inspection and copying at any reasonable time. The circuit court of a county upon application by the Attorney General, may com-

pel compliance with this section. (An. Code 1957, art. 51, § 4; 1973, 1st Sp. Sess., ch. 2, § 1.)

# EDUCATION.

DIVISION II.

ELEMENTARY AND SECONDARY  
EDUCATION.

Title 3.

Establishment of County Boards of  
Education.

*Subtitle 1. General Provisions.*

Part III. Elected Boards.

Sec.

3-113. Election of county boards.

Title 7.

Public Schools.

*Subtitle 1. General Provisions.*

Sec.

7-103. Required school days and holidays.

DIVISION II.

ELEMENTARY AND SECONDARY EDUCATION.

TITLE 3.

ESTABLISHMENT OF COUNTY BOARDS OF EDUCATION.

*Subtitle 1. General Provisions.*

Part III. Elected Boards.

Sec.

3-113. Election of county boards.

*Subtitle 1. General Provisions.*

Part III. Elected Boards.

## § 3-113. Election of county boards.

(a) *Elected county boards.* — In the following counties, the members of the county board shall be elected:

- (1) Allegany;
- (2) Carroll;
- (3) Charles;
- (4) Garrett;
- (5) Howard;
- (6) Kent;
- (7) Prince George's;
- (8) Montgomery;
- (9) Somerset; and
- (10) Washington.

(b) *Ineligible persons.* — An individual subject to the authority of the county board may not serve as a member of the county board. At the time of filing a certificate of candidacy for election to a county board, a person shall

certify to the local board of supervisors of election whether or not he is subject to the authority of the county board. The Governor shall not issue a commission of election to a person who has certified affirmatively and who is elected to a county board until the member-elect offers proof that he is no longer subject to the authority of the county board.

(c) *Conduct of elections.* — The election of the county boards shall be held as provided in Subtitles 2 through 10 of this title and Article 33 of the Code. (1978, ch. 22, § 2; 1979, ch. 567, § 2; ch. 646, § 1; 1980, ch. 365, §§ 1, 2; 1982, ch. 338.)

**No equal protection violation in selecting school board members.** — With respect to school board members, a state can appoint local officials, or elect them, or combine the elective and appointive systems, without violating equal protection. *Welch v. Board of Educ.*, 477 F. Supp. 959 (D. Md. 1979).

**Classification between elected and appointed school boards** is not itself suspect; neither does it interfere with the exercise of a fundamental right. *Welch v. Board of Educ.*, 477 F. Supp. 959 (D. Md. 1979).

Cited in *Jones v. Frederick County Bd. of Educ.*, 689 F. Supp. 535 (D. Md. 1988).

## TITLE 7.

### PUBLIC SCHOOLS.

#### *Subtitle 1. General Provisions.*

Sec.

7-103. Required school days and holidays.

#### *Subtitle 1. General Provisions.*

### § 7-103. Required school days and holidays.

\* \* \*

(c) *Holidays.* — (1) The following days are public school holidays:

- (i) Thanksgiving Day and the day after;
- (ii) Christmas Eve and from then through January 1;
- (iii) The Friday before Easter and from then through the Monday after

Easter;

- (iv) Memorial Day; and
- (v) Primary and general election days.

(2) If the federal and State observances of a holiday are on different days, the board of education of each county shall determine which date shall be the date of observance for the public schools within the county.

(3) The public schools shall devote a part of the day to appropriate exercises for the following days:

- (i) Washington's Birthday;
- (ii) Lincoln's Birthday;
- (iii) Veterans' Day;
- (iv) Columbus Day;
- (v) Martin Luther King Day;



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- (vi) Arbor Day; and
- (vii) Any other day of national significance.

(4) In Worcester County, notwithstanding any other provision of this article, the public schools may not be used as polling places and may remain open and in session on primary and general election days.

(5) Notwithstanding any other provisions of this article, the public schools, in the following counties, may remain open and in session on primary and general election days:

- (i) Calvert;
- (ii) Caroline;
- (iii) Dorchester;
- (iv) Kent; and
- (v) Talbot.

\* \* \*

(An. Code 1957, art. 77, §§ 73-76; 1978, ch. 22, § 2; ch. 925; 1979, chs. 481, 517; 1980, ch. 147, § 2; ch. 220; 1982, ch. 120; 1990, ch. 202.)

**Editor's note.** — As only subsection (c) is applicable, the remainder of the section is not set forth above.

**Effect of amendment.** — The 1990 amendment, effective July 1, 1990, inserted present

(c) (5) (iv) and redesignated former (c) (5) (iv) as present (c) (5) (v).

As the rest of this section was not amended, it is not reprinted in this Supplement.

**HEALTH-GENERAL.**

**Title 7.**

**Developmental Disabilities Law.**

*Subtitle 10. Rights of Individuals.*

Sec.

7-1004. Infringement of right to vote or receive, hold, and dispose of property.

**Title 10.**

**Mental Hygiene Law.**

*Subtitle 7. Rights of Mentally Ill Individuals in Facilities.*

Sec.

10-704. Civil rights generally.

**TITLE 7.**

**DEVELOPMENTAL DISABILITIES LAW.**

*Subtitle 10. Rights of Individuals.*

Sec.

7-1004. Infringement of right to vote or receive, hold, and dispose of property.

*Subtitle 10. Rights of Individuals.*

**§ 7-1004. Infringement of right to vote or receive, hold, and dispose of property.**

An individual may not be deprived of the right to vote or to receive, hold, and dispose of property solely because the individual has developmental disability or receives services under this title. (1986, ch. 636, § 2; ch. 637, § 2.)

**TITLE 10.**

**MENTAL HYGIENE LAW.**

*Subtitle 7. Rights of Mentally Ill Individuals in Facilities.*

Sec.

10-704. Civil rights generally.

*Subtitle 7. Rights of Mentally Ill Individuals in Facilities.*

**§ 10-704. Civil rights generally.**

An individual may not be deprived of the right to vote or to receive, hold, and dispose of property solely because the individual is in a facility or a Veterans' Administration hospital for a mental disorder. (An. Code 1957, art. 59, § 51; 1982, ch. 21, § 2; 1983, ch. 405, § 1.)

**Editor's note.** — Chapter 405, Acts 1983, effective July 1, 1983, transferred former § 10-703 of this article to be present § 10-704 of this article and former § 10-704 of this article to be present § 10-705 of this article. — **University of Baltimore Law Review.** —

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For note discussing doctrine of informed consent in context of medical malpractice litigation, see 8 U. Balt. L. Rev. 114 (1978).

**Right to vote.** — Residents of mental health hospitals and residents of mental retardation facilities are not by reason of such residency

deprived of their right to vote if they otherwise qualify and if they are not under guardianship of their person by reason of mental disability. 60 Op. Att'y Gen. 208 (1975).

## STATE GOVERNMENT.

### Title 2.

#### General Assembly.

##### *Subtitle 2. Legislative Districting Plan of 1982.*

###### Sec.

- 2-201. General provisions.
- 2-202. Composition of legislative districts.
- 2-203. Applicability of subtitle.
- 2-204. Repeal of inconsistent laws.
- 2-205. Severability.

### Title 10.

#### Governmental Procedures.

##### *Subtitle 5. Meetings.*

###### Sec.

- 10-502. Legislative policy.
- 10-505. Open sessions generally required.
- 10-506. Notice of open session.
- 10-507. Attendance at open session.
- 10-508. Closed sessions permitted.
- 10-509. Minutes.

## TITLE 2.

### GENERAL ASSEMBLY.

##### *Subtitle 2. Legislative Districting Plan of 1982.*

###### Sec.

- 2-201. General provisions.

###### Sec.

- 2-202. Composition of legislative districts.
- 2-203. Applicability of subtitle.
- 2-204. Repeal of inconsistent laws.
- 2-205. Severability.

##### *Subtitle 2. Legislative Districting Plan of 1982.*

### § 2-201. General provisions.

(a) *Number of districts.* — The State of Maryland is divided into 47 districts for the election of members of the General Assembly of Maryland.

(b) *Number of Senators and Delegates from each district.* — Each legislative district shall elect 1 Senator and 3 Delegates.

(c) *Subdivision of districts.* — Each legislative district may be subdivided into 3 single member delegate districts or into 1 single member delegate district and 1 multimember delegate district.

(d) *Residence of Delegates in districts containing more than 2 counties.* — In any legislative district which contains more than 2 counties or parts of more than 2 counties, and where Delegates are to be elected at large by the voters of the entire district, a county, or part of a county, may not have more than 1 Delegate residing in that district.

(e) *Descriptions are to geographical boundaries existing on June 1, 1981.* — The descriptions of the legislative districts set forth in this subtitle, including all references to election districts, wards, precincts, streets, highways, and other designations, are to the geographical boundaries or other designations as they existed on June 1, 1981. (271 Md. 320; 1982 J.R. 1; 1984, ch. 284, § 2.)

**Editor's note.** — Sections 2-201 to 2-205 were formerly §§ 46, 47, 47A, 47B, and 47C of Article 40. They were transferred and renumbered by § 2, ch. 284, Acts 1984, effective Oct. 1, 1984.

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**§ 2-202. Composition of legislative districts.**

The composition of the 47 legislative districts is:

- (1) Legislative district 1 consists of:
  - (a) Delegate district 1A (single member delegate district):
    - (i) Garrett County in its entirety; and
    - (ii) Allegany County election district 10 in its entirety; and
  - (b) Delegate district 1B (2 member delegate district): Allegany County election districts 5 through 9, inclusive, 11 through 14, inclusive, 17 through 20, inclusive, 22 through 24, inclusive, 26, 28 through 31, inclusive, 34, and 35 in their entirety.
- (2) Legislative district 2 consists of:
  - (a) Delegate district 2A (single member delegate district):
    - (i) Allegany County election districts 1 through 4, inclusive, 16, and 21 in their entirety; and
    - (ii) Washington County election districts 4, 5, 15, 23, and 24 in their entirety;
  - (b) Delegate district 2B (single member delegate district):
    - (i) Washington County election districts 2, 10, 12, 20, and 26 in their entirety; and
    - (ii) Washington County election district 17, precincts 2 and 3; and
  - (c) Delegate district 2C (single member delegate district):
    - (i) Washington County election districts 3, 21, 22, and 25 in their entirety; and
    - (ii) Washington County election district 17, precinct 1.
- (3) Legislative district 3 consists of:
  - (a) Delegate district 3A (single member delegate district): Washington County election districts 1, 6, 8, 9, 11, 13, 16, 18, 19, and 27 in their entirety; and
  - (b) Delegate district 3B (2 member delegate district):
    - (i) Washington County election districts 7 and 14 in their entirety; and
    - (ii) Frederick County election districts 2, 3, 6, 10, 16, 21, 22, and 24 in their entirety.
- (4) Legislative district 4 consists of:
  - (a) Delegate district 4A (2 member delegate district): Frederick County election districts 1, 4, 5, 7, 8, 9, 11 through 15, inclusive, 17 through 20, inclusive, 23, 25, and 26 in their entirety; and
  - (b) Delegate district 4B (single member delegate district):
    - (i) Carroll County election districts 1, 3, 9 through 13, inclusive, in their entirety; and
    - (ii) Howard County election district 4 in its entirety.
- (5) Legislative district 5 consists of:
  - (a) Delegate district 5A (2 member delegate district):
    - (i) Carroll County election districts 2, 4, 6, 7, 8, and 14 in their entirety; and
    - (ii) Carroll County election district 5, precincts 1 and 2; and

- (b) Delegate district 5B (single member delegate district):
- (i) Baltimore County election district 1, precinct 2;
  - (ii) Baltimore County election district 2, precincts 3, 11, 17, and 19;
  - (iii) Baltimore County election district 2, that part of precinct 15 that is north and west of a line that runs along the center of Lyons Mill Road from Deer Park Road, to Lathe Road, thence in a southerly direction to the northeast corner of the Deer Park Elementary School property, thence in a southerly direction along the eastern boundary of the Deer Park Elementary School property to the southeastern corner of that property, thence in an easterly direction to Winans Road, continuing along the center of Winans Road to McDonogh Road, thence in a northerly direction along the center of McDonogh Road to the intersection of Lyons Mill Road, thence in an easterly direction along the center of McDonogh Road to the center of Gwynns Falls;
  - (iv) Baltimore County election district 3, that part of precinct 11 that is north of a line running along the center of McDonogh Road from the center of Gwynns Falls to Reisterstown Road; thence along the center of Reisterstown Road to Greenspring Valley Road; thence along the center of Greenspring Valley Road to Garrison Forest Road;
  - (v) Baltimore County election district 4, precinct 1;
  - (vi) Baltimore County election district 4, that part of precinct 2 that is south of a line running along the center of Nicodemus Road from Cherry Hill Road to Reisterstown Road; and
  - (vii) Carroll County election district 5, precincts 3 and 4.
- (6) Legislative district 6 consists of:
- (a) Baltimore County election district 11, precincts 3, 4, 5, 10, and 11;
  - (b) Baltimore County election district 11, that part of precinct 2 that is north of a line that runs along the center of Glenarm Road from Long Green Pike to Hartley Mill Road; and
  - (c) Baltimore County election district 15, precincts 4 through 20, inclusive.
- (7) Legislative district 7 consists of:
- (a) Baltimore County election district 12 in its entirety; and
  - (b) Baltimore County election district 15, precincts 1, 2, 3, 21 through 24, inclusive.
- (8) Legislative district 8 consists of:
- (a) Baltimore County election district 14 in its entirety;
  - (b) Baltimore County election district 9, precincts 26, 27, and 28;
  - (c) Baltimore County election district 10, that part of precinct 1 that is south of a line that runs along the center of Paper Mill Road from Poplar Hill Road to Jarrettsville Pike;
  - (d) Baltimore County election district 10, that part of precinct 2 that is south of a line that runs along the center of Sweet Air Road from Jarrettsville Pike to Green Road;
  - (e) Baltimore County election district 11, precincts 1, and 6 through 9, inclusive; and
  - (f) Baltimore County election district 11, that part of precinct 2 that is south of a line that runs along the center of Glenarm Road from Long Green Pike to Hartley Mill Road.

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(9) Legislative district 9 consists of:

(a) Baltimore County election district 8, that part of precinct 4 that is south and east of a line that runs along the center of Cranbrook Road from Lord Byron Lane to the transmission line;

(b) Baltimore County election district 8, that part of precinct 10 that is south and west of a line that runs along the center of Ridgely Road from York Road to Pot Spring Road, thence along the center of Pot Spring Road to Dulaney Valley Road;

(c) Baltimore County election district 8, that part of precinct 11 that is north and east of a line that runs from the southeasternmost corner of precinct 4 of election district 8 in an easterly direction to Cardigan Road, continuing along the center of Cardigan Road to Padonia Road, thence in a southerly direction along the center of Padonia Road to Treherne Road; and

(d) Baltimore County election district 9, precincts 3 through 25, inclusive.

(10) Legislative district 10 consists of:

(a) Baltimore County election districts 5, 6, and 7 in their entirety;

(b) Baltimore County election district 3, precinct 12;

(c) Baltimore County election district 4, precincts 3 through 9, inclusive;

(d) Baltimore County election district 4, that part of precinct 2 that is north of a line running along the center of Nicodemus Road from Cherry Hill Road to Reisterstown Road;

(e) Baltimore County election district 8, precincts 1, 2, 3, 5 through 9, inclusive, and precinct 12;

(f) Baltimore County election district 8, that part of precinct 4 that is north and west of a line running along the center of Cranbrook Road from Lord Byron Lane to the transmission line;

(g) Baltimore County election district 8, that part of precinct 10 that is north and east of a line that runs along the center of Ridgely Road from York Road to Pot Spring Road, thence along the center of Pot Spring Road to Dulaney Valley Road;

(h) Baltimore County election district 8, that part of precinct 11 that is south and west of a line that runs from the southeasternmost corner of precinct 4 of election district 8 in an easterly direction to Cardigan Road, continuing along the center of Cardigan Road to Padonia Road, thence in a southerly direction along the center of Padonia Road to Treherne Road;

(i) Baltimore County election district 9, precincts 1 and 2;

(j) Baltimore County election district 10, that part of precinct 1 that is north of a line that runs along the center of Paper Mill Road from Phoenix Road to Jarrettsville Pike; and

(k) Baltimore County election district 10, that part of precinct 2 that is north of a line that runs along the center of Sweet Air Road from Jarrettsville Pike to Green Road.

(11) Legislative district 11 consists of:

(a) Baltimore County election district 2, precincts 1, 2, 4 through 10, inclusive, 12, 13, 14, 16, and 18;

(b) Baltimore County election district 2, that part of precinct 15 that is south and east of a line that runs along the center of Lyons Mill Road from Deer Park Road to Lathe Road, thence in a southerly direction to the northeast corner of the Deer Park Elementary School property, thence in a southerly direction along the eastern boundary of Deer Park Elementary School property to the southeastern corner of that property, thence in an easterly direction to Winans Road, continuing along the center of Winans Road to McDonogh Road, thence in a northerly direction along the center of McDonogh Road to the intersection of Lyons Mill Road, thence in an easterly direction along the center of McDonogh Road to the center of Gwynns Falls;

(c) Baltimore County election district 3, precincts 1 through 10, inclusive; and

(d) Baltimore County election district 3, that part of precinct 11 that is south of a line running along the center of McDonogh Road from the center of Gwynns Falls to Reisterstown Road, thence along the center of Reisterstown Road to Greenspring Valley Road, thence along the center of Greenspring Valley Road to Garrison Forest Road.

(12) Legislative district 12 consists of:

(a) Baltimore County election district 13 in its entirety; and

(b) Baltimore County election district 1, precincts 1, and 3 through 16, inclusive.

(13) Legislative district 13 consists of:

(a) Delegate district 13A (single member delegate district):

(i) Howard County election district 6, precincts 4, 5, 6, 8, 9, 10, 11, 12, 13, and 14;

(ii) Howard County election district 6, that part of precinct 3 that is north of a line running along the center of Gorman Road from Murray Hill Road to Maryland Route 29; and

(iii) Howard County election district 6, that part of precinct 7 that is north and west of a line running along the center of Interstate 95 from Guilford Road to Maryland Route 175; and

(b) Delegate district 13B (2 member delegate district):

(i) Howard County election district 1 in its entirety;

(ii) Howard County election district 6, precincts 1, 2, and 15;

(iii) Howard County election district 5, precinct 6;

(iv) Howard County election district 5, that part of precinct 1 that is east and south of a line running along the center of Maryland Route 108 from Hall Shop Road to Guilford Road, thence along the center of Maryland Route 32 to the western boundary of precinct 5 of election district 5;

(v) Howard County election district 5, that part of precinct 5 that is south of a line running along the center of Maryland Route 32 from Maryland Route 29 to Cedar Lane;

(vi) Howard County election district 6, that part of precinct 3 that is south of a line running along the center of Gorman Road from Murray Hill Road to Maryland Route 29;

(vii) Howard County election district 6, that part of precinct 7 that is east and south of a line running along the center of Interstate 95 from Guilford Road to Maryland Route 175;



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(viii) Prince George's County election district 10, precincts 1 through 6, inclusive, and 8 and 9; and

(ix) Prince George's County election district 10, that part of precinct 7 that is north and west of a line that runs along the center of Muirkirk Road from the current border of precinct 4 of election district 1 to Orvis Way, thence along the center of Orvis Way to Horton Road, thence along the center of Horton Road to Montague Drive, thence along the center of Montague Drive to Lanner Place, thence along the center of Lanner Place to Muirkirk Road, thence continuing along the center of Muirkirk Road to the entrance ramp to the Baltimore-Washington Expressway, thence continuing along the center of the entrance ramp to the Baltimore-Washington Expressway and thence along the center of the Baltimore-Washington Expressway in a northerly direction to the center of the Patuxent River.

(14) Legislative district 14 consists of:

(a) Delegate district 14A (single member delegate district):

(i) Montgomery County election district 5, precincts 2, 8, 15, 17, and 18;

(ii) Montgomery County election district 5, that part of precinct 1 that is generally north of a line running along the center of Good Hope Road from New Hampshire Avenue a distance of 2,100 feet to an unnamed stream which is the western fork of another unnamed stream (both of which are generally known as the Good Hope Branch tributary to the Paint Branch), thence in a southeasterly direction along the center of the western fork to the second unnamed stream, and thence along the center of the second unnamed stream to Paint Branch;

(iii) Montgomery County election district 8, precincts 1 and 5;

(iv) Montgomery County election district 8, that part of precinct 2 that is south of a line running along the center of Brighton Dam Road from the eastern precinct boundary to the intersection with the municipal boundary of the municipal corporation of Brookeville, thence along the northern municipal boundary of the municipal corporation of Brookeville in a generally westerly direction to Brookeville Road, thence along the center of Brookeville Road so far as is required to reach the western precinct boundary;

(v) Montgomery County election district 8, that part of precinct 6 that generally is east and north of a line running in a northwesterly direction along the center of Norwood Road from the southern precinct boundary to the intersection of Dr. Bird Road, thence continuing in a northwesterly direction along the center of Dr. Bird Road to Maryland Route 108; and

(vi) Montgomery County election district 8, that part of precinct 7 that is generally west of a line running along the center of New Hampshire Avenue from Maryland Route 108 to Gold Mine Road, thence in a westerly direction along the center of Gold Mine Road to the boundary line of precinct 2 of election district 8; and

(b) Delegate district 14B (2 member delegate district):

(i) Howard County election districts 2 and 3 in their entirety;

(ii) Howard County election district 5, precincts 2, 3, 4, 7, 8, 9, and 10;

(iii) Howard County election district 5, that part of precinct 1 that is west and north of a line running along the center of Maryland Route 108 from Hall Shop Road to Guilford Road, thence along the center of Maryland Route 32 to the western boundary of precinct 5 of election district 5;

(iv) Howard County election district 5, that part of precinct 5 that is north of a line running along the center of Maryland Route 32 from Maryland Route 29 to Cedar Lane;

(v) Montgomery County election district 1 in its entirety;

(vi) Montgomery County election district 8, that part of precinct 2 that is north of a line running along the center of Brighton Dam Road from the eastern precinct boundary to the intersection with the municipal boundary of the municipal corporation of Brookeville, thence along the northern municipal boundary of the municipal corporation of Brookeville in a generally westerly direction to Brookeville Road, thence along the center of Brookeville Road so far as is required to reach the western precinct boundary;

(vii) Montgomery County election district 8, that part of precinct 7 that is north and east of a line running along the center of New Hampshire Avenue from Maryland Route 108 to Gold Mine Road, thence in a westerly direction along the center of Gold Mine Road to the boundary line of precinct 2 of election district 8;

(viii) Montgomery County election district 9, that part of precinct 20 that is generally east of a line that runs along the municipal boundary of the municipal corporation of Gaithersburg from Gaithersburg-Laytonsville Road to Emory Grove Road;

(ix) Montgomery County election district 9, that part of precinct 21 that is generally east and south of a line running along the center of Strawberry Knoll Road from Emory Grove Road to Snouffer's School Road; and

(x) Montgomery County election district 9, that part of precinct 21 that is north of a line meandering in a generally westerly direction along the center of Cabin Branch from Snouffer's School Road to Goshen Road.

(15) Legislative district 15 consists of:

(a) Montgomery County election districts 2, 3, 6, 11, and 12 in their entirety;

(b) Montgomery County election district 4, precincts 12 and 20;

(c) Montgomery County election district 4, that part of precinct 17 that is west of a line running along the center of Seven Locks Road from Postoak Road to Tuckerman Lane;

(d) Montgomery County election district 4, that part of precinct 25 that is south of the municipal boundary of the municipal corporation of Rockville;

(e) Montgomery County election district 9, precincts 9, 12, 17, 18, and 19;

(f) Montgomery County election district 9, that part of precinct 1 that is bounded by a line that runs along the center of North Summit Avenue from the boundary of election district 9, precinct 7 to the municipal boundary of the municipal corporation of Gaithersburg, thence runs in a generally westerly and northerly direction along the northern municipal boundary of the municipal corporation of Gaithersburg to Oden'Hal Avenue, and thence runs gener-

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ally easterly along the existing boundary line between precincts 1 and 7 of election district 9 to North Summit Avenue;

(g) Montgomery County election district 9, all of precinct 5 except that part generally south and west of the municipal boundary line of the municipal corporation of Gaithersburg;

(h) Montgomery County election district 9, all of precinct 7 except that part generally west of a line running along the center of Lost Knife Road between Montgomery Village Avenue and Oden'Hal Avenue;

(i) Montgomery County election district 9, that part of precinct 8 that is generally northwest of a line meandering in a generally westerly direction along the center of Great Seneca Creek from Interstate 270 to Clopper Road;

(j) Montgomery County election district 9, that part of precinct 11 that is not within the corporate boundaries of the municipal corporation of Gaithersburg;

(k) Montgomery County election district 9, that part of precinct 15 that is generally east of the municipal boundary of the municipal corporation of Gaithersburg;

(l) Montgomery County election district 9, that part of precinct 21 that is generally west of a line running along the center of Strawberry Knoll Road from Emory Grove Road to Snouffer's School Road, thence running north along the center of Snouffer's School Road from Emory Grove Road to Cabin Branch, and thence meandering in a generally westerly direction along the center of Cabin Branch to Goshen Road; and

(m) Montgomery County election district 10, precincts 1 through 6, inclusive, 8, 9, and 11.

(16) Legislative district 16 consists of:

(a) Montgomery County election district 4, precincts 10, 13, and 18;

(b) Montgomery County election district 4, that part of precinct 17 that is east of a line running along the center of Seven Locks Road from Montrose Road to Tuckerman Lane;

(c) Montgomery County election district 4, that part of precinct 28 that is bounded on the west and north by the municipal boundary line of the municipal corporation of Rockville, on the east by Route 355, and on the south by Montrose Road;

(d) Montgomery County election district 7, precincts 3, 4, 7 through 15, inclusive, 17 through 20, inclusive, and 22 through 31, inclusive;

(e) Montgomery County election district 10, precincts 7 and 10; and

(f) Montgomery County election district 13, precinct 38.

(17) Legislative district 17 consists of:

(a) Montgomery County election district 4, precincts 2 through 9, inclusive, 11, 14, 15, 16, 21 through 24, inclusive, 26, 27, and 29;

(b) Montgomery County election district 4, that part of precinct 1 that is west of a line that runs along the center of Rock Creek;

(c) Montgomery County election district 4, that part of precinct 25 that is within the municipal boundary of the municipal corporation of Rockville;

(d) Montgomery County election district 4, all of precinct 28 except that which is bounded on the west and north by the municipal boundary line

of the municipal corporation of Rockville, on the east by Route 355, and on the south by Montrose Road;

(e) Montgomery County election district 9, precincts 2, 3, 6, 13, and 16;

(f) Montgomery County election district 9, all of precinct 1 except that bounded by a line that runs along the center of North Summit Avenue from the boundary of election district 9, precinct 7 to the municipal boundary of the municipal corporation of Gaithersburg, thence runs in a generally westerly and northerly direction along the northern municipal boundary of the municipal corporation of Gaithersburg to Oden'Hal Avenue, and thence runs generally easterly along the existing boundary line between precincts 1 and 7 of election district 9 to North Summit Avenue;

(g) Montgomery County election district 9, that part of precinct 5 generally south and west of the municipal boundary line of the municipal corporation of Gaithersburg;

(h) Montgomery County election district 9, that part of precinct 7 generally west of a line running along the center of Lost Knife Road between Montgomery Village Avenue and Oden'Hal Avenue;

(i) Montgomery County election district 9, that part of precinct 8 that is generally southeast of a line meandering in a generally westerly direction along the center of Great Seneca Creek from Interstate 270 to Clopper Road;

(j) Montgomery County election district 9, that part of precinct 10 that is within the municipal boundary of the municipal corporation of Gaithersburg;

(k) Montgomery County election district 9, that part of precinct 11 that is within the municipal boundary of the municipal corporation of Gaithersburg;

(l) Montgomery County election district 9, that part of precinct 15 that is generally west of the municipal boundary of the municipal corporation of Gaithersburg;

(m) Montgomery County election district 9, that part of precinct 20 that is within the municipal boundary of the municipal corporation of Gaithersburg; and

(n) Montgomery County election district 13, that part of precinct 26 that is generally north and west of a line that runs along the center of Cedar Lane in a generally easterly direction from the boundary of precinct 38 of election district 13 to Summit Avenue, thence in a northerly direction along the center of Summit Avenue to the existing boundary between precincts 26 and 40 of election district 13.

(18) Legislative district 18 consists of:

(a) Montgomery County election district 7, precincts 1, 2, 5, 6, 16, 21, and 32;

(b) Montgomery County election district 13, precincts 3, 7, 16, 17, 24, 25, 27 through 32, inclusive, 34, 36, 39, 40, 44, 53, 58, 59, and 61;

(c) Montgomery County election district 13, that part of precinct 14 that is generally north and west of a line that runs along the center of Alton Parkway from Georgia Avenue to Dale Drive, thence in a southeasterly direction along the center of Dale Drive to Colesville Road;

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(d) Montgomery County election district 13, that part of precinct 26 that is generally east of a line that runs along the center of Cedar Lane in a generally easterly direction from the boundary of precinct 38 of election district 13 to Summit Avenue, thence in a northerly direction along the center of Summit Avenue to the existing boundary between precincts 26 and 40 of election district 13; and

(e) Montgomery County election district 13, that part of precinct 49 that is generally west and south of a line that runs along the center of Martin Avenue in a northerly direction to Henderson Avenue, thence in an easterly direction along the center of Henderson Avenue to Bernard Drive, thence in a northerly direction along the center of Bernard Drive to Georgian Woods Place, thence along the center of Georgian Woods Place to the intersection of Georgian Woods Place and Georgia Avenue.

(19) Legislative district 19 consists of:

(a) Montgomery County election district 4, precinct 19;

(b) Montgomery County election district 4, that part of precinct 1 that is east of a line that runs along the center of Rock Creek;

(c) Montgomery County election district 8, precincts 3 and 4;

(d) Montgomery County election district 8, that part of precinct 6 that is generally west and south of a line running in a northwesterly direction along the center of Norwood Road from the southern precinct boundary to the intersection of Dr. Bird Road, thence continuing in a northwesterly direction along the center of Dr. Bird Road to Maryland Route 108;

(e) Montgomery County election district 9, precincts 4 and 14;

(f) Montgomery County election district 9, that part of precinct 10 that is not within the municipal boundary of the municipal corporation of Gaithersburg;

(g) Montgomery County election district 13, precincts 1, 2, 11, 19, 20, 33, 35, 37, 42, 43, 45, 46, 48, 51, 52, 54 through 57, inclusive, and 60; and

(h) Montgomery County election district 13, that part of precinct 49 that is generally east of a line that runs along the center of Martin Avenue in a northerly direction to Henderson Avenue, thence in an easterly direction along the center of Henderson Avenue to Bernard Drive, thence in a northerly direction along the center of Bernard Drive to Georgian Woods Place, thence along the center of Georgian Woods Place to the intersection of Georgian Woods Place and Georgia Avenue.

(20) Legislative district 20 consists of:

(a) Montgomery County election district 5, precincts 3 through 7, inclusive, 9 through 14, inclusive, and 16;

(b) Montgomery County election district 5, that part of precinct 1 that is generally south of a line running along the center of Good Hope Road from New Hampshire Avenue a distance of 2,100 feet to an unnamed stream which is the western fork of another unnamed stream (both of which are generally known as the Good Hope Branch tributary to the Paint Branch), thence in a southeasterly direction along the center of the western fork to the second unnamed stream, and thence along the center of the second unnamed stream to Paint Branch;

(c) Montgomery County election district 13, precincts 4, 5, 6, 8, 9, 10, 12, 13, 15, 18, 21, 22, 23, 41, 47, and 50; and

(d) Montgomery County election district 13, that part of precinct 14 that is generally south and east of a line that runs along the center of Alton Parkway from Georgia Avenue to Dale Drive, thence in an easterly direction along the center of Dale Drive to Colesville Road.

(21) Legislative district 21 consists of:

(a) Prince George's County election district 1 in its entirety;

(b) Prince George's County election district 17, precincts 4, 6, 10, 11, 13, 14, and 15;

(c) Prince George's County election district 19, precinct 3;

(d) Prince George's County election district 21, precincts 1, 2, 4, 5, 7, 10, 12, 14, and 15; and

(e) Prince George's County election district 10, that part of precinct 7 that is south and east of a line that runs along the center of Muirkirk Road from the current border of precinct 4 of election district 1 to Orvis Way, thence along the center of Orvis Way to Horton Road, thence along the center of Horton Road to Montague Drive, thence along the center of Montague Drive to Lanner Place, thence along the center of Lanner Place to Muirkirk Road, thence continuing along the center of Muirkirk Road to the entrance ramp to the Baltimore-Washington Expressway, thence continuing along the center of the entrance ramp to the Baltimore-Washington Expressway and thence along the center of the Baltimore-Washington Expressway in a northerly direction to the center of the Patuxent River.

(22) Legislative district 22 consists of:

(a) Prince George's County election district 16 in its entirety;

(b) Prince George's County election district 2, precincts 3 through 6, 8, and 9;

(c) Prince George's County election district 17, precincts 9 and 12;

(d) Prince George's County election district 19, precincts 1, 2, 4, and 5; and

(e) Prince George's County election district 20, precincts 1, 2, 3, 6, 7, and 10.

(23) Legislative district 23 consists of:

(a) Prince George's County election districts 7 and 14 in their entirety;

(b) Prince George's County election district 20, precincts 5 and 9; and

(c) Prince George's County election district 21, precincts 3, 6, 8, 9, 11, and 13.

(24) Legislative district 24 consists of:

(a) Prince George's County election district 2, precincts 1, 2, and 7;

(b) Prince George's County election district 13, precincts 1, 2, 3, and 5;

(c) Prince George's County election district 17, precincts 1, 2, 3, 5, 7, and 8;

(d) Prince George's County election district 18, precincts 1, 2, 3, 5, 7, and 8; and

(e) Prince George's County election district 20, precincts 4 and 8.

(25) Legislative district 25 consists of:

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(a) Prince George's County election district 6, precincts 1, 3 through 7, inclusive, 10 through 12, inclusive, 15, and 16;

(b) Prince George's County election district 13, precincts 4 and 6; and

(c) Prince George's County election district 18, precincts 4 and 6.

(26) Legislative district 26 consists of:

(a) Prince George's County election district 12 in its entirety;

(b) Prince George's County election district 6, precincts 2, 8, 9, 13, 14, and 17; and

(c) Prince George's County election district 9, precinct 2.

(27) Legislative district 27 consists of:

(a) Prince George's County election districts 3, 4, 5, 8, 11, and 15 in their entirety;

(b) Prince George's County election district 6, precinct 18; and

(c) Prince George's County election district 9, precincts 1, 3, 4, and 5.

(28) Legislative district 28 consists of:

(a) Delegate district 28A (2 member delegate district):

(i) Charles County election districts 1, 2, 3, 6, 7, and 10 in their entirety; and

(ii) Charles County election district 8, precinct 1; and

(b) Delegate district 28B (single member delegate district):

(i) Charles County election districts 4, 5, and 9 in their entirety;

(ii) Charles County election district 8, precinct 2; and

(iii) St. Mary's County election districts 4, 5, and 7 in their entirety.

(29) Legislative district 29 consists of:

(a) Delegate district 29A (single member delegate district):

(i) Calvert County election district 3 in its entirety, and Calvert County election district 2, precinct 2; and

(ii) Anne Arundel County election district 7, precincts 1, 2, and 9;

(b) Delegate district 29B (single member delegate district):

(i) Calvert County election district 1 in its entirety, and Calvert County election district 2, precinct 1;

(ii) St. Mary's County election districts 3 and 6 in their entirety; and

(iii) St. Mary's County, that part of election district 8 that is north and east of a line that runs from the Calvert County line in a northwesterly direction to Town Creek Drive, thence in a westerly direction along the center of Town Creek Drive to Maryland Route 235, thence in a northerly direction along the center of Maryland Route 235 to the boundary of St. Mary's County election district 6; and

(c) Delegate district 29C (single member delegate district):

(i) St. Mary's County election districts 1, 2, and 9 in their entirety; and

(ii) St. Mary's County, that part of election district 8 that is south and west of a line that runs from the Calvert County line in a northwesterly direction to Town Creek Drive, thence in a westerly direction along the center of Town Creek Drive to Maryland Route 235, thence in a northerly direction along the center of Maryland Route 235 to the boundary of St. Mary's County election district 6.

(30) Legislative district 30 consists of:

- (a) Anne Arundel County election district 6 in its entirety;
- (b) Anne Arundel County election district 5, precincts 1 through 4, inclusive, 17, 18, and 20 through 22, inclusive; and
- (c) Anne Arundel County election district 7, precincts 3 through 6, inclusive, and 10.

(31) Legislative district 31 consists of:

- (a) Anne Arundel County election district 2, precincts 1, 8, 9, 10, 12, and 13;
- (b) Anne Arundel County election district 3, precincts 1 through 11, inclusive, 13, and 14; and
- (c) Anne Arundel County election district 5, precincts 9 through 14, inclusive, 16, 23, and 24.

(32) Legislative district 32 consists of:

- (a) Anne Arundel County election district 1 in its entirety;
- (b) Anne Arundel County election district 2, precincts 2 through 7, inclusive, 11, and 15;
- (c) Anne Arundel County election district 3, precinct 12;
- (d) Anne Arundel County election district 4, that part of precinct 1 that is west and north of a line that runs along the center of the Baltimore-Washington Expressway from the Anne Arundel County line to Route 198; and
- (e) Anne Arundel County election district 4, that part of precinct 9 that is west and north of a line that runs along the center of the Baltimore-Washington Expressway from Maryland Route 198 to the perimeter of the District of Columbia Training School property, thence in a westerly direction along the perimeter to its far western corner, thence in a northerly direction to Route 32, thence along the center of Route 32 to the Baltimore-Washington Expressway and continuing along the center of the Baltimore-Washington Expressway to Route 175.

(33) Legislative district 33 consists of:

- (a) Anne Arundel County election district 2, precinct 14;
- (b) Anne Arundel County election district 4, precincts 2 through 8, inclusive, and 10 through 15, inclusive;
- (c) Anne Arundel County election district 4, that part of precinct 1 that is east and south of a line that runs along the center of the Baltimore-Washington Expressway from the Anne Arundel County line to Route 198;
- (d) Anne Arundel County election district 4, that part of precinct 9 that is east and south of a line that runs along the center of the Baltimore-Washington Expressway from Maryland Route 198 to the perimeter of the District of Columbia Training School property, thence in a westerly direction along the perimeter to its far western corner, thence in a northerly direction to Route 32, thence along the center of Route 32 to the Baltimore-Washington Expressway and continuing along the center of the Baltimore-Washington Expressway to Route 175;
- (e) Anne Arundel County election district 5, precincts 5 through 8, inclusive, 15, and 19; and
- (f) Anne Arundel County election district 7, precincts 7, 8, and 11.



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(34) Legislative district 34 consists of:

- (a) Harford County election district 6 in its entirety;
- (b) Harford County election district 1, precincts 3, 4, 5, 6, 10, 11, and 45;
- (c) Harford County election district 2, precincts 1, 3, 15, and 19; and
- (d) Harford County election district 3, precincts 10, 11, 12, and 15 through 18, inclusive.

(35) Legislative district 35 consists of:

- (a) Delegate district 35A (2 member delegate district):
    - (i) Harford County election districts 4 and 5 in their entirety;
    - (ii) Harford County election district 1, precinct 2;
    - (iii) Harford County election district 2, precinct 2; and
    - (iv) Harford County election district 3, precincts 2, 3, 4, 5, and 35;
- and
- (b) Delegate district 35B (single member delegate district):
    - (i) Cecil County election districts 6, 7, 8, and 9 in their entirety;
    - (ii) Cecil County election district 5, precinct 2; and
    - (iii) Cecil County election district 4, that part that lies west and north of a line that runs along the center of Big Elk Creek starting from Maryland Route 277 to the Baltimore and Ohio Railroad tracks, thence in an easterly direction along the center of the tracks to the Delaware state line.

(36) Legislative district 36 consists of:

- (a) All of Kent County;
- (b) All of Queen Anne's County;
- (c) Cecil County election districts 1, 2, and 3 in their entirety;
- (d) Cecil County election district 5, precinct 1;
- (e) Cecil County election district 4, that part that lies east and south of a line that runs along the center of Big Elk Creek starting from Maryland Route 277 to the Baltimore and Ohio Railroad tracks, thence in an easterly direction along the center of the tracks to the Delaware state line;
- (f) Caroline County election districts 1 and 7 in their entirety;
- (g) Talbot County election district 4;
- (h) Talbot County election district 1, precinct 4; and
- (i) Talbot County election district 1, that part of precinct 3 that is not within the municipal boundaries of the municipal corporation of Easton.

(37) Legislative district 37 consists of:

- (a) All of Dorchester County;
- (b) Caroline County election districts 2, 3, 4, 5, 6, and 8 in their entirety;
- (c) Talbot County election districts 2, 3, and 5 in their entirety;
- (d) Talbot County election district 1, precincts 1 and 2;
- (e) Talbot County election district 1, that part of precinct 3 that is within the municipal boundaries of the municipal corporation of Easton;
- (f) Wicomico County election districts 1, 2, 3, 7, 10, 12, 15, and 16 in their entirety;
- (g) Wicomico County election district 9, that part of precinct 1 which is one of three parts of precinct 1 that are not within the municipal boundaries of

the municipal corporation of Salisbury, that is bounded only by the municipal boundary of the municipal corporation of Salisbury and precinct 2 of election district 9;

(h) Wicomico County election district 9, that part of precinct 2 that is not within the municipal boundaries of the municipal corporation of Salisbury; and

(i) Wicomico County election district 9, that part of precinct 3 that is not within the municipal boundaries of the municipal corporation of Salisbury.

(38) Legislative district 38 consists of:

(a) All of Somerset County;

(b) All of Worcester County;

(c) Wicomico County election districts 4, 5, 6, 8, 11, 13, and 14 in their entirety;

(d) Wicomico County election district 9, all of precinct 1 except for the part, which is one of three parts of precinct 1 that are not within the municipal boundaries of the municipal corporation of Salisbury, that is bounded only by the municipal corporation of Salisbury and precinct 2 of election district 9;

(e) Wicomico County election district 9, that part of precinct 2 that is within the municipal boundaries of the municipal corporation of Salisbury; and

(f) Wicomico County election district 9, that part of precinct 3 that is within the municipal boundaries of the municipal corporation of Salisbury.

(39) Legislative district 39 consists of:

(a) Baltimore City wards 4, 17, 18, and 22 in their entirety;

(b) Baltimore City ward 3, precinct 2;

(c) Baltimore City ward 3, that part of precinct 1 that is north of a line running along the center of Bank Street from Central Avenue to Broadway;

(d) Baltimore City ward 5, that part of precinct 1 that is west of a line running along the center of Central Avenue from Orleans Street to Fayette Street;

(e) Baltimore City ward 5, that part of precinct 2 that is west of a line running along the center of Aisquith Street from Monument Street to Orleans Street;

(f) Baltimore City ward 10, precincts 3 and 4;

(g) Baltimore City ward 11, precincts 1, 2, and 4 through 9, inclusive;

(h) Baltimore City ward 14, precincts 3 through 11, inclusive;

(i) Baltimore City ward 15, precincts 25, 28, 29, and 30;

(j) Baltimore City ward 16, precincts 1 through 4, inclusive;

(k) Baltimore City ward 19, precincts 1 and 2;

(l) Baltimore City ward 20, precincts 1, 2, 3, and 22 through 25, inclusive; and

(m) Baltimore City ward 21, that part of precinct 1 that lies north and east of a line that runs along the center of Harbor City Boulevard from Eutaw Street to Pratt Street.

(40) Legislative district 40 consists of:

(a) Baltimore City ward 12, precincts 5 and 7;

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- (b) Baltimore City ward 13, precincts 6 through 18, inclusive;
- (c) Baltimore City ward 15, precincts 10, 17 through 24, inclusive, 26, 27, 31 through 42, inclusive, 44, and 45;
- (d) Baltimore City ward 16, precincts 6 and 7;
- (e) Baltimore City ward 16, that part of precinct 5 that is north of a line running along the center of Lanvale Street from Whitmore Avenue to Bentalou Street, thence continuing in an easterly direction to Spedden Street; and

(f) Baltimore City ward 27, precincts 92 through 99, inclusive.

(41) Legislative district 41 consists of:

- (a) Baltimore City ward 15, precincts 1 through 9, inclusive, 11 through 16, inclusive, and 43;
- (b) Baltimore City ward 16, precincts 8 through 12, inclusive;
- (c) Baltimore City ward 16, that part of precinct 5 that is south of a line running along the center of Lanvale Street from Whitmore Avenue to Bentalou Street, thence continuing in an easterly direction to Spedden Street;
- (d) Baltimore City ward 20, precincts 4 through 18, inclusive, and 21;
- (e) Baltimore City ward 28, precincts 4, 5, 6, 10, 11, and 17; and
- (f) Baltimore City ward 28, that part of precinct 12 that is east of a line beginning at the westernmost end of the odd side of the 4900 block of West Forest Park Avenue and proceeding in a southerly direction to the intersection with Gwynns Falls.

(42) Legislative district 42 consists of:

- (a) Baltimore City ward 13, precincts 2, 3, 4, 5, and 19 through 25, inclusive;
- (b) Baltimore City ward 27, precincts 78 through 91, inclusive, and 100 through 108, inclusive;
- (c) Baltimore City ward 28, precincts 1, 2, 3, 7, 8, 9, 13, 14, 15, 16, 18, 19, and 20; and
- (d) Baltimore City ward 28, that part of precinct 12 that is west of a line beginning at the westernmost end of the odd side of the 4900 block of West Forest Park Avenue and proceeding in a southerly direction to the intersection with Gwynns Falls.

(43) Legislative district 43 consists of:

- (a) Baltimore City ward 26, precincts 38 through 45, inclusive; and
- (b) Baltimore City ward 27, precincts 8 through 40, inclusive, and 58 through 77, inclusive.

(44) Legislative district 44 consists of:

- (a) Baltimore City ward 8, precincts 1 and 2;
- (b) Baltimore City ward 9, precincts 1 through 7, inclusive;
- (c) Baltimore City ward 11, precinct 3;
- (d) Baltimore City ward 12, precincts 1 through 4, inclusive, 6, and 8 through 24, inclusive;
- (e) Baltimore City ward 13, precinct 1;
- (f) Baltimore City ward 14, precincts 1, 2, and 12;
- (g) Baltimore City ward 26, precincts 34 through 37, inclusive, and precinct 46; and

(h) Baltimore City ward 27, precincts 2 through 7, inclusive, 41 through 57, inclusive.

(45) Legislative district 45 consists of:

(a) Baltimore City ward 5, that part of precinct 1 that is east of a line running along the center of Central Avenue from Orleans Street to Fayette Street;

(b) Baltimore City ward 5, that part of precinct 2 that is east of a line running along the center of Aisquith Street from Monument Street to Orleans Street;

(c) Baltimore City ward 6, precincts 2 through 5, inclusive;

(d) Baltimore City ward 7, precincts 1 through 7, inclusive;

(e) Baltimore City ward 8, precincts 3 through 13, inclusive;

(f) Baltimore City ward 9, precincts 8 through 17, inclusive; and

(g) Baltimore City ward 10, precincts 1 and 2.

(46) Legislative district 46 consists of:

(a) Baltimore City wards 1 and 2 in their entirety;

(b) Baltimore City ward 3, precinct 3;

(c) Baltimore City ward 3, that part of precinct 1 that is south of a line running along the center of Bank Street from Central Avenue to Broadway;

(d) Baltimore City ward 6, precincts 1, 6, and 7;

(e) Baltimore City ward 7, precincts 8 and 9; and

(f) Baltimore City ward 26, precincts 1 through 33, inclusive, and 47 through 51, inclusive.

(47) Legislative district 47 consists of:

(a) Baltimore City wards 23, 24, and 25 in their entirety;

(b) Baltimore City ward 19, precincts 3, 4, and 5;

(c) Baltimore City ward 20, precincts 19 and 20;

(d) Baltimore City ward 21, precincts 2 and 3; and

(e) Baltimore City ward 21, that part of precinct 1 that lies south and west of a line that runs along the center of Harbor City Boulevard from Eutaw Street to Pratt Street. (271 Md. 320; 1982 J.R. 1; 1984, ch. 284, § 2.)

### **§ 2-203. Applicability of subtitle.**

For purposes of elections, the provisions of this subtitle shall be applicable to elections for members of the General Assembly beginning with the primary and general elections of 1982 and, for purposes of representation, shall be applicable beginning with the second Wednesday of January, 1983. (1972, ch. 7; 1973 J.R. 1, 2; 1982 J.R. 1; 1984, ch. 284, § 2.)

### **§ 2-204. Repeal of inconsistent laws.**

All provisions of this article, and all other laws or parts of laws, public general or public local, inconsistent with the provisions of this subtitle, are repealed to the extent of any such inconsistency. (1972, ch. 7; 1973 J.R. 1, 2; 1982 J.R. 1; 1984, ch. 284, § 2.)

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### § 2-205. Severability.

If any part of this subtitle, including any section or subsection or portion of it, shall be held to be unconstitutional or invalid for any reason, the unconstitutionality or invalidity may not affect the remaining parts of this subtitle. It is the intention that the remaining parts of this subtitle would have been enacted into law if that unconstitutionality or invalidity had been known. To this end, all parts of this subtitle are declared to be severable. (1972, ch. 7; 1973 J.R. 1, 2; 1982 J.R. 1; 1984, ch. 284, § 2.)

**Cross reference.** — See Editor's note to § 2-201 of this subtitle.

#### GENERAL REVISOR'S NOTE

As required by Md. Constitution, Art. III, § 5, the plan that sets forth the boundaries of the legislative districts and the ancillary provisions on elections are adopted through joint resolution of the General Assembly.

Joint Resolution 1 (1982) codified these provisions as Art. 40, §§ 46 through 47C of the Code. Chapter 284, Acts of 1984, which enacted this article, transferred former Art. 40, §§ 46 through 47C, without amendment, to be §§ 2-201 through 2-205 of this article.

Note that, under Md. Constitution, Art. III, § 5, the Court of Appeals has original jurisdiction to review the plan for legislative districts. The Court, in a per curiam decision dated June 4, 1982, approved, without modification, the legislative districting plan of 1982, as adopted in JR 1 (1982). *Wiser v. Hughes*, 51 U.S.L.W. 3150 (U.S. Aug. 30, 1982), appeal dismissed, 103 S. Ct. 286 (1982) and *Andrews v. Hughes*, appeal dismissed, 103 S. Ct. 286 (1982).

### TITLE 10.

#### GOVERNMENTAL PROCEDURES.

##### *Subtitle 5. Meetings.*

Sec.

10-502. Legislative policy.

10-505. Open sessions generally required.

Sec.

10-506. Notice of open session.

10-507. Attendance at open session.

10-508. Closed sessions permitted.

10-509. Minutes.

##### *Subtitle 5. Meetings.*

### § 10-502. Legislative policy.

It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances:

- (1) public business be performed in an open and public manner; and
- (2) citizens be advised and aware of:

- (i) the performance of public officials; and

- (ii) the deliberations and decisions that the making of public policy involves. (An. Code 1957, art. 76A, § 7; 1984, ch. 284, § 1.)

## REVISOR'S NOTE

This section formerly appeared as Art. 76A, § 7.

The only changes are in style.

**Maryland Law Review.** — For article, "Of Men and Laws: Murphy, Cornford, Arnold, Potter, Parkinson, Peter, Maccoby, and Gall," see 38 Md. L. Rev. 37 (1978).

**Public right to observe deliberative process.** — While the public is not afforded any right to participate in meetings setting public policy, the public is assured right to observe the deliberative process and the making of decisions by the public body at open meetings. *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980).

**Provisions requiring open meetings make no distinction between formal and informal meetings of the public body.** *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980).

**Gross violation of open meeting provisions.** — To give notice of a meeting of the public body, and then intentionally prevent the public from attending, would constitute a gross violation of the provisions requiring open meetings. *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980).

**County board of education may unilaterally determine to hold open meetings.** — A county board of education may determine unilaterally to conduct collective bargaining negotiations at meetings open to the public. *Carroll County Educ. Ass'n v. Board of Educ.*, 294 Md. 144, 448 A.2d 345 (1982).

**Quoted in *City of College Park v. Cotter*,** 309 Md. 573, 525 A.2d 1059 (1987).

## § 10-505. Open sessions generally required.

Except as otherwise expressly provided in this subtitle, a public body shall meet in open session whenever the public body is carrying out:

- (1) an advisory function;
- (2) a legislative function; or
- (3) a quasi-legislative function. (An. Code 1957, art. 76A, §§ 9, 10; 1984, ch. 284, § 1.)

## REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 76A, § 10 (a) and the first sentence of § 9.

In the introductory language of this section, the language "[e]xcept as otherwise expressly provided in this subtitle" is substituted for the former references "[s]ubject to the provisions of § 9" and "unless closed in accordance with § 11", for brevity.

Also in the introductory language of this section, the clause "whenever the public body is carrying out" is added to incorporate the substance of the first sentence of former Art. 76A,

§ 9, which stated that this subtitle applies to a public body "when it is exercising" an enumerated function and, thus, limited the seemingly all-inclusive statement in former Art. 76A, § 10 that read, in part, "the meetings of every public body shall be open".

**Defined terms:**

|                               |          |
|-------------------------------|----------|
| "Advisory function":          | § 10-501 |
| "Legislative function":       | § 10-501 |
| "Meet":                       | § 10-501 |
| "Public body":                | § 10-501 |
| "Quasi-legislative function": | § 10-501 |

**Thoroughbred Racing Board's decision to permit Sunday racing** is a decision that should be arrived at in an open public meeting. 65 Op. Att'y Gen. 396 (1980).

**County board of education may unilaterally determine to hold open meetings.** — A

county board of education may determine unilaterally to conduct collective bargaining negotiations at meetings open to the public. *Carroll County Educ. Ass'n v. Board of Educ.*, 294 Md. 144, 448 A.2d 345 (1982).

Applied in *Malamis v. Stein*, 69 Md. App.

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221, 516 A.2d 1039 (1986); City of College Park v. Cotter, 309 Md. 573, 525 A.2d 1059 (1987).

### § 10-506. Notice of open session.

(a) *Required.* — Before meeting in a session that this subtitle requires to be open, a public body shall give reasonable advance notice of the session.

(b) *Form.* — Whenever reasonable, a notice under this section shall:

(1) be in writing; and

(2) include the date, time, and place of the session.

(c) *Method.* — A public body may give the notice under this section as follows:

(1) if the public body is a unit of the State government, by publication in the Maryland Register;

(2) by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part;

(3) if the public body previously has given public notice that this method will be used, by posting or depositing the notice at a convenient public location at or near the place of the session; or

(4) by any other reasonable method. (An. Code 1957, art. 76A, § 12; 1984, ch. 284, § 1; ch. 285, § 8.)

#### SPECIAL REVISOR'S NOTE

As it appeared in Ch. 284, Acts of 1984, this section was derived from former Art. 76A, § 12 (b), (c), and the first sentence of (a). However, subsection (c) of this section was amended by Ch. 285, Acts of 1984. See the General Revisor's Note to this subtitle.

#### Defined terms:

|                          |          |
|--------------------------|----------|
| "Includes"; "including": | § 1-101  |
| "Meet":                  | § 10-501 |
| "Public body":           | § 10-501 |

**Editor's note.** — Section 9, ch. 285, Acts 1984, provides that "the provisions of this act are intended solely to correct outdated references and technical errors in the law and to delete certain obsolete provisions and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

**Specific statement of open meeting not required.** — Notice of a meeting need not contain a specific statement that the meeting is open to the general public. City of New

Carrollton v. Rogers, 287 Md. 56, 410 A.2d 1070 (1980).

**Notice held sufficient.** — Where information of a levy hearing, although not conveyed by formal notice, was apparently communicated to members of the press and advance notice of the meeting was given to the public, the notice provisions were not violated. 64 Op. Att'y Gen. 20 (1979).

**Applied in** Malamis v. Stein, 69 Md. App. 221, 516 A.2d 1039 (1986); City of College Park v. Cotter, 309 Md. 573, 525 A.2d 1059 (1987).

### § 10-507. Attendance at open session.

(a) *In general.* — Whenever a public body meets in open session, the general public is entitled to attend.

(b) *Removal of individuals.* — (1) If the presiding officer determines that the behavior of an individual is disrupting an open session, the public body may have the individual removed.

(2) Unless the public body or its members or agents acted maliciously, the public body, members, and agents are not liable for having an individual removed under this subsection. (An. Code 1957, art. 76A, § 10; 1984, ch. 284, § 1.)

#### REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 76A, § 10 (b).

#### Defined terms:

"Meet":

§ 10-501

"Public body":

§ 10-501

Applied in *City of College Park v. Cotter*,  
309 Md. 573, 525 A.2d 1059 (1987).

### § 10-508. Closed sessions permitted.

(a) *In general.* — A public body may meet in closed session or adjourn an open session to a closed session only to:

(1) discuss:

(i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, or resignation of appointees, employees, or officials over whom it has jurisdiction; or

(ii) any other personnel matter that affects 1 or more specific individuals;

(2) protect the privacy or reputation of individuals with respect to a matter that is not related to public business;

(3) consider the acquisition of real property for a public purpose and matters directly related thereto;

(4) consider a preliminary matter that concerns the proposal for a business or industrial organization to locate in the State;

(5) consider the investment of public funds;

(6) consider the marketing of public securities;

(7) consult with counsel;

(8) consult with staff, consultants, or other individuals about pending or potential litigation;

(9) conduct collective bargaining negotiations or consider matters that relate to the negotiations;

(10) discuss public security, including:

(i) the deployment of fire and police services and staff; and

(ii) the development and implementation of emergency plans;

(11) prepare, administer, or grade a scholastic, licensing, or qualifying examination;

(12) conduct an investigative proceeding on actual or possible criminal conduct;



## SG, § 10-509 REGISTRATION AND ELECTION LAWS

(13) comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or

(14) satisfy an exceptional reason that, by two-thirds vote of the members of the public body who are present at the session, the public body finds to be so compelling that the reason overrides the general public policy in favor of open sessions.

(b) *Limitation.* — A public body that meets in closed session under this section may not discuss or act on any matter not permitted under subsection (a) of this section. (An. Code 1957, art. 76A, § 11; 1984, ch. 284, § 1.)

### REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 76A, § 11 (a) and (b) (1).

In subsection (a) (8) of this section, the former reference to "attorneys" is deleted as unnecessary in light of the broad reference to "other individuals" in subsection (a) (8) of this section and the broad reference to "counsel" in subsection (a) (7) of this section.

In subsection (a) (14) of this section, the

words "individually recorded", which formerly modified the word "vote", are deleted as unnecessary in light of § 10-509 (c) (2) (ii) of this subtitle.

#### Defined terms:

|                          |          |
|--------------------------|----------|
| "Includes"; "including": | § 1-101  |
| "Meet":                  | § 10-501 |
| "Public body":           | § 10-501 |

**Conflict of laws.** — Contention that this section should be read into a municipal charter provision which flatly prohibited closed meetings was rejected due to the impact of § 10-504 of this article. *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987).

**Waiver of attorney-client privilege.** —

Section 10-504 of this article provides legislative authority for a public body to waive its attorney-client privilege by flatly prohibiting closed meetings in the municipal charter. *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987).

## § 10-509. Minutes.

(a) *Scope of section.* — This section does not:

(1) require any change in the form or content of the Senate Journal or House Journal; or

(2) limit the matters that a public body may include in its minutes.

(b) *Required.* — As soon as practicable after a public body meets, it shall have written minutes of its session prepared.

(c) *Contents.* — (1) The minutes shall reflect:

(i) each item that the public body considered;

(ii) the action that the public body took on each item; and

(iii) each vote that was recorded.

(2) If a public body meets in closed session, the minutes for its next open session shall include:

(i) a statement of the time, place, and purpose of the closed session;

(ii) a record of the vote of each member as to closing the session; and

(iii) a citation of the authority under this subtitle for closing the session.

(d) *Access.* — (1) Except as provided in paragraph (2) of this subsection, minutes of a public body are public records and shall be open to public inspection during ordinary business hours.

(2) If a public body meets in a closed session that this subtitle authorizes and inspection of the minutes that relate to the session would frustrate the purpose for the closed session, the minutes are not open to public inspection. (An. Code 1957, art. 76A, §§ 11, 13; 1984, ch. 284, § 1.)

**REVISOR'S NOTE**

This section is new language derived without substantive change from former Art. 76A, §§ 11 (b) (2) and 13.

In subsection (c) (2) (ii) of this section, the reference to a vote "as to closing the session" is substituted for the former reference to the "vote ... by which any meeting was closed", to

clarify that the record includes votes for and against closing the session.

**Defined terms:**

|                          |          |
|--------------------------|----------|
| "Includes"; "including": | § 1-101  |
| "Meet":                  | § 10-501 |
| "Public body":           | § 10-501 |

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Applied in *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987).

## TRANSPORTATION.

### TITLE 8.

#### HIGHWAYS.

##### *Subtitle 7. Regulation of Outdoor Advertising.*

##### Part III. Outdoor Signs Along State Highways Generally.

Sec.

8-714. Permit required.

##### *Subtitle 7. Regulation of Outdoor Advertising.*

##### Part III. Outdoor Signs Along State Highways Generally.

#### § 8-714. Permit required.

\*\*\*

(b) *Exceptions.* — A permit is not required under this section to erect or maintain any outdoor sign:

\*\*\*

(4) That advertises a candidate or the support or defeat of any proposition. This sign:

(i) Shall comply with all provisions of Article 33 of this Code;

(ii) Shall comply with public safety requirements as set forth in § 8-716 of this article;

(iii) Shall conform to all local restrictions and zoning requirements which are more restrictive than this section, including any applicable time limitations. In the absence of an applicable time limitation, the sign:

1. May not be erected more than 45 days prior to the election; and

2. Shall be removed within 15 days after the general election, or within 15 days after the primary election if the candidate is not a candidate in the general election; and

(iv) Shall conform to the restrictions and requirements of Parts IV and V of this subtitle; or

\*\*\*

(An. Code 1957, art. 56, §§ 202, 203, 205; 1977, ch. 13, § 2; 1979, ch. 381; 1985, ch. 691.)

**Editor's note.** — As only the introductory language and paragraph (4) of subsection (b) are applicable, the remainder of the section is not set forth above.



## EXTRACTS

### FROM THE DECLARATION OF RIGHTS AND THE CONSTITUTION OF MARYLAND APPLICABLE TO ELECTIONS.

#### Declaration of Rights.

Art.

7. Elections to be free and frequent; right of  
suffrage.

#### Article 7. Elections to be free and frequent; right of suf- frage.

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 citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage. (1971, ch. 357, ratified Nov. 7, 1972.)

**University of Baltimore Law Review.** — For article, "State Constitutional Law for Maryland Lawyers: Individual Civil Rights," see 7 U. Balt. L. Rev. 299 (1978).

**Citizenship and suffrage are not inseparable,** the latter not being an inalienable right but a conventional; nor is the right of suffrage a right of property. *Anderson v. Baker*, 23 Md. 618 (1865), holding the Registry Act of 1865, ch. 174, disfranchising those who had served in the Confederate army or had given aid and comfort thereto, and providing a test oath, constitutional. (See also, separate and dissenting opinions in this case.)

**There is no fundamental right in any voter to participate in the primaries or conventions** of parties other than the one to which he belongs. Neither this article of the Declaration of Rights nor § 1 of article I of the Constitution has any such implication. *Hennegan v. Geartner*, 186 Md. 551, 47 A.2d 393 (1946).

**Election laws are not required to be uniform** throughout the State. *Munsell v. Hennegan*, 182 Md. 15, 31 A.2d 640 (1943).

**Prohibiting voter from changing party**

**affiliation within six months before primary.** — The provisions of Acts 1945, ch. 934, prohibiting a voter from changing party affiliation within six months before primary were held valid in *Hennegan v. Geartner*, 186 Md. 551, 47 A.2d 393 (1946).

**Representation in legislature.** — Notwithstanding the unconstitutionality of Maryland Constitution, article III, § 5, the representation in the legislature did not violate the civil rights statutes, nor § 2, article XIV of the Maryland Constitution, nor articles 1, 7 and 45 of the Maryland Declaration of Rights. *Maryland Comm. for Fair Representation v. Tawes*, Equity Case No. 13,920 in the Circuit Court for Anne Arundel County, May 24, 1962.

**Cited in** *Postal Tel. Cable Co. v. State*, 110 Md. 608, 73 A. 679 (1909); *Montgomery County v. Walsh*, 274 Md. 502, 336 A.2d 97 (1975), appeal dismissed, 424 U.S. 901, 96 S. Ct. 1091, 47 L. Ed. 2d 306 (1976); *Baker v. State*, 39 Md. App. 133, 383 A.2d 698 (1978); *Chairman of Bd. of Trustees v. Waldron*, 285 Md. 175, 401 A.2d 172 (1979); *Dixon v. Maryland State Admin. Bd. of Election Laws*, 686 F. Supp. 539 (D. Md. 1988).

# REGISTRATION AND ELECTION LAWS

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# CONSTITUTION OF MARYLAND

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  3. Legislative bodies; chief executive officers; enactment, publication and interpretation of local laws.
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# Art. I, § 1 REGISTRATION AND ELECTION LAWS

Sec.

Article XVIII

9. Provisions inconsistent with article repealed or abrogated.

Provisions of Limited Duration

## ARTICLE I

### ELECTIVE FRANCHISE

#### Section 1. Elections to be by ballot; qualifications of voters; election districts.

All elections shall be by ballot. Every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which he resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until he shall have acquired a residence in another election district or ward in this State. (1904, ch. 96, rejected Nov. 7, 1905; 1908, ch. 26, rejected Nov. 2, 1909; 1956, ch. 99, ratified Nov. 6, 1956; 1969, ch. 784, ratified Nov. 3, 1970; 1977, ch. 681, ratified Nov. 7, 1978.)

**Cross references.** — As to elections generally, see article 33 of the Code. As to right of citizens 18 years of age to vote, see U.S. Const., amend. 26.

**Editor's note.** — Chapter 355, Acts 1971, proposing an amendment to this section, was withdrawn and repealed by ch. 678, Acts 1972.

**Maryland Law Review.** — For article, "Survey of Developments in Maryland Law, 1985-86," see 46 Md. L. Rev. 533 (1987).

**University of Baltimore Law Review.** — For article, "State Constitutional Law for Maryland Lawyers: Individual Civil Rights," see 7 U. Balt. L. Rev. 299 (1978).

**Nature and importance of elective franchise.** — See *Kemp v. Owens*, 76 Md. 235, 24 A. 606 (1892).

**The constitutional qualifications of a voter cannot be added to or taken from.** *Kemp v. Owens*, 76 Md. 235, 24 A. 606 (1892).

**But legislature may enact rules of evidence governing proof of right to vote.** — While the qualifications of a voter as fixed by this section cannot be enlarged nor curtailed, the legislature may enact rules of evidence by which the facts establishing the right to vote may be proved. *Southerland v. Norris*, 74 Md. 326, 22 A. 137 (1891).

**This section relates only to elections which the Constitution itself requires to be held, and hence has no application to municipal corporations other than Baltimore City.** Hence a statute regulating the right to vote at an election in Bel Air was held valid. *Hanna v. Young*, 84 Md. 179, 35 A. 674 (1896).

**Article is inapplicable to primaries and to municipal elections outside Baltimore**

**City.** — The legislature has plenary powers which are not restricted by the provisions of this article with regard to primary elections and to municipal elections outside of the City of Baltimore. *Hill v. Mayor of Colmar Manor*, 210 Md. 46, 122 A.2d 462 (1956).

The conclusion that it is the constitutional right of an elector to cast his ballot for whom he pleases, and that it is necessary for him to be given the means and the reasonable opportunity to write or insert in the ballot the names of his choice, is subject to this limitation, that the right is not applicable to primary elections, nor to municipal elections other than those of the City of Baltimore. *Hill v. Mayor of Colmar Manor*, 210 Md. 46, 122 A.2d 462 (1956).

**Citizenship and suffrage are not inseparable,** the latter not being an inalienable right but a conventional one; nor is the right of suffrage a right of property. *Anderson v. Baker*, 23 Md. 531 (1865).

**There is no fundamental right in any voter to participate in the primaries or conventions of parties other than the one to which he belongs.** Neither article 7 of the Declaration of Rights nor this section of the Constitution has any such implication. *Hennegan v. Geartner*, 186 Md. 551, 47 A.2d 393 (1946).

**Prohibiting voter from changing party within six months before primary.** — Acts 1945, ch. 934, prohibiting a voter from changing party affiliation within six months before a primary, is valid. *Hennegan v. Geartner*, 186 Md. 551, 47 A.2d 393 (1946).

**Purpose of registration.** — Registration is not one of the qualifications for voting but is a mechanism for evidencing which voters have

the requisite qualifications. *Board of Supvrs. of Elections v. Goodsell*, 284 Md. 279, 396 A.2d 1033 (1979).

**Object of residence qualification.** — The object of the framers of the Constitution in prescribing residence as a qualification for the exercise of the elective franchise was not only to identify the voters and to prevent fraud but also to assure that each voter would become in fact a member of his community and take an interest in its government. *Shaeffer v. Gilbert*, 73 Md. 66, 20 A. 434 (1890); *Shenton v. Abbott*, 178 Md. 526, 15 A.2d 906 (1940).

The purposes of this section are identifying the voter, and as a protection against fraud; and to insure that the voter will become in fact a member of the community, and as such have a common interest in all matters pertaining to its government. *Drueding v. Devlin*, 234 F. Supp. 721 (D. Md. 1964), *aff'd*, 380 U.S. 125, 85 S. Ct. 807, 13 L. Ed. 2d 792 (1965).

**Meaning of word "resident".** — See *Shaeffer v. Gilbert*, 73 Md. 66, 20 A. 434 (1890); *McLane v. Hobbs*, 74 Md. 166, 21 A. 708 (1891); *Langhammer v. Munter*, 80 Md. 518, 31 A. 300 (1895); *Thomas v. Warner*, 83 Md. 14, 34 A. 830 (1896); *Howard v. Skinner*, 87 Md. 556, 40 A. 379 (1898).

The requirement in the Constitution of residence for political or voting purposes is one of a place of fixed, present domicile. *Gallagher v. Board of Supvrs. of Elections*, 219 Md. 192, 148 A.2d 390 (1959).

**An individual cannot declare the locality of the institution in which he is confined as his "residence" for voting** as prescribed by this section. 57 Op. Att'y Gen. 215 (1972).

**Requirement of a residential address in order to register to vote** would effectively be imposing an additional qualification for voting: Occupancy of a dwelling with mail service; the Maryland Constitution does not require that particular form of residence; and the General Assembly may not enlarge upon constitutional qualifications. 69 Op. Att'y Gen. 138 (1984).

**Defining a resident as a domiciliary for registration purposes excludes a mere property owner** and is not unconstitutional. *Reeder v. Board of Supvrs. of Elections*, 269 Md. 261, 305 A.2d 132 (1973).

**When one becomes State domiciliary.** — One becomes a domiciliary of Maryland, if not when he established his residence in the State, certainly when he registered to vote. *Comptroller of Treas. v. Lenderking*, 268 Md. 613, 303 A.2d 402 (1973).

**Domiciles which satisfy residency requirement.** — There is no intrinsic reason why a person may not maintain a fixed, present domicile in a place without a conventional dwelling, and such a residence, however unconventional it may be, satisfies the pur-

poses of the constitutional residency requirement; it deters fraud by linking the person to a particular locale, and a person who really does maintain a fixed domicile in an out-of-doors location is as much a member of the community as the citizens of the community who are fortunate enough to have housing. 69 Op. Att'y Gen. 138 (1984).

**Rebuttable presumption that party was domiciled in State.** — The act of registering to vote, taken together with the fact that a party lived with his family in Maryland from 1967 until late 1969, gave rise to a rebuttable presumption that he was domiciled in Maryland. *Comptroller of Treas. v. Lenderking*, 268 Md. 613, 303 A.2d 402 (1973).

**Homeless citizen must provide a mailing address as a prerequisite to registration;** however, the address of an institution at which the voter regularly picks up mail would suffice. 69 Op. Att'y Gen. 138 (1984).

**Moving from one legislative district to another.** — When a citizen had been a resident of Maryland for one year and of a legislative district in Baltimore City for six months, he was entitled to vote in the ward in which he resided. When a citizen had resided six months in one legislative district and then moved into another legislative district, he was entitled to vote in the former until he had resided six months in the latter. *Kemp v. Owens*, 76 Md. 235, 24 A. 606 (1892).

**Moving from one ward to another.** — A right to vote did not depend on a residence for six months in any particular ward. When a man moved from one ward to another in the same legislative district, he was entitled to vote in the latter ward. *Kemp v. Owens*, 76 Md. 235, 24 A. 606 (1892).

**Section inapplicable to candidates.** — This section, protecting a voter moving from one election district to another, does not apply to candidates. *Blount v. Board of Supvrs. of Elections*, 247 Md. 342, 230 A.2d 639 (1967).

**Privilege to vote in a state is within the jurisdiction of the state itself,** to be exercised as the state may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the federal Constitution. *Drueding v. Devlin*, 234 F. Supp. 721 (D. Md. 1964).

**And the several states may impose age, residence and other requirements,** so long as such requirements do not discriminate against any class of citizens by reason of race, color or other invidious ground and are not so unreasonable as to violate the equal protection clause of the Fourteenth Amendment. *Drueding v. Devlin*, 234 F. Supp. 721 (D. Md. 1964).

Maryland may require that all applicants for the vote actually fulfill the requirements of

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bona fide residence. *Evans v. Cornman*, 398 U.S. 419, 90 S. Ct. 1752, 26 L. Ed. 2d 370 (1970).

**Individual subjected to substantial obligations of citizenship cannot be denied right to vote.** — A state may not subject an individual who resides within its geographical boundaries to substantial obligations of citizenship and at the same time deny such individual the correlative right to exercise a voice in defining the nature and extent of such obligations by denying him his right to vote. *Cornman v. Dawson*, 295 F. Supp. 654 (D. Md. 1969), *aff'd*, 398 U.S. 419, 90 S. Ct. 1752, 26 L. Ed. 2d 370 (1970).

**Residents of federal enclaves**, where the federal government has exclusive jurisdiction, are not state residents for voting purposes. *Royer v. Board of Election Supvrs.*, 231 Md. 561, 191 A.2d 446, cert. denied, 375 U.S. 921, 84 S. Ct. 267, 11 L. Ed. 2d 165 (1963).

United States citizens residing on federal enclaves are not State residents for voting purposes and are not afforded the right to vote for President and Vice-President. *Drueding v. Devlin*, 234 F. Supp. 721 (D. Md. 1964).

Where the federal government has exclusive jurisdiction over land located within the geographical boundaries of a state, it can hardly be doubted that no constitutional right of a resident of the enclave is infringed by the state's refusal to grant such resident the right to vote. *Cornman v. Dawson*, 295 F. Supp. 654 (D. Md. 1969), *aff'd*, 398 U.S. 419, 90 S. Ct. 1752, 26 L. Ed. 2d 370 (1970).

If there were a retrocession by the federal government to a state of all or substantially all incidents of jurisdiction over a federal enclave, such state could not constitutionally deny residents of the enclave the right to vote. *Cornman v. Dawson*, 295 F. Supp. 654 (D. Md. 1969), *aff'd*, 398 U.S. 419, 90 S. Ct. 1752, 26 L. Ed. 2d 370 (1970).

Where members of a federal enclave may be prosecuted under State criminal statutes, are subject to State unemployment and workmen's compensation laws, have access to the State courts under acts permitting divorce and adoption proceedings, and must pay income, sales and gasoline taxes to the State, it is a violation of the Fourteenth Amendment for the State to deny them the right to vote. *Cornman v. Dawson*, 295 F. Supp. 654 (D. Md. 1969), *aff'd*, 398

U.S. 419, 90 S. Ct. 1752, 26 L. Ed. 2d 370 (1970).

Residents on the grounds of the National Institutes of Health, a federal enclave in Montgomery County, are qualified to vote in Maryland elections and it violates the Fourteenth Amendment to the Constitution of the United States to deny them that right. *Evans v. Cornman*, 398 U.S. 419, 90 S. Ct. 1752, 26 L. Ed. 2d 370 (1970).

**Voting machines.** — Acts 1937, ch. 94, § 1, providing for use of voting machines in Baltimore City, not in violation of provision requiring elections to be by ballot, as that term has been used to describe voting by balls, etc., and machines which register votes. *Norris v. Mayor of Baltimore*, 172 Md. 667, 192 A. 531 (1937).

**The requirement that the vote on a proposed amendment to the Constitution should be by ballot** was not a legislative enactment, since this section provides that "all elections shall be by ballot." *Warfield v. Vandiver*, 101 Md. 78, 60 A. 538 (1905).

**Registration requirement for county executive in Prince George's County was unconstitutional.** — Because the five-year registration requirement for county executive set forth in the Prince George's County Charter fails to withstand the applicable strict scrutiny standard, it therefore discriminates against those county residents who are registered for a lesser period of time, in violation of the equal protection clause of the Fourteenth Amendment to the federal Constitution and the due process clause in article 24 of the Maryland Declaration of Rights. *Board of Supvrs. of Elections v. Goodsell*, 284 Md. 279, 396 A.2d 1033 (1979).

**Quoted in** *Broadwater v. State*, 306 Md. 597, 510 A.2d 583 (1986).

**Stated in** *Crosse v. Board of Supvrs. of Elections*, 243 Md. 555, 221 A.2d 431 (1966).

**Cited in** *Fitzwater v. Youghiogheny Hydro-Elec. Corp.*, 149 Md. 461, 131 A. 776 (1926); *Hill v. Board of Registry*, 171 Md. 653, 187 A. 869 (1937); *Binswanger v. Whittle*, 176 Md. 146, 2 A.2d 174 (1939); *Munsell v. Hennegan*, 182 Md. 15, 31 A.2d 640 (1943); *Stein v. State Administrative Bd. of Election Laws*, 432 F.2d 1003 (4th Cir. 1970); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

## Section 2. Registration of voters.

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. (1956, ch. 99, ratified Nov. 6, 1956; 1977, ch. 681, ratified Nov. 7, 1978.)

**Purpose of registration.** — Registration is not one of the qualifications for voting but is a mechanism for evidencing which voters have the requisite qualifications. *Board of Supvrs. of Elections v. Goodsell*, 284 Md. 279, 396 A.2d 1033 (1979).

**This section is concerned with uniformity in the basis of the franchise** and not with time and other conditions not substantially affecting the franchise. *Binswanger v. Whittle*, 176 Md. 146, 2 A.2d 174 (1939).

**Not applicable to municipal elections except in Baltimore or to primaries.** — This section is not applicable to municipal elections other than in Baltimore City or to primaries. *Jackson v. Norris*, 173 Md. 579, 195 A. 576 (1938); *Hill v. Mayor of Colmar Manor*, 210 Md. 46, 122 A.2d 462 (1956).

This section makes no allusion to municipal elections in any town or city other than Baltimore City; the Constitution makes a clear distinction between federal and State elections on the one hand, and municipal elections on the other. *Smith v. Stephan*, 66 Md. 381, 7 A. 561 (1887).

**Opportunity must be given to write in names on ballot.** — A voter has the right under this section to vote for whom he pleases, and reasonable opportunity must be given him to write or insert in the ballot the names of his choice. *Jackson v. Norris*, 173 Md. 579, 195 A. 576 (1938); *Hill v. Mayor of Colmar Manor*, 210 Md. 46, 122 A.2d 462 (1956).

**Act providing for registration in counties and excepting Baltimore City.** — Acts 1916, ch. 569, Code of 1924, article 33, § 20, which provided for registration in the counties on Tuesdays before primary elections of all persons not already on the books and who should be entitled to vote at the next general elections, and expressly excepted Baltimore City

from the effect of the enactment, did not violate this section. *Binswanger v. Whittle*, 176 Md. 146, 2 A.2d 174 (1939).

**Providing different rules of evidence of intention and residence in certain counties.** — Acts 1929, ch. 578, providing different rules of evidence of intention and residence for Prince George's and Baltimore counties and the remainder of the State, was held invalid as being in violation of this section. *Bangs v. Fey*, 159 Md. 548, 152 A. 508 (1930).

**A count in an indictment against an officer of registration for the violation of a law passed in pursuance of this section upheld.** *Mincher v. State*, 66 Md. 227, 7 A. 451 (1886).

**The Registry Act of 1865, ch. 174, disfranchising those who had served in the Confederate army or had given aid and comfort thereto, and providing a test oath, was held constitutional.** *Anderson v. Baker*, 23 Md. 531 (1865).

**Registration requirement for county executive in Prince George's County was unconstitutional.** — Because the five-year registration requirement for county executive set forth in the Prince George's County Charter fails to withstand the applicable strict scrutiny standard, it therefore discriminates against those county residents who are registered for a lesser period of time, in violation of the equal protection clause of the Fourteenth Amendment to the federal Constitution and the due process clause in article 24 of the Maryland Declaration of Rights. *Board of Supvrs. of Elections v. Goodsell*, 284 Md. 279, 396 A.2d 1033 (1979).

**Cited in** *Hardesty v. Taft*, 23 Md. 512 (1865); *Langhammer v. Munter*, 80 Md. 518, 31 A. 300 (1895); *Cox v. Bryan*, 81 Md. 287, 31 A. 447, 852 (1895); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

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### Section 3. Absentee voting.

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 in which they are entitled to vote and for voting by other qualified voters who are unable to vote personally and for the manner in which and the time and place at which such absent voters may vote, and for the canvass and return of their votes. (1918, ch. 20, ratified Nov. 5, 1918; 1953, ch. 480, ratified Nov. 2, 1954; 1956, ch. 100, ratified Nov. 6, 1956; 1974, ch. 881, ratified Nov. 5, 1974; 1977, ch. 681, ratified Nov. 7, 1978.)

**Limits on power of General Assembly.** — Although the ultimate power to judge the elections and qualifications of its members continues to reside in the Senate and House of Delegates, respectively, the exercise of that

power is, to some extent, constrained by law. *Lamb v. Hammond*, 308 Md. 286, 518 A.2d 1057 (1987).

Cited in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

### Section 4. Right to vote of persons convicted of certain crimes and persons under guardianship.

The General Assembly by law may regulate or prohibit the right to vote of a person convicted of infamous or other serious crime or under care or guardianship for mental disability. (1972, ch. 368, ratified Nov. 7, 1972; 1977, ch. 681, ratified Nov. 7, 1978.)

**Editor's note.** — Chapter 355, Acts 1971, proposing an amendment to this section, was withdrawn and repealed by ch. 678, Acts 1972.

**Section refers to such crimes as were "infamous" at common law.** — The Constitution in providing for exclusion from suffrage of persons whose character was too bad to be permitted to vote, could only have intended, by the language used, such crimes as were "infamous" at common law, and are described as such in common-law authorities. *State v. Bixler*, 62 Md. 354 (1884).

An "infamous crime" is such crime as involved moral turpitude, or such as rendered the offender incompetent as a witness in court. *State v. Bixler*, 62 Md. 354 (1884).

Not every crime punishable by confinement in the penitentiary is infamous. *State v. Bixler*, 62 Md. 354 (1884).

Perjury is infamous crime subjecting one to disenfranchisement. *Hourie v. State*, 53 Md. App. 62, 452 A.2d 440 (1982), aff'd, — Md. —, 467 A.2d 1016 (1983).

**Index of "infamous crimes".** — For nonexhaustive index issued by Attorney General of offenses that, under Maryland law, are "infamous crimes," see 67 Op. Att'y Gen. 176 (1982).

**Willfully providing false information on state tax return "infamous crime".** — Conviction for willfully providing false information

on State tax return in violation of former Article 81, § 221 (now see TG § 13-1024 and Art. 24, § 9-717) constitutes conviction of an "infamous crime" so as to disqualify person so convicted from continued registration as qualified voter. 67 Op. Att'y Gen. 176 (1982).

**Perjury is infamous crime subjecting one to disenfranchisement.** *Hourie v. State*, 53 Md. App. 62, 452 A.2d 440 (1982), aff'd, 298 Md. 50, 467 A.2d 1016 (1983).

**What constitutes "conviction".** — Where defendant was indicted on the charge of feloniously voting in seven elections in Maryland, when he had been convicted in the State of New York of grand larceny in the first degree, the facts did not justify a finding of a previous "conviction," as required by this section, since defendant in New York had pleaded guilty, been given a suspended sentence, placed on probation and ordered to make restitution, and under New York law, which was controlling, a person against whom sentence has been suspended after verdict has not been "convicted" within the meaning of similar disenfranchisement provisions. *State v. Rappaport*, 211 Md. 523, 128 A.2d 270 (1957).

Applied in *Hayes v. Mandel*, 367 F. Supp. 566 (D. Md. 1973); *Francis v. Maryland*, 459 F. Supp. 163 (D. Md. 1978), aff'd, 605 F.2d 747 (4th Cir. 1979).

**Quoted** in *State v. Broadwater*, 317 Md. 342, 563 A.2d 420 (1989).

**Cited** in *Anderson v. Baker*, 23 Md. 531 (1865); *Greenwald v. State*, 221 Md. 235, 155 A.2d 894 (1959), cert. denied, 363 U.S. 719, 80

S. Ct. 1596, 4 L. Ed. 2d 1521 (1960); *In re Trader*, 272 Md. 364, 325 A.2d 398 (1974); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

**Section 5. Change of residence for purpose of voting; illegal voting.**

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 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. (1977, ch. 681, ratified Nov. 7, 1978.)

**Cited** in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

**Section 6. Buying and selling votes.**

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 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. (1912, ch. 602, ratified Nov. 4, 1913; 1977, ch. 681, ratified Nov. 7, 1978.)

**Cross references.** — See article III, § 50, of the Constitution, and article 27, § 28 et seq. of the Code.

**Quoted** in *Duffy v. Conaway*, 295 Md. 242, 455 A.2d 955 (1982).

**Cited** in *Anderson v. Baker*, 23 Md. 531 (1865); *State v. Canova*, 278 Md. 483, 365 A.2d 988 (1976); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

## Art. 1, § 7 REGISTRATION AND ELECTION LAWS

### Section 7. Laws to be passed for preservation of purity of elections.

The General Assembly shall pass Laws necessary for the preservation of the purity of Elections. (1977, ch. 681, ratified Nov. 7, 1978.)

**Maryland Law Review.** — For comment on *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975), cited in the notes below, see 35 Md. L. Rev. 543 (1976).

**Intent of framers of State Constitution.** — Provisions of this section demonstrate that the framers of the State Constitution contemplated that the regulation of elections would be the province of the legislature, and, in fact, the General Assembly has responded to these constitutional directives by enacting a comprehensive State Election Code. *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

**Power to legislate in regard to elections is inherent in General Assembly.** — The power to legislate in regard to elections — primary or general — if unrestrained by the Constitution itself is inherent in the General Assembly, and this provision, instead of conferring the power, is a mandate to execute a power implicitly assumed to exist indepen-

dently of the mandate. "The General Assembly shall pass Laws" is a direction to bring into activity an antecedent and independent authority. *Kenneweg v. County Comm'rs*, 102 Md. 119, 62 A. 249 (1905); *Hennegan v. Geartner*, 186 Md. 551, 47 A.2d 393 (1946).

**Thus power to enact primary election law is not derived from this section.** — The power to enact a primary election law lies back of and beyond this section and is not derived from it. *Kenneweg v. County Comm'rs*, 102 Md. 119, 62 A. 249 (1905); *Hennegan v. Geartner*, 186 Md. 551, 47 A.2d 393 (1946).

**The legislature has full power to enact a primary election law, since there is no provision depriving it of that authority.** *Hennegan v. Geartner*, 186 Md. 551, 47 A.2d 393 (1946).

**Registry Act of 1865, ch. 174, upheld.** — See *Anderson v. Baker*, 23 Md. 531 (1865).

Cited in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

### Section 8. Legislature to make provisions for contested elections.

The General Assembly, shall make provisions for all cases of contested elections of any of the officers, not herein provided for. (1977, ch. 681, ratified Nov. 7, 1978.)

**Cross reference.** — As to contest of election for Attorney General, see article V, § 2, of the Constitution.

**Court of equity held without jurisdiction.** — In the light of this section and of the legislation adopted in pursuance thereof, a court of equity has no jurisdiction to hear and determine a contest in regard to an election of officers; neither has it jurisdiction by a proceeding in the nature of quo warranto to try the title to an office, since jurisdiction in the latter proceeding belongs to a court of law. *Hamilton v. Carroll*, 82 Md. 326, 33 A. 648 (1896).

**Contested election for Comptroller.** —

Since a statute passed in pursuance of this section provided that contested elections for Comptroller should be decided by the House of Delegates, and since in this case it had been decided by the House in favor of the appellee, an injunction restraining him from exercising the power and duties of Comptroller was properly refused. *State v. Jarrett*, 17 Md. 309 (1861).

Cited in *Groome v. Gwinn*, 43 Md. 572 (1875); *Anderson v. Levely*, 58 Md. 192 (1882); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

**Section 9. Oath of office.**

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 .....  
(1977, ch. 681, ratified Nov. 7, 1978.)

**University of Baltimore Law Review.** — For article, "State Constitutional Law for Maryland Lawyers: Judicial Relief for Violations of Rights," see 10 U. Balt. L. Rev. 102 (1980).

**Section prohibits legislature from prescribing additional oath.** — This section is mandatory. In connection with article 37 of the Declaration of Rights, it prohibits the legislature from prescribing any additional oath whether the office be created by the Constitution or not; hence the failure of an officer to take a statutory oath does not defeat his right to the office. Davidson v. Brice, 91 Md. 681, 48 A. 52 (1900); Keyser v. Upshur, 92 Md. 726, 48 A. 399 (1901).

**Terms of oath regarded as part of officer's duty.** — The thing which the oath prescribed by this section requires the officer to swear that he will do or refrain from doing, may be regarded as part of his duty when he has qualified. Keyser v. Upshur, 92 Md. 726, 48 A. 399 (1901).

**Officer is not entitled to salary until he qualifies.** — A Comptroller is not in office and hence not entitled to salary until he qualifies by taking the oath prescribed by this section. Thomas v. Owens, 4 Md. 189 (1853).

**Effect of failure of reelected officer to take oath.** — Where a Treasurer was reelected in January, 1888, but failed to take the oath required by this section and to give the bond required by article VI, § 1, until November, 1889, his original bond was liable for his defaultations up to the latter date. Archer v. State, 74 Md. 410, 22 A. 6, 737 (1891).

**Test of whether a position is an office.** — See Board of Supvrs. of Elections v. Attorney General, 246 Md. 417, 229 A.2d 388, 230 A.2d 61 (1967).

A city engineer and city attorney were

not required to take the oath of office prescribed by this section, where the legislature had never created any office of city engineer or attorney for the city, and neither the engineer nor the attorney received any commission, neither was required to file any official bond, and they exercised no powers except such as were derived from the city commissioners, it being evident that they could not be regarded as public officers, but merely as employees. Jackson v. Cosby, 179 Md. 671, 22 A.2d 453 (1941).

**Members of a racing commission of Harford County** were not persons "elected or appointed to an office of profit or trust under the Constitution or under the laws made pursuant thereto," within the contemplation of this section; hence they were not required, independent of statute, to take the constitutional oath before entering upon the duties of their office. Clark v. Harford Agrl. & Breeders' Ass'n, 118 Md. 608, 85 A. 503 (1912); State Tax Comm'n v. Harrington, 126 Md. 157, 94 A. 537 (1915).

**The position of councilman of Snow Hill** was an "office of profit and trust" within the meaning of this section. Truitt v. Collins, 122 Md. 526, 89 A. 850 (1914).

**"Special policemen"** — Each person appointed to be a "special policeman" shall take the constitutional oath required by this section. Huger v. State, 285 Md. 347, 402 A.2d 880 (1979).

**Quoted in Pratt v. State, 9 Md. App. 220, 263 A.2d 247 (1970).**

**Cited in State ex rel. Mayor of Havre De Grace v. Fahey, 108 Md. 533, 70 A. 218 (1908); McCurdy v. Jessup, 126 Md. 318, 95 A. 37 (1915); Jackson v. Cosby, 179 Md. 671, 22 A.2d 453 (1941); Shub v. Simpson, 196 Md. 177, 76 A.2d 332, appeal dismissed, 340 U.S. 881, 71 S. Ct. 198, 95 L. Ed. 640 (1950); Gary v. Board of**



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Trustees of Employees Retirement Sys., 223 Md. 446, 165 A.2d 475 (1960); Taggart v. Mandel, 391 F. Supp. 733 (D. Md. 1975); Hanrahan v. Alterman, 41 Md. App. 71, 396 A.2d 272 (1979).

### **Section 10. How officers may qualify; construction of words and phrases used in creating public offices.**

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. (1922, ch. 275, ratified Nov. 7, 1922; 1977, ch. 681, ratified Nov. 7, 1978.)

### **Section 11. Refusal to take oath; violation of oath.**

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 ninth 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 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. (1977, ch. 681, ratified Nov. 7, 1978.)

**New nominees to secretaries of principal departments of Executive Branch may not officially commence their terms of office until their appointments have been confirmed by the Senate, their commissions have been issued, and they have qualified by taking the**

oath of office. 64 Op. Att'y Gen. 246 (1979).

Cited in Ames v. Board of Supvrs. of Elections, 195 Md. 543, 74 A.2d 29 (1950); Hanrahan v. Alterman, 41 Md. App. 71, 396 A.2d 272 (1979).

### **Section 12. Persons not registered voters ineligible to serve in elective office.**

Except as otherwise specifically provided herein, a person is ineligible to enter upon the duties of, or to continue to serve in, an elective office created by or pursuant to the provisions of this Constitution if the person was not a registered voter in this State on the date of the person's election or appointment to that term or if, at any time thereafter and prior to completion of the

term, the person ceases to be a registered voter. (1984, ch. 788, ratified Nov. 6, 1984.)

**Maryland Law Review.** — For article, "Survey of Developments in Maryland Law, 1986-87," see 47 Md. L. Rev. 739 (1988).

**Constitutionality.** — As applied, the provision of this section providing that one entering

upon the duties of an elective office created by or pursuant to the provisions of the Maryland Constitution must be a registered voter are constitutional. *Broadwater v. State*, 306 Md. 597, 510 A.2d 583 (1986).

ARTICLE II

EXECUTIVE DEPARTMENT

**Section 1. Executive power vested in Governor; term of office; when ineligible to succeed himself.**

The executive power of the State shall be vested in a Governor, whose term of office shall commence on the third 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. (1939, ch. 381, rejected Nov. 5, 1940; 1947, ch. 109, ratified Nov. 2, 1948; 1964, ch. 161, ratified Nov. 3, 1964; 1970, ch. 576, ratified Nov. 3, 1970.)

**Cross references.** — See article 8 and article 34 of the Declaration of Rights. As to the Governor and the administrative departments of the State, see the State Government Article.

**Editor's note.** — Chapter 788, Acts 1969, which was repealed by ch. 576, Acts 1970, had proposed amendments to article II, §§ 1, 3 and 13 and to article III, §§ 14, 15, 27 and 52.

**Appointment of members of Commission on Medical Discipline.** — Placing the authority to appoint members of the Commission on Medical Discipline in the Medical and Chirurgical Faculty, a professional organization chartered by the General Assembly of Maryland by Chapter 105 of Acts of 1798, rather than in the

hands of the Governor, does not offend the separation of powers provision of the Maryland Declaration of Rights. *Commission on Medical Discipline v. Stillman*, 291 Md. 390, 435 A.2d 747 (1981).

**Executive order embodying the State's drug-free workplace policy addressing Executive Branch employees is valid and enforceable through applicable disciplinary procedures.** 74 Op. Att'y Gen. — (August 8, 1989).

**Cited in** *Miles v. Bradford*, 22 Md. 170 (1864); *Smith v. Thursby*, 28 Md. 244 (1868); *Cull v. Wheltle*, 114 Md. 58, 78 A. 820 (1910); *Buchholtz v. Hill*, 178 Md. 280, 13 A.2d 348 (1940).

**Section 1A. Office of Lieutenant Governor created; duties; qualifications.**

There shall be a Lieutenant Governor, who shall have only the duties delegated to him by the Governor and shall have such compensation as the General Assembly shall provide by law, except that beginning in the year 1978 the salary of the Lieutenant Governor shall be as provided under Section 21A of this Article. No person who is ineligible under this Constitution to be elected Governor shall be eligible to hold the office of Lieutenant Governor. (1970, ch. 532, ratified Nov. 3, 1970; 1976, ch. 543, ratified Nov. 2, 1976.)

**Editor's note.** — Chapter 787, Acts 1969, which was repealed by ch. 532, Acts 1970, had

proposed amendments to article II, §§ 1A, 2, 3, 4, 5, 6, 7 and 7A.

**Section 1B. Candidate for Governor to designate candidate for Lieutenant Governor; joint listing of names on ballot.**

Each candidate who shall seek a nomination for Governor, under any method provided by law for such nomination, including primary elections, shall at the time of filing for said office designate a candidate for Lieutenant Governor, and the names of the said candidate for Governor and Lieutenant Governor shall be listed on the primary election ballot, or otherwise considered for nomination jointly with each other. No candidate for Governor may designate a candidate for Lieutenant Governor to contest for the said offices jointly with him without the consent of the said candidate for Lieutenant Governor, and no candidate for Lieutenant Governor may designate a candidate for Governor, to contest jointly for said offices with him without the consent of the said candidate for Governor, said consent to be in writing on a form provided for such purpose and filed at the time the said candidates shall file their certificates of candidacy, or other documents by which they seek nomination. In any election, including a primary election, candidates for Governor and Lieutenant Governor shall be listed jointly on the ballot, and a vote cast for the candidate for Governor shall also be cast for Lieutenant Governor jointly listed on the ballot with him, and the election of Governor, or the nomination of a candidate for Governor, also shall constitute the election for the same term, or the nomination, of the Lieutenant Governor who was listed on the ballot or was being considered jointly with him. (1970, ch. 532, ratified Nov. 3, 1970.)

**Cross reference.** — See Editor's note to Md. Const., article II, § 1A.

Cited in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

**Section 2. Time, place and manner of holding election for Governor and Lieutenant Governor; qualifications of voters.**

An election for Governor and Lieutenant Governor, under this Constitution, shall be held on the Tuesday next after the first Monday of November, in the year nineteen hundred and seventy-four, 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 Delegate, shall be qualified and entitled to vote for Governor and Lieutenant 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. (1956, ch. 99, ratified Nov. 6, 1956; 1970, ch. 532, ratified Nov. 3, 1970.)

## **Art. II, § 3 REGISTRATION AND ELECTION LAWS**

**Cross reference.** — See Editor's note to Md. Const., article II, § 1A.

**Cited in** Hanrahan v. Alterman, 41 Md. App. 71, 396 A.2d 272 (1979).

### **Section 3. Ascertainment of result of election; when Governor and Lieutenant Governor to qualify.**

The Speaker of the House of Delegates shall then open the said Returns, in the presence of both Houses; and the persons having the highest number of votes for these offices, and being constitutionally eligible, shall be the Governor and Lieutenant Governor, and shall qualify, in the manner herein prescribed, on the third Wednesday of January next ensuing his election, or as soon thereafter as may be practicable. (1964, ch. 161, ratified Nov. 3, 1964; 1970, chs. 532, 576, ratified Nov. 3, 1970.)

**Cross reference.** — See Editor's note to Md. Const., article II, § 1A.

**Cited in** Hanrahan v. Alterman, 41 Md. App. 71, 396 A.2d 272 (1979).

### **Section 4. How tie elections decided; questions relating to election determined by House of Delegates.**

If two or more sets of persons shall have the highest and equal number of votes for Governor and Lieutenant Governor, one set of them shall be chosen Governor and Lieutenant Governor, by the Senate and House of Delegates; and all questions in relation to the eligibility of Governor and Lieutenant 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 having the highest number of votes for Governor or for Lieutenant Governor or both of them, be ineligible, a person or persons shall be chosen by the Senate and House of Delegates in place of the ineligible person or persons. Every election of Governor or of Lieutenant Governor, or both, 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 sets of persons shall have the highest and an equal number of votes, then, a second vote shall be taken, which shall be confined to the sets of persons having an equal number; and if the vote shall again be equal, then the election of Governor and Lieutenant Governor shall be determined by lot between those sets, who shall have the highest and an equal number on the first vote. (1970, ch. 532, ratified Nov. 3, 1970.)

**Cross reference.** — See Editor's note to Md. Const., article II, § 1A.

**Cited in** Hanrahan v. Alterman, 41 Md. App. 71, 396 A.2d 272 (1979).

**Section 5. Qualifications of Governor and Lieutenant Governor.**

A person to be eligible for the office of Governor or Lieutenant Governor must have attained the age of thirty years, and must have been a resident and registered voter of the State for five years next immediately preceding his election. (1970, ch. 532, ratified Nov. 3, 1970.)

**Cross reference.** — See Editor's note to Md. Const., article II, § 1A.

**United States citizenship required.** — The Maryland Constitution provides that the Governor, judges and the Attorney General shall be qualified voters, and therefore, by necessary implication, citizens of the United

States. *Crosse v. Board of Supvrs. of Elections*, 243 Md. 555, 221 A.2d 431 (1966).

**Applied in** *Secretary of State v. McGucken*, 244 Md. 70, 222 A.2d 693 (1966).

**Cited in** *Blount v. Board of Supvrs. of Elections*, 247 Md. 342, 230 A.2d 639 (1967).

ARTICLE III

LEGISLATIVE DEPARTMENT

**Section 2. Membership of Senate and House of Delegates.**

The membership of the Senate shall consist of forty-seven (47) Senators. The membership of the House of Delegates shall consist of one hundred forty-one (141) Delegates. (1900, ch. 469, ratified Nov. 5, 1901; 1910, ch. 303, rejected Nov. 7, 1911; 1922, ch. 7, ratified Nov. 7, 1922; 1956, ch. 99, ratified Nov. 6, 1956; 1969, ch. 785, ratified Nov. 3, 1970; 1972, ch. 363, ratified Nov. 7, 1972.)

**Editor's note.** — Acts 1972, ch. 363, withdrew and repealed ch. 356, Acts 1971, which had proposed an amendment to this section.

**History of section.** — See Maryland Comm. for Fair Representation v. Tawes, 229 Md. 406, 184 A.2d 715 (1962), rev'd on other grounds, 377 U.S. 656, 84 S. Ct. 1429, 12 L. Ed. 2d 595 (1964).

**Duty of court to determine validity of section.** — It is the duty of the court to determine the question whether this section or § 5 of this article, or both, in view of the present distribution of population in Maryland, constitute an unreasonable, discriminatory dilution of rights of suffrage in violation of the equal protection clause of the Fourteenth Amendment of the federal Constitution. The question is not a political one. Maryland Comm. for Fair Representation v. Tawes, 228 Md. 412, 180 A.2d 656 (1962).

**Bicameral legislature required to be apportioned on population basis.** — Seats in both houses of a bicameral state legislature are required, under the equal protection clause, to be apportioned substantially on a population basis. Maryland Comm. for Fair Representation v. Tawes, 377 U.S. 656, 84 S. Ct. 1429, 12 L. Ed. 2d 595 (1964).

Considerations of history and tradition could not provide a sufficient justification for the substantial deviations from population-based representation in both houses of the legisla-

ture. Maryland Comm. for Fair Representation v. Tawes, 377 U.S. 656, 84 S. Ct. 1429, 12 L. Ed. 2d 595 (1964).

**And apportionment of both houses must be considered together.** — It is impossible to decide upon the validity of the apportionment of one house of a bicameral legislature in the abstract, without also evaluating the actual scheme of representation employed with respect to the other house. Maryland Comm. for Fair Representation v. Tawes, 377 U.S. 656, 84 S. Ct. 1429, 12 L. Ed. 2d 595 (1964).

The proper, and indeed indispensable, subject for judicial focus in a legislative apportionment controversy is the overall representation accorded to the state's voters, in both houses of a bicameral state legislature. Maryland Comm. for Fair Representation v. Tawes, 377 U.S. 656, 84 S. Ct. 1429, 12 L. Ed. 2d 595 (1964).

**Same apportionment standards apply in federal and state courts.** — In determining the validity of a state's apportionment plan, the same federal constitutional standards are applicable whether the matter is litigated in a federal or a state court. Maryland Comm. for Fair Representation v. Tawes, 377 U.S. 656, 84 S. Ct. 1429, 12 L. Ed. 2d 595 (1964).

Cited in Perkins v. Eskridge, 278 Md. 619, 366 A.2d 21 (1976); In re Legislative Districting, 299 Md. 658, 475 A.2d 428 (1982).

**Section 3. Division of State into legislative districts; number of Senators and Delegates from each district; subdivision of districts.**

The State shall be divided by law into legislative districts for the election of members of the Senate and the House of Delegates. Each legislative district shall contain one (1) Senator and three (3) Delegates. Nothing herein shall prohibit the subdivision of any one or more of the legislative districts for the purpose of electing members of the House of Delegates into three (3) single-member delegate districts or one (1) single-member delegate district and one

(1) multimember delegate district. (1969, ch. 785, ratified Nov. 3, 1970; 1972, ch. 363, ratified Nov. 7, 1972.)

**Editor's note.** — Acts 1972, ch. 363, withdrew and repealed ch. 356, Acts 1971, which had proposed an amendment to this section.

**This section authorizes creation of three types of legislative districts:** (1) those in which all candidates are elected at large, (2) those in which each candidate is elected from a single-member subdistrict, and (3) those in which one candidate is elected from a single-member subdistrict while the others are

elected from a multimember subdistrict. *State Administrative Bd. of Election Laws v. Calvert*, 272 Md. 659, 327 A.2d 290 (1974), cert. denied, 419 U.S. 1110, 95 S. Ct. 784, 42 L. Ed. 2d 807 (1975).

Cited in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979); In re *Legislative Districting*, 299 Md. 658, 475 A.2d 428 (1982).

## Section 4. Requirements for districts.

Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions. (1900, ch. 432, ratified Nov. 5, 1901; 1910, ch. 318, rejected Nov. 7, 1911; 1922, ch. 20, ratified Nov. 7, 1922; 1956, ch. 99, ratified Nov. 6, 1956; 1969, ch. 785, ratified Nov. 3, 1970; 1972, ch. 363, ratified Nov. 7, 1972.)

**Editor's note.** — Acts 1972, ch. 363, withdrew and repealed ch. 356, Acts 1971, which had proposed an amendment to this section.

**Maryland Law Review.** — For article discussing gerrymandering of State and federal legislative districts, see 16 Md. L. Rev. 277 (1956).

For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 400 (1985).

**University of Baltimore Law Review.** — For article, "State Constitutional Law for Maryland Lawyers: Individual Civil Rights," see 7 U. Balt. L. Rev. 299 (1978).

**In determining whether there has been compliance with mandatory compactness requirement,** due consideration must be afforded to the "mix" of constitutional and other factors which make some degree of noncompactness unavoidable, i.e., concentration of people, geographic features, convenience of access, means of communication, and the several competing constitutional restraints, including contiguity and due regard for natural and political boundaries, as well as the predominant constitutional requirement that districts be comprised of substantially equal population. In re *Legislative Districting*, 299 Md. 658, 475 A.2d 428 (1982).

**Contiguity and compactness intended to prevent gerrymandering.** — The contiguity and compactness requirements, and particularly the latter, are intended to prevent politi-

cal gerrymandering. In re *Legislative Districting*, 299 Md. 658, 475 A.2d 428 (1982).

**Contiguity explained.** — The contiguity requirement mandates that there be no division between one part of a district's territory and the rest of the district; in other words, contiguous territory is territory touching, adjoining and connected, as distinguished from territory separated by other territory. In re *Legislative Districting*, 299 Md. 658, 475 A.2d 428 (1982).

**Primary intent of "due regard" provision** is to preserve those fixed and known features which enable voters to maintain an orientation to their own territorial areas. In re *Legislative Districting*, 299 Md. 658, 475 A.2d 428 (1982).

**Function of courts in districting process.** — Essentially, the districting process is a political exercise for determination by the legislature and not the judiciary; the function of the courts is limited to assessing whether the principles underlying the compactness and other constitutional requirements have been fairly considered and applied in view of all relevant considerations. In re *Legislative Districting*, 299 Md. 658, 475 A.2d 428 (1982).

Cited in *Haldas v. Commissioners of Charlestown*, 207 Md. 255, 113 A.2d 886 (1955); *Maryland Comm. for Fair Representation v. Tawes*, 228 Md. 412, 180 A.2d 656 (1962).

For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 400 (1985).



**Art. III, § 6 REGISTRATION AND ELECTION LAWS**

**Section 6. Election and terms of members of General Assembly.**

A member of the General Assembly shall be elected by the registered voters of the legislative or delegate district from which he seeks election, to serve for a term of four years beginning on the second Wednesday of January following his election. (1956, ch. 99, ratified Nov. 6, 1956; 1969, ch. 785, ratified Nov. 3, 1970; 1977, ch. 681, ratified Nov. 7, 1978.)

**Cross reference.** — As to term, see article XVII of the Constitution. *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

Cited in *Thomas v. Owens*, 4 Md. 189 (1853);

**Section 7. Time of holding elections for Senators and Delegates.**

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. (1956, ch. 99, ratified Nov. 6, 1956.)

**Stated** in *Maryland Comm. for Fair Representation v. Tawes*, 377 U.S. 656, 84 S. Ct. 1429, 12 L. Ed. 2d 595 (1964). **Cited** in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

**Section 9. Age, citizenship and residence requirements for Senators and Delegates.**

A person is eligible to serve as a Senator or Delegate, who on the date of his election, (1) is a citizen of the State of Maryland, (2) has resided therein for at least one year next preceding that date, and (3) if the district which he has been chosen to represent has been established for at least six months prior to the date of his election, has resided in that district for six months next preceding that date.

If the district which the person has been chosen to represent has been established less than six months prior to the date of his election, then in addition to (1) and (2) above, he shall have resided in the district for as long as it has been established.

A person is eligible to serve as a Senator, if he has attained the age of twenty-five years, or as a Delegate, if he has attained the age of twenty-one years, on the date of his election. (1974, ch. 880, ratified Nov. 5, 1974; 1977, ch. 681, ratified Nov. 7, 1978.)

**Residency means domicile.** — Residence, as contemplated by the framers of the State Constitution, for political or voting purposes, means a place of fixed present domicile. *Bainum v. Kalen*, 272 Md. 490, 325 A.2d 392 (1974).

The words reside or resident in a constitutional provision or statute delineating rights,

duties, obligations, privileges, etc., is construed to mean domicile, unless a contrary intent be shown. *Bainum v. Kalen*, 272 Md. 490, 325 A.2d 392 (1974).

**Where a county has districts**, this section does not require that a candidate for the House of Delegates reside for a year before election day in the district which he may be chosen to

represent, but only that he reside for a year before election day in the county. *Hillyard v. Board of Supvrs. of Elections*, 259 Md. 150, 269 A.2d 42 (1970).

**Senatorial subdistrict residence requirement.** — If the only residence requirement were that imposed in the Constitution, then any resident of a particular county, which composes a senatorial district, could run in any subdistrict wholly within that county; and in senatorial districts embracing more than one county, the candidate must have resided in that portion of the county which is a part of the senatorial district which he aspires to represent. *Hillyard v. Board of Supvrs. of Elections*, 259 Md. 150, 269 A.2d 42 (1970).

**Eligibility requirements to fill vacancy due to resignation.** — The eligibility requirements for individuals who desire to be selected to fill a vacancy in the Senate or House of Dele-

gates as a result of the resignation of an incumbent are contained in this section. 62 Op. Att'y Gen. 442 (1977).

**"Established".** — The word "established" is defined as "permanently settled and confirmed." *Dixon v. Board of Supvrs. of Elections*, 244 Md. 48, 222 A.2d 371 (1966).

**Purpose of selecting word "established".** — The selection of the word "established" in this section is for the purpose of requiring a reliable date from which the one-year computation could be made. *Dixon v. Board of Supvrs. of Elections*, 244 Md. 48, 222 A.2d 371 (1966).

**Applied in State Administrative Bd. of Election Laws v. Calvert**, 272 Md. 659, 327 A.2d 290 (1974), cert. denied, 419 U.S. 1110, 95 S. Ct. 784, 42 L. Ed. 2d 807 (1975).

**Cited in Blount v. Board of Supvrs. of Elections**, 247 Md. 342, 230 A.2d 639 (1967).

**Section 10. Persons holding office under United States not eligible as Senators or Delegates.**

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.

**Appointment of member of House of Delegates as consultant to National Science Foundation** would not constitute the acceptance of a civil office under the government of

the United States contrary to this section. 59 Op. Att'y Gen. 129 (1974).

**Cited in Bowling v. Weakley**, 181 Md. 496, 30 A.2d 791 (1943).

*(Amendment subject to referendum.)*

**Section 10. Persons holding office under United States not eligible as Senators or Delegates; membership in armed forces reserves or militia.**

*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; except that a Senator or Delegate may be a member of a reserve component of the armed forces of the United States or a member of the militia of the United States or this State.*

(1990, ch. 61.)

## Art. III, § 11 REGISTRATION AND ELECTION LAWS

**Amendment subject to referendum.** — Chapter 61, Acts 1990, adds the exception at the end.

Section 2 of ch. 61 provides that: "the General Assembly determines that the amendment to the Constitution of Maryland proposed by this Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the Constitution concerning local approval of constitutional amendments do not apply."

Section 3 of ch. 61 provides that: "the foregoing section proposed as an amendment to the Constitution of Maryland shall be submitted to the legal and qualified voters of this State at the next general election to be held in

November, 1990 for their adoption or rejection in pursuance of directions contained in Article XIV of the Constitution of this State. At that general election, the vote on this proposed amendment 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. Immediately after the election, all returns shall be made to the Governor of the vote for and against the proposed amendment, as directed by Article XIV of the Constitution, and further proceedings had in accordance with Article XIV."

### Section 11. Persons holding civil offices under State not eligible as Senators or Delegates.

No person holding any civil office of profit, or trust, under this State shall be eligible as Senator or Delegate. (1977, ch. 681, ratified Nov. 7, 1978.)

**University of Baltimore Law Review.** — For article, "State Constitutional Law for Maryland Lawyers: Individual Civil Rights," see 7 U. Balt. L. Rev. 299 (1978).

**This section was declared unconstitutional** as violative of the First and Fourteenth Amendments of the Constitution of the United States. The requirement, formerly imposed by this section, that no preacher or minister of the gospel was eligible as a Senator or Delegate, clearly constituted a governmental interference with religion, and no interest of the State of Maryland justified such a burden upon the free exercise of religion. *Kirkley v. State*, 381 F. Supp. 327 (D. Md. 1974).

**Member of General Assembly may be justice of peace.** — See *Kimble v. Bender*, 173 Md. 608, 196 A. 409 (1938).

**Test of whether a position is an office.** — See *Board of Supvrs. of Elections v. Attorney Gen.*, 246 Md. 417, 229 A.2d 388, 230 A.2d 61 (1967).

**Appointment of member of House of Delegates as special prosecutor** to handle cases from which the State's attorney has withdrawn his participation poses serious questions of violation of the constitutional sanctions against the holding of another office of profit or trust and would not be free from constitutional infirmity. 59 Op. Att'y Gen. 121 (1974).

**Constable of District Court serving as member of General Assembly.** — A constable of the District Court is barred from serving at the same time as a member of the General Assembly. 59 Op. Att'y Gen. 154 (1974).

**Member of General Assembly appointed to Suburban Transit Commission.** — This section and article 8 of the Declaration of Rights may preclude appointment of a current member of the General Assembly to the Washington Suburban Transit Commission. 61 Op. Att'y Gen. 152 (1976).

### Section 12. Disqualification to serve as Senator or Delegate or hold other office for failure to account for public money.

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.

**Section 13. Vacancy in office of Senator or Delegate.**

(a) (1) 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 Central Committee of the political party, if any, with which the Delegate or Senator, so vacating, had been affiliated, at the time of the last election or appointment of the vacating Senator or Delegate, in the County or District from which he or she was appointed or elected, provided that the appointee shall be of the same political party, if any, as was that of the Delegate or Senator, whose office is to be filled, at the time of the last election or appointment of the vacating Delegate or Senator, and it shall be the duty of the Governor to make said appointment within fifteen days after the submission thereof to him.

(2) If a name is not submitted by the Central Committee within thirty days after the occurrence of the vacancy, the Governor within another period of fifteen days shall appoint a person, who shall be affiliated with the same political party, if any as was that of the Delegate or Senator, whose office is to be filled, at the time of the last election or appointment of the vacating Delegate or Senator, and who is otherwise properly qualified to hold the office of Delegate or Senator in the District or County.

(3) In the event there is no 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, from the same political party, if any, as that of the vacating Delegate or Senator, at the time of the last election or appointment of the vacating Senator or Delegate, who is otherwise properly qualified to hold the office of Delegate or Senator in such District or County.

(4) 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 Legislative or Delegate district, as the case may be, in any of the twenty-three counties of Maryland, the Central Committee or committees shall follow these provisions:

(1) If the vacancy occurs in a district having the same boundaries as a county, the Central Committee of the county shall submit the name of a resident of the district.

(2) If the vacancy occurs in a district which has boundaries comprising a portion of one county, the Central Committee of that county shall submit the name of a resident of the district.

(3) If the vacancy occurs in a district which has boundaries comprising a portion or all of two or more counties, the Central Committee of each county involved shall have one vote for submitting the name of a resident of the

## Art. III, § 19 REGISTRATION AND ELECTION LAWS

district; and if there is a tie vote between or among the Central Committees, the list of names there proposed shall be submitted to the Governor, and he shall make the appointment from the list. (1935, ch. 584, ratified Nov. 3, 1936; 1966, ch. 162, ratified Nov. 8, 1966; 1977, ch. 681, ratified Nov. 7, 1978; 1986, ch. 649, ratified Nov. 4, 1986.)

**Intent of section.** — Both the legislative history and the language itself indicate that the intent of this section was that in case of a vacancy in the General Assembly, the appropriate central committee would submit the name of only one person to the Governor and the Governor would appoint that person to fill the vacancy. 62 Op. Att'y Gen. 241 (1977).

**Notice or advertising of vacancy not required.** — There is no explicit requirement in the State Constitution providing for notice or advertising that a vacancy exists and is to be filled. 62 Op. Att'y Gen. 442 (1977).

**Section not applicable to initial vacancies in offices of county councilmen.** — The provision of the Constitution, article III, § 13, that vacancies in the membership of the General Assembly shall be filled by appointment of the Governor is not applicable to initial vacancies in the offices of county councilmen of a county which adopts a charter under the Home Rule Amendment because that amendment requires that the county council be an elective body. *County Comm'rs v. Supervisors of Elections*, 192 Md. 196, 63 A.2d 735 (1949).

**Removal of member of House of Delegates from legislative district for which he was chosen would not justify determination that vacancy had occurred** so long as the Delegate remains a resident of either Baltimore City or of the county or counties from which his legislative district was formed. 60 Op. Att'y Gen. 306 (1975).

**This section does not require unanimity** in selecting a nominee to fill a vacancy created by resignation. 62 Op. Att'y Gen. 442 (1977).

**Duty of Governor where committee submits names of two or more qualified persons.** — If a central committee should ignore the clear intent of this section and submit the names of two or more qualified persons to the Governor, the Governor cannot ignore the names submitted by the committee. Rather, the Governor must appoint one of the persons to the vacancy. 62 Op. Att'y Gen. 241 (1977).

**Duty of Governor not mandatory where committee fails to submit nominee.** — Although the State Constitution provides that the Governor shall appoint a person within 15 days of the failure of the central committee to submit a nominee, that requirement cannot reasonably be construed as imposing a mandatory duty upon the Governor. 62 Op. Att'y Gen. 453 (1977).

**Eligibility requirements** for individuals who desire to be selected to fill a vacancy in the Senate or House of Delegates as a result of the resignation of an incumbent are contained in Md. Const., article III, § 9. 62 Op. Att'y Gen. 442 (1977).

Stated in *Tyler v. Board of Supvrs. of Elections*, 213 Md. 37, 131 A.2d 247 (1957).

Cited in *Covington v. Buffett*, 90 Md. 569, 45 A. 204 (1900); *Black v. Board of Supvrs. of Elections*, 232 Md. 74, 191 A.2d 580 (1963).

### **Section 19. Each House to be judge of qualifications and elections of its members; appoint its own officers, make its own rules; punishment and expulsion of members.**

Each House shall be judge of the qualifications and elections of its members, as prescribed by the Constitution and Laws of the State, and shall appoint its own officers, determine the rules of its own proceedings, punish a member for disorderly or disrespectful behaviour 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. (1977, ch. 681, ratified Nov. 7, 1978.)

Power in this section has been held to be exclusive in nature, both as to matters of fact and law. 63 Op. Att'y Gen. 370 (1978).

**Limits on power of General Assembly.** — Although the ultimate power to judge the elections and qualifications of its members continues to reside in the Senate and House of Delegates, respectively, the exercise of that power is, to some extent, constrained by law. *Lamb v. Hammond*, 308 Md. 286, 518 A.2d 1057 (1987).

**Senate is exclusive judge of questions respecting election and qualification of its members.** — Under this section the Senate is made the final and exclusive judge of all questions of law and fact respecting election returns or the qualifications of its members so far as they are involved in the determination of the right of any person to be a member thereof. *Price v. Ashburn*, 122 Md. 514, 89 A. 410 (1914).

**And court cannot determine whether vacancy exists in office of Senator.** — Since, under this section, the Senate is the only tribunal which has the power to decide whether a vacancy in the office of State Senator exists, the courts have no jurisdiction to determine that question. *Covington v. Buffett*, 90 Md. 569, 45 A. 204 (1900).

**Determination of any vacancy question would be up to the House of Delegates.** 60 Op. Att'y Gen. 306 (1975).

A court would have no jurisdiction to compel the seating of one claiming to have been elected to the House of Delegates of the General Assembly, since this section names the only tribunal which has the power to decide the question of qualification and election to such office, and that is the House of Delegates itself. *Bowling v. Weakley*, 181 Md. 496, 30 A.2d 791 (1943).

The procedures to be followed where seating of newly elected Delegate is challenged on the basis that his residency in the district was not for the proper length of time are entirely the concern of the House of Delegates itself. 63 Op. Att'y Gen. 370 (1978).

**Presumption that Senate has complied with its rules.** — If a bill is constitutionally passed, no inquiry will be made as to whether the Senate, in its reconsideration thereof, complied with its rule on that subject; the presumption is conclusive that it has done so. *Baltimore Fid. Whse. Co. v. Canton Lumber Co.*, 118 Md. 135, 84 A. 188 (1912).

Quoted in *Snyder v. Glusing*, 308 Md. 411, 520 A.2d 349 (1987).

Cited in *Blondes v. State*, 16 Md. App. 165, 294 A.2d 661 (1972); *Perkins v. Eskridge*, 278 Md. 619, 366 A.2d 21 (1976); *Avara v. Baltimore News Am. Div.*, 292 Md. 543, 440 A.2d 368 (1982); *Duffy v. Conaway*, 295 Md. 242, 455 A.2d 955 (1982).

## Section 49. Power of legislature to regulate elections.

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.

**Maryland Law Review.** — For comment discussing *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975), cited in the notes below, see 35 Md. L. Rev. 543 (1976).

**Intent of framers of State Constitution.** — Provisions of this section demonstrate that the framers of the State Constitution contemplated that the regulation of elections would be the province of the legislature, and, in fact, the General Assembly has responded to these constitutional directives by enacting a comprehensive State Election Code. *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

This section does not require that election laws shall be uniform throughout the State; they must be free and equal to all per-

sons entitled to vote. *Lankford v. County Comm'rs*, 73 Md. 105, 20 A. 1017 (1890).

**Electors should have the fullest opportunity to vote for candidates of any political party,** and while this right, in cases where the public furnishes the ballots, may be restricted by the dictates of common sense, and by considerations of convenience in the size of the ballots, and by considerations of excessive costs, such restrictions will not be upheld when they are destructive of freedom of choice by the voters. *Munsell v. Hennegan*, 182 Md. 15, 31 A.2d 640 (1943).

Cited in *Ames v. Board of Supvrs. of Elections*, 195 Md. 543, 74 A.2d 29 (1950); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

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ARTICLE IV

JUDICIARY DEPARTMENT

Part I—General Provisions

Section 2. Qualifications of judges.

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, district, 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. (1966, ch. 10, ratified Nov. 8, 1966; 1969, ch. 789, ratified Nov. 3, 1970.)

**Cross reference.** — As to removal of judges, and prohibition of judges' holding other offices, etc., see article 33 of the Declaration of Rights.

**United States citizenship required.** — The Maryland Constitution provides that the Governor, judges and the Attorney General shall be qualified voters, and therefore, by necessary implication, citizens of the United States. *Crosse v. Board of Supvrs. of Elections*, 243 Md. 555, 221 A.2d 431 (1966).

**This section simply supplements § 21 of this article** by specifying the minimum requisite period of continued residency in the particular locality from which the particular circuit court judge is required by law to be elected or appointed. 67 Op. Att'y Gen. 232 (1982).

**State residency requirement may be met** by residence in Maryland for any continuous period of 5 years, and the residency period need not be for the 5-year period immediately preceding the applicant's appointment or election to judicial office. 68 Op. Att'y Gen. 342 (1983).

**This section is not applicable to judges of the orphans' courts** and, therefore, they are not required to be members of the bar. *Kadan v. Board of Supvrs. of Elections*, 273 Md. 406, 329 A.2d 702 (1974).

Cited in *Grote v. Rogers*, 158 Md. 685, 149 A. 547 (1930); *Quenstedt v. Wilson*, 173 Md. 11, 194 A. 354 (1937).

Section 3. Election of judges; term of office; retirement.

Except for the Judges of the District Court, the Judges of the 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, 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 reeligible 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. (1931, ch. 479, ratified Nov. 8, 1932; 1953, ch. 607, ratified Nov. 2, 1954; 1966, ch. 10, ratified Nov. 8, 1966; 1969, ch. 791, rejected Nov. 3, 1970; 1976, ch. 542, ratified Nov. 2, 1976; 1977, ch. 681, ratified Nov. 7, 1978.)

**Cross reference.** — As to salaries of judges, see § 24 of this article.

**Maryland Law Review.** — For note discussing the strict liability of manufacturers and marketers of Saturday night special handguns used in the commission of a crime, see 46 Md. L. Rev. 486 (1987).

**University of Baltimore Law Review.** — For article, "State Constitutional Law for Maryland Lawyers: Judicial Relief for Violations of Rights," see 10 U. Balt. L. Rev. 102 (1980).

**Mandatory retirement.** — Circuit court judges and appellate court judges fall within the "elected to public office" exception to the federal Age Discrimination in Employment Act and, therefore, remain subject to the con-

stitutional requirement that they retire at age 70. 71 Op. Att'y Gen. — (December 29, 1986).

**Activities of bar association relative to nomination and election of judges.** — The activities of the bar association of Baltimore City relative to the nomination and election of judges were within the scope of its powers and not in violation of the Corrupt Practices Act. *Smith v. Higinbotham*, 187 Md. 115, 48 A.2d 754 (1946).

**Stated in** *Cohen v. Goldstein*, 58 Md. App. 699, 474 A.2d 229 (1984).

**Cited in** *Gordy v. Dennis*, 176 Md. 106, 5 A.2d 69 (1939); *Kadan v. Board of Supvrs. of Elections*, 273 Md. 406, 329 A.2d 702 (1974); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

## Section 5. Vacancy in office of judge of circuit court.

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 of a circuit court, or creation of the office of any such 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. 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. (1880, ch. 417, ratified Nov. 8, 1881; 1943, ch. 772, ratified Nov. 7, 1944; 1945, ch. 703, ratified Nov. 5, 1946; 1969, ch. 791, rejected Nov. 3, 1970; 1975, ch. 551, ratified Nov. 2, 1976; 1980, ch. 523, ratified Nov. 4, 1980.)

**Maryland Law Review.** — For note, "Discipline of Judges in Maryland," see 34 Md. L. Rev. 612 (1974).

**History of section.** — See *Hillman v. Boone*, 190 Md. 606, 59 A.2d 506 (1948).

**The effect and purpose of the 1944 amendment** are clear. By making the provision for appointments to fill vacancies all-inclusive and providing for biennial, instead of quadrennial elections, but only after one year

after the latest vacancy, the electorate at every election are given, approximately, at least one year and less than three of experience with an appointed sitting judge, instead of none at all or any period less than four years. This purpose is not impaired by making the occurrence of the vacancy the point of time and ignoring such accidents as delays in appointment or qualification and the variation in the date of



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election day. *Hillman v. Boone*, 190 Md. 606, 59 A.2d 506 (1948).

**"Vacancy" means latest vacancy.** — "Vacancy" as used in this section is construed to mean the latest vacancy, so that the electorate at every election are given at least one year and less than three of experience with an appointed sitting judge, instead of none at all. *Hillman v. Boone*, 190 Md. 606, 59 A.2d 506 (1948).

**Resignation of judge appointed to fill vacancy is "occurrence of vacancy".** — Where a judge was appointed to fill a vacancy created by death, and before the time for the election of his successor he resigned and another judge was appointed, the resignation of the judge first appointed was "the occurrence of the vacancy" within the meaning of the second sentence of this section, and an election could not be held to fill the vacancy until one year after such resignation. *Hillman v. Boone*, 190 Md. 606, 59 A.2d 506 (1948).

**Appointee not entitled to office for term for which predecessor was elected.** — A vacancy having occurred in the office of judge by death, it was competent for the Governor to fill the same by issuing a temporary commission which held good until the end of the next session of the General Assembly, or until some other person was appointed; and when the Governor, with the advice and consent of the Sen-

ate, appoints a man to fill a vacancy which has occurred during the recess of the Senate, such incumbent is not entitled to the office for the term for which his predecessor was elected, but only until the next general election thereafter. *Magruder v. Swann*, 25 Md. 173 (1866).

**Chapters 523 and 524, Acts 1980, do not violate article XIV, § 1 of Maryland Constitution.** — Chapters 523 and 524, Acts 1980, concerning, respectively, the consolidation of the Baltimore City court system and the removal of causes, do not violate the Md. Const., art. XIV, § 1 and they represent valid amendments to the Maryland Constitution. *Andrews v. Governor of Md.*, 294 Md. 285, 449 A.2d 1144 (1982).

**Term extends until successor takes oath of office.** — A judge may continue to hold office until his successor is elected at the general election, and, thereafter, until that successor qualifies by taking the requisite oath of office. 67 Op. Atty Gen. 241 (1982).

**Quoted in** *Comptroller of State v. Klein*, 215 Md. 427, 138 A.2d 648 (1958).

**Cited in** *Worman v. Hagan*, 78 Md. 152, 27 A. 616 (1893); *Gordy v. Dennis*, 176 Md. 106, 5 A.2d 69 (1939); *Hillman v. Stockett*, 183 Md. 641, 39 A.2d 803 (1944); *Smith v. Higinbotham*, 187 Md. 115, 48 A.2d 754 (1946); *O'Donnell v. Comptroller of Treas.*, 268 Md. 412, 302 A.2d 42 (1973).

### Section 11. Clerks of courts to certify election returns to Governor; Governor to issue commissions; who declared elected.

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 for officers other than judges of an appellate court, the person having the greatest number of votes, shall be declared to be elected. (1975, ch. 551, ratified Nov. 2, 1976.)

**Attorney General is within terms of section.** — The Attorney General, although not expressly named, is clearly embraced within the terms of this section. *Groome v. Gwinn*, 43 Md. 572 (1875).

**Commission should not be withheld while elections are contested.** — It is the duty of the Governor under this section to issue his commission to the person regularly and duly returned as elected, although such election may be contested, and the Governor by

§ 12 of this article is required to send the returns to the House of Delegates. *Ijams v. Duvall*, 85 Md. 252, 36 A. 819 (1897).

Construing this section in connection with article V, § 2 of the Constitution, it is clear that the Governor should issue commissions as soon as the result of the election is ascertained from the official returns, and the newly elected officers should at once take the oath and enter upon their duties; the commission should not

be withheld when the elections are contested. *Groome v. Gwinn*, 43 Md. 572 (1875).

The words "of the county" and "for the county" as applied to the circuit courts and

the clerks thereof, are used interchangeably. *Slymer v. State*, 62 Md. 237 (1884).

Cited in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

## Section 12. Contested elections for judges, clerks and registers of wills.

In case of any contested election for Judges, Clerks of the Courts of Law, and Registers of Wills, the Governor shall send the returns to the House of Delegates, which shall judge 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. (1977, ch. 681, ratified Nov. 7, 1978.)

The "contested" election spoken of in this section means a contest between candidates at such election, not a dispute about the office of judge in which one party claims by appointment of the executive and the other by election of the people. *Magruder v. Swann*, 25 Md. 173 (1866).

This section and §§ 11 and 13 impose ministerial duties on Governor. — The duties of the Governor are not all found in article II of the Constitution, as is shown by this section and §§ 11 and 13 of this article, where ministerial duties are imposed on the Governor, no discretion being imposed in him as to them. In the discharge of ministerial duties, the Governor is subject to mandamus. *Magruder v. Swann*, 25 Md. 173 (1866); *Brooke v. Widdicombe*, 39 Md. 386 (1874); *Groome v. Gwinn*, 43 Md. 572 (1875).

The resolution of the House of Delegates relative to a contested election cannot name a successor; all that it can do if it finds against an incumbent, is to give judgment against him and order a new election. *Ijams v. Duvall*, 85 Md. 252, 36 A. 819 (1897).

Time of holding new election; term of

person elected. — Where the House of Delegates, acting under this section, declares an incumbent, who has been returned elected and received a commission under § 11 of this article, not entitled to the office, a new election should be held at the earliest possible moment; if it cannot be held at the time the House of Delegates appoints, then it may be held at the general election as mentioned in article XV, § 7 of the Constitution. The person elected at such new election is entitled to the full term, to begin from his election. *Wells v. Munroe*, 86 Md. 443, 38 A. 987 (1897).

Order of new election not self-executing. — Where a contest is heard under this section and a new election ordered, such order is not self-executing, but requires affirmative legislation. *Munroe v. Wells*, 83 Md. 505, 35 A. 142 (1896).

Quoted in *Duffy v. Conaway*, 295 Md. 242, 455 A.2d 955 (1982).

Stated in *County Comm'rs v. Supervisors of Elections*, 192 Md. 196, 63 A.2d 735 (1949).

Cited in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

### Part II—Courts of Appeal

## Section 14. Composition of Court of Appeals; Chief Judge; jurisdiction; sessions; salaries of judges; quorum; division of court; reargument.

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, Wicomico, 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,

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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 their respective Appellate Judicial Circuits. The term of each Judge of the Court of Appeals shall begin on the date of his qualification. 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 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 the 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 reargument as hereinafter provided. In any case where there is an equal division or a three to two division of the Court a reargument before the full Court of seven judges shall be granted to the losing party upon application as a matter of right. (1943, ch. 772, ratified Nov. 7, 1944; 1956, ch. 99, ratified Nov. 6, 1956; 1960, ch. 11, ratified Nov. 8, 1960; 1969, ch. 791, rejected Nov. 3, 1970; 1975, ch. 551, ratified Nov. 2, 1976; 1977, ch. 681, ratified Nov. 7, 1978.)

**Cross references.** — As to appeals, see CJ §§ 12-101 to 12-702 of the Code. As to vacancy in office of judge, see § 5 of this article. For judicial salaries and allowances, see CJ §§ 1-701 to 1-708 of the Code. As to noncontested elections of appellate court judges, see § 5A of this article.

**Maryland Law Review.** — For article, "The Court of Appeals of Maryland: Roles, Work and Performance," see 37 Md. L. Rev. 1 (1977).

For article, "Survey of Developments in Maryland Law, 1987-88," see 48 Md. L. Rev. 551 (1989).

**University of Baltimore Law Review.** — For article, "State Constitutional Law for Maryland Lawyers: Judicial Relief for Violations of Rights," see 10 U. Balt. L. Rev. 102 (1980).

**The legislature cannot confer original jurisdiction upon the Court of Appeals,** though that court may grant a mandamus, cer-

tiorari or other appropriate writ, in aid to its appellate jurisdiction. But Acts 1809, ch. 125, empowering the judges of the Court of Appeals in vacation to grant the writ of habeas corpus, was held to be still in force under the Constitution of 1851; but article IV, § 2 of that Constitution, was designed to withhold the above powers from the Court of Appeals as such. The above powers, however, may be claimed by the individual judges of the Court of Appeals under article IV, § 6 of the Constitution. Ex parte O'Neill, 8 Md. 227 (1855); Sevinsky v. Wagus, 76 Md. 335, 25 A. 468 (1892); Hendrick v. State, 115 Md. 552, 81 A. 18 (1911).

**The legislature may confer on the Court of Appeals the right to hear appeals in special cases,** but such law must leave the judicial functions of the court untrammelled. Acts 1862, ch. 2, authorizing the Court of Appeals to hear and determine the appeal of the State against the Northern Central Railway Company, was valid. Prout v. Berry, 2 Gill 147

(1844); *State v. Northern Cent. Ry.*, 18 Md. 193 (1862).

**Court unauthorized to increase its membership.** — The Court of Appeals under its present constitutional authority could not validly invoke its rule-making power to increase its constitutionally prescribed membership of seven. *Washabaugh v. Washabaugh*, 285 Md. 393, 404 A.2d 1027 (1979).

**Jurisdiction of the Court of Appeals is solely appellate.** *Reyes v. Prince George's County*, 281 Md. 279, 380 A.2d 12 (1977).

**Appellate jurisdiction is the review of an initial exercise of judicial authority.** *Shell Oil Co. v. Supervisor of Assmts.*, 276 Md. 36, 343 A.2d 521 (1975).

Appellate jurisdiction does not arise until there is an initial exercise of judicial power or authority by a court. *Shell Oil Co. v. Supervisor of Assmts.*, 276 Md. 36, 343 A.2d 521 (1975).

The exercise of appellate jurisdiction requires a prior action by some judicial authority, or the prior exercise of judicial power. *Shell Oil Co. v. Supervisor of Assmts.*, 276 Md. 36, 343 A.2d 521 (1975).

**Review of the decision of an administrative agency is an exercise of original jurisdiction and not of appellate jurisdiction.** *Shell Oil Co. v. Supervisor of Assmts.*, 276 Md. 36, 343 A.2d 521 (1975).

**An appeal lies from the order of the Court of Common Pleas removing a trustee in insolvency and dismissing a petition for the benefit of the insolvent laws; such right of appeal is not taken away by § 28 of this article.** *Van Nostrand v. Carr*, 30 Md. 128 (1869).

**Act held invalid.** — Acts 1835, ch. 339, authorizing any party to a cause to have a transcript of chancery proceedings transmitted to the Court of Appeals for the purpose of getting its opinion touching the validity of certain acts and on such other points as the parties might

by agreement have submitted to the lower court, held unconstitutional. *Lawrence v. Hicks*, 8 Gill & J. 386 (1836).

**Advisory opinions.** — There is no constitutional bar to the Court of Appeals rendering an advisory opinion as that term is loosely used to refer to the decision of a case in which, because the action is either moot or collusive, there is no actual controversy between the parties before the court. *Reyes v. Prince George's County*, 281 Md. 279, 380 A.2d 12 (1977).

The Court of Appeals cannot be required to give an advisory opinion at the request of the legislature or executive. *Reyes v. Prince George's County*, 281 Md. 279, 380 A.2d 12 (1977).

The Court of Appeals cannot undertake to give an advisory opinion of its own accord. *Reyes v. Prince George's County*, 281 Md. 279, 380 A.2d 12 (1977).

**Moot cases.** — The constitutional limitations of article 8 of the Maryland Declaration of Rights and this section, are not applicable to prevent decision by the Court of Appeals in a moot case where requisite extraordinary circumstances exist. *Reyes v. Prince George's County*, 281 Md. 279, 380 A.2d 12 (1977).

**Writ of certiorari to Court of Special Appeals.** — Court of Appeals has statutory jurisdiction to issue a writ of certiorari to the Court of Special Appeals in a case involving an in banc appeal. *Montgomery County v. McNeece*, 311 Md. 194, 533 A.2d 671 (1987).

**Quoted in Attorney Grievance Comm'n v. Mandel**, 294 Md. 560, 451 A.2d 910 (1982).

**Cited in** *Gordy v. Dennis*, 176 Md. 106, 5 A.2d 69 (1939); *Boyer v. Thurston*, 247 Md. 279, 231 A.2d 50 (1967); *Prince George's County v. AFSCME, Council 67*, 289 Md. 388, 424 A.2d 770 (1981); *Cohen v. Goldstein*, 58 Md. App. 699, 474 A.2d 229 (1984); *Lohrmann v. Arundel Corp.*, 65 Md. App. 309, 500 A.2d 344 (1985); *In re Petition for Writ of Prohibition*, 312 Md. 280, 539 A.2d 664 (1988).

### Part III—Circuit Courts

## Section 19. State divided into judicial circuits.

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. (1956, ch. 99, ratified Nov. 6, 1956.)

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**Maryland Law Review.** — For survey of Maryland Court of Appeals decisions, 1975-1976, regarding constitutional law, see 37 Md. L. Rev. 69 (1977).

**Stated** in *Whitaker v. Prince George's County*, 307 Md. 368, 514 A.2d 4 (1986).

**Cited** in *Wright v. Hamner*, 5 Md. 370 (1854); *State v. Shillinger*, 6 Md. 449 (1854); *Kimball v. Harman*, 34 Md. 401 (1871); *Executor of Fooks v. Ghingher*, 172 Md. 612, 192 A. 782, cert. denied, 302 U.S. 726, 58 S. Ct. 47, 82

L. Ed. 561 (1937); *Gordy v. Dennis*, 176 Md. 106, 5 A.2d 69 (1939); *Perlmutter v. Minskoff*, 196 Md. 99, 75 A.2d 129 (1950); *First Federated Commodity Trust Corp. v. Commissioner of Sec.*, 272 Md. 329, 322 A.2d 539 (1974); *Davidson v. Miller*, 276 Md. 54, 344 A.2d 422 (1975); *Firstman v. Atlantic Constr. & Supply Co.*, 28 Md. App. 285, 345 A.2d 118 (1975); *Ligon v. Maryland*, 448 F. Supp. 935 (D. Md. 1977); *Washabaugh v. Washabaugh*, 285 Md. 393, 404 A.2d 1027 (1979).

### Section 21. Number of judges; residence requirements; chief judge and associate judges; quorum; terms of court.

(a) Subject to the provisions of subsection (b) the General Assembly shall determine by law the number of judges of the circuit court in each county and circuit. These judges shall be selected in accordance with Sections 3 and 5 of this Article.

(b) There shall be at least four circuit court judges resident in each circuit, and at least one circuit court judge shall be resident in each county. There shall be at least two such judges resident in Anne Arundel County, at least three resident in Baltimore County, at least four resident in Prince George's County, and at least five resident in Montgomery County.

(c) The senior judge in length of service in each circuit shall be the chief judge of the circuit. The other judges shall be associate judges.

(d) Except as otherwise provided by law, one judge shall constitute a quorum for the transaction of any business.

(e) The terms of the circuit courts shall be determined by law.

(f) A person is not ineligible for appointment or election as a judge because he was a member of the General Assembly at a time when the number or salary of judges were increased or decreased. (1912, ch. 515, ratified Nov. 4, 1913; 1935, ch. 426, ratified Nov. 3, 1936; 1937, ch. 494, ratified Nov. 8, 1938; 1939, ch. 371, rejected Nov. 5, 1940; 1939, ch. 200, ratified Nov. 5, 1940; 1941, ch. 494, ratified Nov. 3, 1942; 1943, ch. 772, ratified Nov. 7, 1944; 1953, ch. 607, ratified Nov. 2, 1954; 1954, chs. 65, 68, ratified Nov. 2, 1954; 1959, chs. 642, 761, ratified Nov. 8, 1960; 1966, ch. 372, ratified Nov. 8, 1966; 1969, ch. 791, rejected Nov. 3, 1970; 1976, ch. 542, ratified Nov. 2, 1976.)

**History of courts.** — See *Price v. State*, 8 Gill 295 (1849).

**Section 32 of this article construed in connection with this section.** — See *Jackson v. State*, 87 Md. 191, 39 A. 504 (1898).

**Numbers set by this section are minimum, not maximum,** number of resident judges for a county, and the General Assembly is free to create new circuit court judgeships that are also subject to a county residency requirement. 67 Op. Att'y Gen. 232 (1982).

**Section 2 of this article simply supple-**

**ments this section** by specifying the minimum requisite period of continued residency in the particular locality from which the particular circuit court judge is required by law to be elected or appointed. 67 Op. Att'y Gen. 232 (1982).

**One judge constitutes quorum.** — See *Robey v. County Comm'rs*, 92 Md. 150, 48 A. 48 (1900).

**Nonjury terms are "regular" terms.** — Nonjury terms or, as formerly designated in this section, "intermediate terms to which ju-

rors shall not be summoned," are "regular" terms. *Downs v. State*, 78 Md. 128, 26 A. 1005 (1893).

**Rules of circuit court upheld.** — Certain rules of the Circuit Court for Prince George's County dealing with jury and nonjury cases upheld. *Gambrill v. Parker*, 31 Md. 1 (1869).

**Quoted in** *Boyer v. Thurston*, 247 Md. 279, 231 A.2d 50 (1967).

**Stated in** *Reed v. McKeldin*, 207 Md. 553, 115 A.2d 281 (1955).

**Cited in** *Gordy v. Dennis*, 176 Md. 106, 5 A.2d 69 (1939); *Hillman v. Boone*, 190 Md. 606, 59 A.2d 506 (1948); *Moore v. Moore*, 218 Md. 218, 145 A.2d 764 (1958); *Washabaugh v. Washabaugh*, 285 Md. 393, 404 A.2d 1027 (1979); *Scheve v. McPherson*, 44 Md. App. 398, 408 A.2d 1071 (1979); *Whitaker v. Prince George's County*, 307 Md. 368, 514 A.2d 4 (1986).

## Section 25. Clerks.

There shall be a Clerk of the Circuit Court for each county and Baltimore City, who shall be elected by a plurality of the qualified voters of said County or City, 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 that Court may fill the 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. (1956, ch. 99, ratified Nov. 6, 1956; 1980, ch. 523, ratified Nov. 4, 1980.)

**Cross references.** — See title 2 of the Courts Article of the Code. For statutory provisions concerning the election of the clerk of the Circuit Court for Baltimore City, see ch. 525, Acts 1980.

**Holding over at expiration of term.** — Under article IV, § 14 of the Constitution of 1851, a clerk held over at the expiration of his term until his successor qualified. *Sappington v. Scott*, 14 Md. 40 (1859).

**Where clerk declared not elected by House of Delegates.** — A clerk who has been returned elected, has received a commission under § 11 of this article and has duly qualified, but has been declared not elected by the House of Delegates after a contest, is not entitled to a full term of four years under this section, which could begin "from the time of his election," and may hold office only until his successor has been elected and has qualified. However, there is no "vacancy" in the office of clerk which the judges may fill as provided in the last sentence of this section, since the "vacancy" contemplated by this section is one that occurs after an election by the voters. Under such circumstances a new election for clerk should be held at the earliest possible moment; if it cannot be held at the time the House of Delegates appoints, then it may be held at the general election as mentioned in article XV, § 7 of the Constitution. The person elected at such new election will be entitled to the full term, to begin from his election. *Wells v. Munroe*, 86 Md. 443, 38 A. 987 (1897).

**The "Judges of said Court"** describe the judges of the court for which the clerk is to be appointed; i.e., the court for the particular county in which the office of clerk becomes vacant. *Boyer v. Thurston*, 247 Md. 279, 231 A.2d 50 (1967).

**Majority of judges must concur in appointment.** — Appointment of a clerk by one of the two resident judges without the concurrence of the other judge was held null and void since a majority of the judges empowered to appoint must concur in the appointment. *Boyer v. Thurston*, 247 Md. 279, 231 A.2d 50 (1967).

**Section prevails over article 8 of Declaration of Rights.** — The specific provisions of this section prevail over the general provisions of article 8 of the Declaration of Rights. *Boyer v. Thurston*, 247 Md. 279, 231 A.2d 50 (1967).

**Chapters 523 and 524, Acts 1980, do not violate article XIV, § 1 of Maryland Constitution.** — Chapters 523 and 524, Acts 1980, concerning, respectively, the consolidation of the Baltimore City court system and the removal of causes, do not violate the Md. Const., art. XIV, § 1 and they represent valid amendments to the Maryland Constitution. *Andrews v. Governor of Md.*, 294 Md. 285, 449 A.2d 1144 (1982).

**Quoted in** *State v. Ensor*, 277 Md. 529, 356 A.2d 259 (1976).

**Cited in** *Brooke v. Widdicombe*, 39 Md. 386 (1874); *Chester v. State*, 32 Md. App. 593, 363 A.2d 605 (1976); *O'Leary v. Shipley*, 313 Md. 189, 545 A.2d 17 (1988).

## Art. IV, § 40 REGISTRATION AND ELECTION LAWS

### *Part V—Orphans' Court*

#### **Section 40. Election and qualifications of judges; powers; compensation; vacancies; Montgomery and Harford counties excepted.**

The qualified voters of the City of Baltimore, and of the several Counties, except Montgomery County and Harford County, shall elect three Judges of the Orphans' Courts of 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 the Judges shall be paid such compensation as may be regulated by Law, to be paid by the 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 vacancy for the residue of the term. (1956, chs. 99, 124, ratified Nov. 6, 1956; 1963, ch. 744, ratified Nov. 3, 1964; 1972, ch. 374, ratified Nov. 7, 1972; 1977, ch. 681, ratified Nov. 7, 1978.)

**Cross reference.** — See ET §§ 2-101 to 2-109 of the Code.

**Md. Const., article IV, § 2, is not applicable to judges of the orphans' courts and, therefore, they are not required to be members of the bar.** *Kadan v. Board of Supvrs. of Elections*, 273 Md. 406, 329 A.2d 702 (1974).

**Legislature may change powers of orphans' courts.** — Under this section, the legislature may not only make changes in the powers which the orphans' courts had at the time the Constitution of 1867 was adopted, but also may confer additional powers upon them or take away powers which they then possessed. *Savings Bank v. Weeks*, 110 Md. 78, 72 A. 475 (1909).

**Legislature may delegate power to regulate salaries.** — The General Assembly may delegate to a county any of its constitutional power to regulate the salaries of the orphans' court judges. 58 Op. Att'y Gen. 147 (1973).

The "vacancy" referred to in this section is a vacancy occurring after an election by the

people; hence where an election is contested and the House of Delegates acting under § 12 of this article decides that a person other than the incumbent is entitled to the office, there is no vacancy within the meaning of this section which the Governor may fill, and the House must order a new election under § 12; the incumbent holds until some other person has been elected by the people and has qualified. *Ijams v. Duvall*, 85 Md. 252, 36 A. 819 (1897).

**Article IV, § 17 of the Constitution of 1851, compared with, and referred to in construing, article IV, § 14 of that Constitution.** *Sansbury v. Middleton*, 11 Md. 296 (1857).

**Sections 25 and 26 of article IV of the Constitution of 1851 compared with § 19 of article IV of said Constitution.** *Cantwell v. Owens*, 14 Md. 215 (1859).

**Stated in** *In re Estate of Underwood*, 233 Md. 394, 196 A.2d 877 (1964).

**Cited in** *Quenstedt v. Wilson*, 173 Md. 11, 194 A. 354 (1937).

#### **Section 41. Register of wills.**

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. (1956, ch. 99, ratified Nov. 6, 1956.)

**Cross references.** — For constitutional provision that all State and county officers elected by qualified voters shall hold office for terms of four years, see Md. Const., article XVII, § 1. See ET §§ 2-201 to 2-211, of the Code.

**Holding over after expiration of term.** — Under article IV, § 18 of the Constitution of

1851, a register of wills held over at the expiration of his term until his successor qualified. *Sappington v. Scott*, 14 Md. 40 (1859).

Quoted in *Boyer v. Thurston*, 247 Md. 279, 231 A.2d 50 (1967).

Cited in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

*Part VII—Sheriffs*

**Section 44. Sheriffs.**

There shall be elected in each county and in Baltimore City one person, resident in said county or City, above the age of twenty-five years, and for at least five years preceding his election a citizen of the State, to the office of Sheriff. He shall hold office for four years, until his successor is duly elected and qualified, 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. (1941, ch. 845, ratified Nov. 3, 1914; 1916, ch. 547, rejected Nov. 7, 1916; 1945, ch. 786, ratified Nov. 5, 1946; 1953, ch. 55, ratified Nov. 2, 1954; 1977, ch. 681, ratified Nov. 7, 1978.)

**Cross references.** — As to sheriffs generally, see article 87 and CJ §§ 2-301 to 2-309, of the Code. As to rights and duties of sheriff relating to fees and other moneys received by him, see article XV, § 1 of the Constitution.

**Maryland Law Review.** — For survey of Maryland Court of Appeals decisions, 1975-1976, regarding constitutional law, see 37 Md. L. Rev. 69 (1977).

**University of Baltimore Law Review.** — For article "The Maryland Sheriff v. Modern and Efficient Administration of Justice," see 2 U. Balt. L. Rev. 282 (1973).

**Validity of act passed in pursuance of amendment.** — Acts 1955, ch. 646, fixing the salary of the Sheriff of Baltimore City at \$10,000, which was enacted in pursuance of the 1953 amendment to this section and, as to

the Sheriff's salary, made effective on the effective date of such amendment, did not violate Md. Const., article III, § 35, providing that salaries of public officers shall not be increased or diminished during their terms of office. *Deegan v. Bernhardt* (Cir. Ct. of Baltimore City), Daily Record, December 21, 1956.

**Powers and duties of sheriffs prescribed by common law as modified by legislature.** — Sheriffs are constitutional officers whose powers and duties are not expressly enumerated in the Constitution. Rather, those powers and duties are prescribed by the common law as modified by the acts of the legislature. Accordingly, sheriffs retain their common-law powers and duties until deprived of them by the legislature. *Soper v. Montgomery County*, 294 Md. 331, 449 A.2d 1158 (1982).



## Art. IV, § 44 REGISTRATION AND ELECTION LAWS

**The legislature has the power to abridge the rights and duties of a sheriff, who is a mere ministerial officer.** *Beasley v. Ridout*, 94 Md. 641, 52 A. 61 (1902).

**And may add duties not in conflict with his office.** — Since this section does not prescribe the duties of sheriffs, the legislature may add to or diminish such duties, provided those added be not in conflict with his office as sheriff. *Mayor of Baltimore v. State*, 15 Md. 376 (1860); *Beasley v. Ridout*, 94 Md. 641, 52 A. 61 (1902); *Green v. State*, 122 Md. 288, 89 A. 608 (1914).

**It may take from him control and supervision of county jail.** — Acts 1901, ch. 15, taking the control and supervision of the Anne Arundel County jail and prisoners therein from the Sheriff, held not to conflict with this section. *Beasley v. Ridout*, 94 Md. 641, 52 A. 61 (1902).

**Duty to attend law courts.** — It is the duty of the Sheriff to attend in person or by deputy the law courts of Baltimore City and of the counties. *Green v. State*, 122 Md. 288, 89 A. 608 (1914).

**Sheriff not qualified by giving bond which has not been approved.** — A sheriff is not qualified to act as such, nor bound to discharge the duties of his office, simply by causing a bond to be signed by himself and his securities which has not been approved. *Bruce v. State ex rel. Love*, 11 Gill & J. 382 (1841).

**Liability of sheriff's bond.** — See *Bruce v. State ex rel. Love*, 11 Gill & J. 382 (1841).

The surety on a sheriff's bond is liable for an unlawful and malicious assault on a prisoner, while making an arrest, placing a prisoner in jail, or preventing his escape. *State ex rel. Hill v. Fidelity & Deposit Co.*, 200 Md. 194, 88 A.2d 457 (1952).

**This section does not require that sheriffs be voters.** *Crosse v. Board of Supvrs. of Elections*, 243 Md. 555, 221 A.2d 431 (1966).

**Nor citizens of United States.** — There is no express requirement in the Maryland Constitution that sheriffs be United States citi-

zens. *Crosse v. Board of Supvrs. of Elections*, 243 Md. 555, 221 A.2d 431 (1966).

**State officers and employees.** — Sheriff of Maryland county is State, not county, officer. *Kline v. Fuller*, 56 Md. App. 294, 467 A.2d 786 (1983).

**County sheriffs and deputy sheriffs are officials and/or employees of the State of Maryland rather than of the county.** *Rucker v. Harford County*, 316 Md. 275, 558 A.2d 399 (1989).

**The office of sheriff is ministerial in nature under the Maryland Constitution.** *Crosse v. Board of Supvrs. of Elections*, 243 Md. 555, 221 A.2d 431 (1966).

**A sheriff's function and province is to execute duties prescribed by law.** *Crosse v. Board of Supvrs. of Elections*, 243 Md. 555, 221 A.2d 431 (1966).

**Area in which deputy sheriff may make arrest.** — A deputy sheriff in Montgomery County has authority to make an arrest in the area for which he is appointed. *Roberts v. Hecht Co.*, 280 F. Supp. 639 (D. Md. 1968).

**Exception to duty of Sheriff of Washington County.** — It is the duty of the Sheriff of Washington County to arrest offenders and enforce the criminal laws throughout Washington County, except within the City of Hagerstown which has a local police force. 60 Op. Att'y Gen. 647 (1975).

**Quoted in Sheriff of Baltimore City v. Abshire**, 44 Md. App. 256, 408 A.2d 398 (1979); *Polk v. Montgomery County*, 548 F. Supp. 613 (D. Md. 1982); *Harford County v. University of Md. Medical Sys. Corp.*, 318 Md. 525, 569 A.2d 649 (1990).

**Cited in State v. Wayman**, 2 Gill & J. 254 (1830); *Broome v. United States*, 56 U.S. (15 How.) 143, 14 L. Ed. 636 (1853); *Rasin v. Leaverton*, 181 Md. 91, 28 A.2d 612 (1942); *Blount v. Board of Supvrs. of Elections*, 247 Md. 342, 230 A.2d 639 (1967); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

## ARTICLE V

## ATTORNEY-GENERAL AND STATE'S ATTORNEYS

**Section 1. Election, term and removal of Attorney-General.**

There shall be an Attorney-General elected by the qualified voters of 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. (1956, ch. 99, ratified Nov. 6, 1956.)

**Maryland Law Review.** — For article "Baltimore City's Liability for Riot Damage: The Mayor as Conservator of the Peace: Mayor & City Council of Baltimore v. Silver," see 33 Md. L. Rev. 73 (1973).

Cited in *Groome v. Gwinn*, 43 Md. 572 (1875); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

**Section 2. Determining election and qualification of Attorney-General; tie vote; oath.**

All elections for Attorney-General shall be certified to, and returns made thereof by the Clerks of the Circuit Courts of 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.

**Jurisdiction of Governor.** — This section confers jurisdiction upon the Governor to decide both as to the election and qualification of the person returned elected, as well in the case of a contest as where there is no contest. The legislature would have no power under article I, § 8 of the Constitution, to confer the above jurisdiction upon any tribunal other than those designated by the Constitution. Although the Governor has the above jurisdiction, it was in-

tended that he should be clothed by law with the means and instrumentalities to execute such power. *Groome v. Gwinn*, 43 Md. 572 (1875).

Cited in *Nutwell v. Board of Supvrs. of Elections*, 205 Md. 338, 107 A.2d 373, 108 A.2d 149 (1954); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

**Section 4. Qualifications of Attorney-General.**

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.

## Art. V, § 7 REGISTRATION AND ELECTION LAWS

**United States citizenship required.** — The Maryland Constitution provides that the Governor, judges and the Attorney General shall be qualified voters, and therefore, by necessary implication, citizens of the United

States. *Crosse v. Board of Supvrs. of Elections*, 243 Md. 555, 221 A.2d 431 (1966).

Cited in *Groome v. Gwinn*, 43 Md. 572 (1875); In re R.G.S., 312 Md. 626, 541 A.2d 977 (1988).

### Section 7. Election, term and removal of State's attorneys.

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, 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. (1956, ch. 99, ratified Nov. 6, 1956; 1977, ch. 681, ratified Nov. 7, 1978.)

**Cross references.** — See article 10, §§ 34 to 41 of the Code. As to when elections for State and county officers to be held, see Md. Const., article XVII, § 2.

**The office of State's attorney is constitutionally prescribed.** *State v. Aquilla*, 18 Md. App. 487, 309 A.2d 44 (1973).

**Office of State's attorney is independent,** is not part of the judicial branch of government, and is not directly subject to its supervision. *State v. Lykins*, 43 Md. App. 472, 406 A.2d 289 (1979), modified, 288 Md. 71, 415 A.2d 1113 (1980).

**A State's attorney is a State rather than a local officer.** *Valle v. Pressman*, 229 Md. 591, 185 A.2d 368 (1962).

**Hence, removal is a State and not a local function.** *Valle v. Pressman*, 229 Md. 591, 185 A.2d 368 (1962).

**Article 10, § 34, implements this section and § 9 of this article.** *State v. Aquilla*, 18 Md. App. 487, 309 A.2d 44 (1973).

**Powers of State's attorneys are constitutional and statutory.** — The office of State's attorney, being unknown at common law, is possessed of no other powers than those prescribed by the constitution and statutes of the State. *State v. Aquilla*, 18 Md. App. 487, 309 A.2d 44 (1973).

**But these powers are nowhere enunciated and defined.** *State v. Aquilla*, 18 Md. App. 487, 309 A.2d 44 (1973).

**Responsibility for prosecuting criminal cases at the trial level devolved upon the State's attorney** by reason of his constitutional mandate as implemented by statute. *State v. Aquilla*, 18 Md. App. 487, 309 A.2d 44 (1973).

**State's attorney may attend on grand jurors.** — As a State's attorney is charged by the

legislature to prosecute criminal cases, and as he is vested with broad official discretion to institute and prosecute such cases, it is implicit in the constitutional provisions as implemented by the statute, that a State's attorney, as the prosecuting officer, has the right to attend on the grand jurors with matters on which they are to pass, aid in the examination of witnesses, and give such general instructions as they may require. *State v. Aquilla*, 18 Md. App. 487, 309 A.2d 44 (1973).

**And may assign deputies and assistants to do so.** — See *State v. Aquilla*, 18 Md. App. 487, 309 A.2d 44 (1973).

**In appraising the conduct of a State's attorney who is charged with having a conflict of interest** of such proportions as to disqualify him from prosecuting a particular individual, the true measure or standard by which his conduct should be viewed is posed in the simple issue: Did his action in prosecuting the individual result in a denial of due process of law to that individual? Otherwise stated, was the prosecution of the accused so wanton, blatant, and harassing as to deny the accused his fundamental right to a fair and impartial trial? The hard core issue is whether the bringing of the prosecution resulted in the accused being denied his fundamental and constitutional right to the due process of law. *Sinclair v. State*, 27 Md. App. 207, 340 A.2d 359 (1975), rev'd on other grounds, 278 Md. 243, 363 A.2d 468 (1976).

If a prosecutor has, or would clearly appear to a reasonable person having knowledge of the pertinent facts to have, any pecuniary interest or a significant personal interest in a civil matter which may impair his obligation in a criminal matter to act impartially toward both the State and the accused, then he is, on the basis

of this State's public policy, disqualified from initiating or participating in the prosecution of that criminal cause. *Sinclair v. State*, 278 Md. 243, 363 A.2d 468 (1976); *State v. Lykins*, 43 Md. App. 472, 406 A.2d 289 (1979), modified, 288 Md. 71, 415 A.2d 1113 (1980).

Where the prosecuting attorney is deemed to have a conflict of interest in a prosecution, the defendant need not prove actual prejudice because, on the basis of public policy, it will be presumed to exist as a matter of law. *Sinclair v. State*, 278 Md. 243, 363 A.2d 468 (1976).

**Applied** in *Goldberg v. State*, 69 Md. App. 702, 519 A.2d 779 (1987).

**Stated** in *Boyer v. Thurston*, 247 Md. 279, 231 A.2d 50 (1967).

**Cited** in *In re Anderson*, 20 Md. App. 31, 315 A.2d 540, *aff'd*, 272 Md. 85, 321 A.2d 516, appeal dismissed, 419 U.S. 809, 95 S. Ct. 21, 42 L. Ed. 2d 35 (1974), cert. denied, 421 U.S. 1000, 95 S. Ct. 2399, 44 L. Ed. 2d 667 (1975); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

**Quoted** in *State v. Romulus*, 315 Md. 526, 555 A.2d 494 (1989); *Rucker v. Harford County*, 316 Md. 275, 558 A.2d 399 (1989).

### Section 8. Determining election and qualification of State's attorney; tie vote; oath.

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 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.

**Oath of office.** — The Governor, a circuit court judge, or a circuit court clerk may administer the oath of office to the State's Attorney. Although the Governor may decline to administer the oath, a judge or clerk may not. Should a judge administer the oath of office to the State's Attorney, a record of the administration of the oath may be made in the clerk's

testamentary book or in any other suitable permanent form. 71 Op. Att'y Gen. — (November 13, 1986).

**Cited** in *Nutwell v. Board of Supvrs. of Elections*, 205 Md. 338, 107 A.2d 373, 108 A.2d 149 (1954); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

### Section 10. Qualifications of State's attorneys.

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.

**Residence requirement is one of fixed, present domicile.** — The requirements in the Constitution of residence for political or voting purposes is one of a place of fixed, present domicile. *Rasin v. Leaverton*, 181 Md. 91, 28 A.2d 612 (1942).

**Time of residence refers to date of election.** — The time of residence for eligibility to the office of State's attorney refers to the date of election. *Rasin v. Leaverton*, 181 Md. 91, 28 A.2d 612 (1942).

**Oath of office.** — The Governor, a circuit

court judge, or a circuit court clerk may administer the oath of office to the State's Attorney. Although the Governor may decline to administer the oath, a judge or clerk may not. Should a judge administer the oath of office to the State's Attorney, a record of the administration of the oath may be made in the clerk's testamentary book or in any other suitable permanent form. 71 Op. Att'y Gen. — (November 13, 1986).

**Quoted** in *State v. Romulus*, 315 Md. 526, 555 A.2d 494 (1989).

ARTICLE VI

TREASURY DEPARTMENT

**Section 1. Composition of Department; election of Comptroller; appointment of Treasurer; terms and compensation of Comptroller and Treasurer; vacancies; offices; oath and bonds.**

There shall be a Treasury Department, consisting of a Comptroller chosen by the qualified electors of the State, who shall receive such salary as may be fixed by law; and a Treasurer, to be appointed on joint ballot by the two Houses of the Legislature at each regular session in which begins the term of the Governor, who shall receive such salary as may be fixed by law. The terms of office of the Comptroller and Treasurer shall be for four years, and until their successors shall qualify; and neither of the 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 the office of the Comptroller 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 and until the qualification of the successor. In case of a vacancy in the office of the Treasurer by death or otherwise, the Deputy Treasurer shall act as Treasurer until the next regular or extraordinary session of the Legislature following the creation of the vacancy, whereupon the Legislature shall choose a successor to serve for the duration of the unexpired term of office. The Comptroller and the Treasurer shall keep their offices at the seat of government, and shall take such oaths and enter into such bonds for the faithful discharge of their duties as are now or may hereafter be prescribed by law. (1922, ch. 141, ratified Nov. 7, 1922; 1966, ch. 428, ratified Nov. 8, 1966; 1976, ch. 640, ratified Nov. 2, 1976; 1977, ch. 681, ratified Nov. 7, 1978.)

**Cross references.** — As to examination of Comptroller and Treasurer by Governor, see article II, § 18 of the Constitution. As to the Comptroller, see article 19 of the Code. As to the Treasurer, see Title 5 of the State Government Article. As to when elections for State and county officers to be held, see Md. Const., article XVII, § 2.

**History of section.** — See *Archer v. State*, 74 Md. 410, 22 A. 6, 737, motion to remand denied, 74 Md. 432, 22 A. 737 (1891).

**Appointment of Treasurer.** — The State Treasurer must be selected by a majority vote of the members of the General Assembly, meeting jointly, or separately with a single tally, sometime during the first regular session of the Governor's term. The vote may be by secret ballot. The one-person, one-vote principle does not affect the method of selection. 72 Op. Att'y Gen. — (January 19, 1987).

**Comptroller is not in office until he has taken oath.** — A Comptroller was not in office, and hence not entitled to salary, until he qualified by taking the oath prescribed by article I, § 6 of the Constitution. *Thomas v. Owens*, 4 Md. 189 (1853).

**He continues in office until his successor is elected and qualifies.** — There is nothing in the Constitution which fixes the Comptroller's term of office at two years from the day of election. A Comptroller continues in office until his successor has been duly elected and qualified. *Thomas v. Owens*, 4 Md. 189 (1853).

**Object and effect of provisions as to oath and bond.** — See *Thomas v. Owens*, 4 Md. 189 (1853).

**Comptroller held to have duly given bond and qualified.** — See *State v. Jarrett*, 17 Md. 309 (1861).

**Failure of Treasurer to take oath and**

**give bond after reelection.** — Where a Treasurer was reelected in January, 1888, but failed to take the oath required by article I, § 9 of the Constitution and to give the bond required by this section until November, 1889, his original bond was liable for his defalcations up to the latter date. *Archer v. State*, 74 Md. 410, 22 A. 6, 737, motion to remand denied, 74 Md. 432, 22 A. 737 (1891).

**Contested election for Comptroller.** — Since a statute passed in pursuance of article I, § 8 of the Constitution provided that contested elections for Comptroller should be decided by the House of Delegates, and since in this case it had been so decided by the House in favor of the appellee, an injunction restraining him from exercising the powers and duties of Comptroller was properly refused. The Governor was

only entitled to fill a vacancy in the office of Comptroller until the party declared to be entitled to the office should duly qualify. *State v. Jarrett*, 17 Md. 309 (1861).

**Mandamus lies to compel payment of Comptroller's salary.** — If payment of the Comptroller's salary is refused, mandamus lies. *Thomas v. Owens*, 4 Md. 189 (1853).

**Requirement that Comptroller keep office at seat of government.** — The provision that Comptroller keep his office at seat of government is mandatory but it applies to his main office and does not forbid him to keep branch offices in Baltimore or other parts of the State. *Duvall v. Lacy*, 195 Md. 138, 73 A.2d 26 (1950).

Cited in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

### Section 5. When Comptroller and Treasurer to qualify.

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.

**Effect of failure of Treasurer to qualify within one month.** — Where the Treasurer is not legally in office because he has failed to take the oath prescribed by article I, § 9, of the Constitution, within the time specified in this section, his official bond, although it has been approved by the Governor, is not liable for his defalcations. The term "qualify" as used in this section means taking the oath. The requirements of article I, § 9, and of article VI, § 1, and of this section, are mandatory and not directory merely. If the Treasurer fails to qualify

within the prescribed time, the Governor has no authority to administer the oath to him, and a qualification after the month has expired does not relate back to the date of his appointment; nor does the approval by the Governor of a bond given after the month has expired make such bond a binding obligation upon the sureties. *Archer v. State*, 74 Md. 410, 22 A. 6, motion to remand denied, 74 Md. 432, 22 A. 737 (1891); *Little v. Schul*, 118 Md. 454, 84 A. 649 (1912).

## Art. VII, § 1 REGISTRATION AND ELECTION LAWS

### ARTICLE VII SUNDRY OFFICERS

#### Section 1. County Commissioners — Election.

The County Commissioners of each county not governed by Article XI-A of this Constitution may be elected by the voters of commissioner districts established therein, or by the voters of the entire county, or by a combination of these methods of election, as provided by the General Assembly by law. (1890, ch. 255, ratified Nov. 3, 1891; 1956, ch. 99, ratified Nov. 6, 1956; 1977, ch. 681, ratified Nov. 7, 1978; 1986, ch. 707, ratified Nov. 4, 1986.)

**Cross references.** — See article 25 of the Code. As to when elections for State and county officers to be held, see Md. Const., article XVII, § 2.

**Effect of amendment.** — Chapter 707, Acts 1986, substituted the present language for the former first clause of the section and transferred the former second and third clauses of the section to be § 2 of this article.

**Amendment proposed in 1890 held valid; effect.** — The amendment proposed by Acts 1890, ch. 255, held to be constitutional and to have been validly adopted; an act proposing an amendment to the Constitution need not be set out verbatim on the journals. Although the amendment to this section was not proclaimed until December, 1891, and by its terms an election was directed to be held in November, 1891, county commissioners elected in November, 1891, were subject to the provisions of this section as amended. *Worman v. Hagan*, 78 Md. 152, 27 A. 616 (1893).

**Historically, county commissioners are outgrowths of the old levy courts** (originally established by ch. 53 of the Laws of 1794), which were composed of the justices of the peace of the several counties. Their duties were to meet and determine the necessary expenses of their counties and to impose an assessment or rate on property to defray county expenses. *City of Bowie v. County Comm'rs*, 258 Md. 454, 267 A.2d 172 (1970).

**The name "county commissioners" was first constitutionally recognized in the Constitution of 1851.** *City of Bowie v. County Comm'rs*, 258 Md. 454, 267 A.2d 172 (1970).

**Meaning of phrase "on general ticket".** — See *Montgomery County Council v. Garrott*, 243 Md. 634, 222 A.2d 164 (1966).

That county commissioners must be elected "on the general ticket" means — for county councilmen in chartered counties as well as for county commissioners — election by all the qualified voters of the county. *McGinnis v. Board of Supvrs. of Elections*, 244 Md. 65, 222 A.2d 391 (1966).

**Election by districts forbidden.** — This section flatly and compellingly says that county councilmen shall be elected by the qualified voters of the entire county and so forbids election by districts. *Montgomery County Council v. Garrott*, 243 Md. 634, 222 A.2d 164 (1966).

A county council cannot bring about a charter requirement that election of council members be by the voters of a district as long as this section and § 3 of article XI-A of the Constitution stand as they now read. *Montgomery County Council v. Garrott*, 243 Md. 634, 222 A.2d 164 (1966).

The legislatures that passed § 2 and the proviso of § 3 of article 25A of the Code must be presumed to have known that this section demanded countywide voting for council members, and that they could not change this demand by statute. *Montgomery County Council v. Garrott*, 243 Md. 634, 222 A.2d 164 (1966).

**Section made applicable to councilmen of Montgomery County.** — The directions of this section that the county commissioners must be elected by general ticket, that is, by all the qualified voters of the county, is made applicable to councilmen of Montgomery County by virtue of Md. Const., art. XI-A, § 3. *Montgomery County Council v. Garrott*, 243 Md. 634, 222 A.2d 164 (1966).

**Nomination of council members by district vote and election by countywide vote not clearly unconstitutional.** — It is not clearly unconstitutional if the General Assembly enacts legislation authorizing either Anne Arundel County specifically or all charter counties generally to require that county council members be nominated by councilmanic district vote and elected by countywide vote. 61 Op. Att'y Gen. 254 (1976).

**Equating nomination and election of councilmen with nomination and election of members of the legislature** could be related only to the procedural and mechanical aspects of those processes, such as dates of filing, filing fees, primary requirements, party

designations, and dates of election. *Montgomery County Council v. Garrott*, 243 Md. 634, 222 A.2d 164 (1966).

**Powers of county commissioners may be changed by legislative authority.** — Until the Constitution of 1867, county commissioners were simply administrative officers in charge of county finances. After the Constitution of 1867 these powers could be broadened by legislative authority. *Cox v. Board of County Comm'rs*, 181 Md. 428, 31 A.2d 179 (1943).

There is no doubt that the legislature may pass laws not in conflict with the Constitution changing the powers and duties of county commissioners. *County Comm'rs v. Mitchell*, 97 Md. 330, 55 A. 673 (1903).

Until the Constitution of 1867, county commissioners were simply administrative officers in charge of county finances, and taking care of public roads. After the Constitution of 1867 these powers could be broadened by legislative authority. *City of Bowie v. County Comm'rs*, 258 Md. 454, 267 A.2d 172 (1970).

Simply acting as county commissioners under this section, county officials only had as much power as prescribed by law. *Urbana Civic Ass'n v. Urban Mobile Village, Inc.*, 260 Md. 458, 272 A.2d 628 (1971).

**Administrative power.** — It long has been recognized in Maryland that county commissioners in much of their functioning act as administrators or in an executive capacity. *City of Bowie v. County Comm'rs*, 258 Md. 454, 267 A.2d 172 (1970).

**Legislative powers.** — A scanning of article 25 of the Code, "County Commissioners," reveals that county commissioners continue to have administrative and executive powers and duties and have acquired specified legislative powers and duties. *City of Bowie v. County Comm'rs*, 258 Md. 454, 267 A.2d 172 (1970).

**Test to determine when action is legislative and when executive or administrative.** — See *City of Bowie v. County Comm'rs*, 258 Md. 454, 267 A.2d 172 (1970).

**Statute providing for new election before expiration of terms.** — Where the appellants were in office as County Commissioners of Anne Arundel County under Acts 1892, ch. 442, and while their terms were still unexpired, Acts 1901, ch. 13, was passed repealing the Act of 1892, and providing for an election in November, 1901, which resulted in the election of appellees, the appellees were held by the lower court to be entitled to the office; since the Court of Appeals was equally divided on the question, the judgment of the lower court was affirmed. *Brown v. Brooke*, 95 Md. 738, 54 A. 516 (1902).

**Police power with respect to the public health or the public safety can be validly conferred on county commissioners by the legislature.** When that is done it follows that such commissioners are, to the extent of such grant, invested with the sovereign power of the State. Acting under such power, they act in a governmental capacity. *Cox v. Board of County Comm'rs*, 181 Md. 428, 31 A.2d 179 (1943).

Acts 1937, ch. 255, as amended by Acts 1941, ch. 283, conferring police power on County Commissioners of Anne Arundel County to control dogs, was valid under this section. *Cox v. Board of County Comm'rs*, 181 Md. 428, 31 A.2d 179 (1943).

**County Commissioner of Montgomery County authorized to license and regulate graveyards.** — See *Gordon v. Commissioners of Montgomery County*, 164 Md. 210, 164 A. 676 (1933).

**Stated in Kent Island Joint Venture v. Smith**, 452 F. Supp. 455 (D. Md. 1978).

**Cited in *Bonsal v. Yellott***, 100 Md. 481, 60 A. 593 (1905); *Benson v. Mellor*, 152 Md. 481, 137 A. 294 (1927); *Fulker v. County Comm'rs*, 156 Md. 408, 144 A. 640 (1929); *Schneider v. Lansdale*, 191 Md. 317, 61 A.2d 671 (1948); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979); *Harbor Island Marina, Inc. v. Board of County Comm'rs*, 286 Md. 303, 407 A.2d 738 (1979).

## Section 2. Same — Number, compensation, powers and duties.

The number, compensation, and powers and duties of the County Commissioners of each county not governed by Article XI-A of this Constitution shall be such as now are or may be hereafter prescribed by law. (1890, ch. 255, ratified Nov. 3, 1891; 1956, ch. 99, ratified Nov. 6, 1956; 1977, ch. 681, ratified Nov. 7, 1978; 1986, ch. 707, ratified Nov. 4, 1986.)



**Art. VII, § 2 REGISTRATION AND ELECTION LAWS**

**Editor's note.** — Chapter 707, Acts 1986, clauses of § 1 of this article to be § 2 of this transferred the former second and third article and rewrote the section.

ARTICLE XI-A

LOCAL LEGISLATION

**Section 1. Charter boards; preparation and adoption of charter.**

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 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

## Art. XI-A, § 1 REGISTRATION AND ELECTION LAWS

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. (1914, ch. 416, ratified Nov. 2, 1915; 1963, ch. 192, ratified Nov. 3, 1964.)

**Cross references.** — As to chartered counties of Maryland, see article 25A of the Code. For statutory provisions concerning petitions for election of charter board, see article 33, § 23-2 of the Code.

**Maryland Law Review.** — For article, "County Home Rule — Sharing the State's Legislative Power with Maryland Counties," see 28 Md. L. Rev. 327 (1968). For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

**University of Baltimore Law Review.** — For comment, "Maryland's Warrantless Inspection Laws: A Warrantless Expectation of Constitutionality," see 8 U. Balt. L. Rev. 88 (1978). For comment, "State and Local Legislative Powers: An Analysis of the Conflict and Preemption Doctrines in Maryland," see 8 U. Balt. L. Rev. 300 (1979).

For note discussing *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255 (1980), cited in the notes below, see 11 U. Balt. L. Rev. 158 (1981).

For note discussing county ordinance enacted pursuant to Express Powers Act as prevailing over ordinances enacted by municipalities within that county pursuant to municipal Express Powers Act, see 12 U. Balt. L. Rev. 191 (1982).

**Power to establish and organize local government** springs directly from this article and thus lies beyond the competence of the General Assembly or any other branch of State government to alter or erase. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Right of the people to adopt a particular form of government** is in no way dependent on legislative authorization or enactment. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

In adopting a home rule charter, the people have the right to make provision therein for any form of government they deem suitable for their needs, so long as they do not in the process run afoul of the letter and spirit of the federal and State Constitutions. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Reasons for article.** — One reason actuating the submission of this article to the people was the desire to prevent the accumulation of

proposed measures at the end of the sessions of the General Assembly, resulting in the passage of much legislation without proper consideration or scrutiny. Another reason was the wish to permit local legislation to be enacted only by those affected by it, without possible interference by representatives from other sections of the State. *Schneider v. Lansdale*, 191 Md. 317, 61 A.2d 671 (1948).

The two main reasons for local home rule were to reduce or eliminate the log jam of unacted on measures in the late days of the legislative sessions, which had resulted in passage of laws that had not received proper scrutiny or due consideration and to permit local legislation to be enacted solely by those directly affected by it without interference by representatives from other sections of the State. *Scully v. Montgomery Citizens League*, 249 Md. 271, 239 A.2d 92 (1968).

One of the objectives of home rule was to assure to the political subdivisions of the State the power of self-government and freedom from interference, by the legislature, in the exercise of that power. *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969).

The purpose and intent of the legislature in supplying the implementation called for by this article by the passage of the Express Powers Act was to take from the legislature and give to the county the exclusive power to enact local laws, and the reasons for this delegation of power, commonly called home rule, were first to reduce as far as possible the log jam of unacted on measures in the late days of the legislative session in Annapolis which had caused passage of laws that had not received careful scrutiny or due consideration and, second, to permit local legislation to be enacted solely by those directly affected by it without interference from representatives of other sections of the State. *Montgomery Citizens League v. Greenhalgh*, 253 Md. 151, 252 A.2d 242 (1969); *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969); *County Council v. Investors Funding Corp.*, 270 Md. 403, 312 A.2d 225 (1973).

The underlying purpose of this article is to share with the counties, within well delineated limits, the legislative powers formerly reserved to the General Assembly. *County Council v.*

Investors Funding Corp., 270 Md. 403, 312 A.2d 225 (1973).

This article was intended to encompass two distinct categories of home rule powers: the power to enact local law and the power to form and establish local government. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

The underlying purpose of the article is to share with the counties and Baltimore City, within well-defined limits, powers formerly reserved to the General Assembly so as to afford the subdivisions certain powers of self-government. *Cheeks v. Cedclair Corp.*, 287 Md. 595, 415 A.2d 255 (1980).

**The provisions of this article are clear and unambiguous** statements in the basic instrument of government of the State, its Constitution. There is no conflict or inconsistency between them and other provisions of the Constitution. They must be accorded full weight and effect. *Connor v. Board of Supvrs. of Elections*, 212 Md. 379, 129 A.2d 396 (1957).

**Manner of adopting home rule provided.** — This article provides for the manner in which the counties of Maryland or Baltimore City may adopt charter home rule. *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969).

**This article grants to a home rule political subdivision full power to enact local laws** on the subjects covered by the Express Powers Act and denies the General Assembly power to enact public local laws on such subjects for the county. *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969).

The power of a political subdivision of this State to enact laws depends on the extent to which the General Assembly has delegated to it its legislative powers which are plenary, except as limited by constitutional provisions. *Montgomery Citizens League v. Greenhalgh*, 253 Md. 151, 252 A.2d 242 (1969).

**Article affords counties independence.** — By providing for the transfer to the counties, within well-defined limits, of legislative powers formerly reserved to the General Assembly, this article affords chartered counties a certain measure of independence from the State legislature. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**But does not constitute grant of absolute autonomy.** — This article in actuality does not constitute a grant of absolute autonomy to local governments. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Authority to legislate restricted.** — Those who framed this article were fearful of a law-making body in continuous session and therefore the new authority to legislate was care-

fully restricted. *Montgomery Citizens League v. Greenhalgh*, 253 Md. 151, 252 A.2d 242 (1969).

**Certain powers do not require implementing legislation.** — There are certain powers implicit in this article which do not qualify as legislative powers and which do not require implementing legislation to render them operative. These powers necessarily proceed from this section and have as their object the initial organization and formation of charter government in the counties. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Conflict between this article and article XVII.** — If there is a conflict between the provisions of the Home Rule Amendment and the provisions of the Fewer Elections Amendment, Md. Const., article XVII, the Court of Appeals, in construing the meaning of the Constitution, bears in mind that it is dealing with an instrument of government. *County Comm'rs v. Supervisors of Elections*, 192 Md. 196, 63 A.2d 735 (1949).

**Nature of charter.** — This section effectively reserves to the people of Maryland the right to organize themselves into semiautonomous political communities for the purpose of instituting self-government within the territorial limits of the several counties. The means by which the inhabitants acquire such autonomy is the charter. Being, in effect, a local constitution, the charter fixes the framework for the organization of the county government. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Conflict between charter and public general law.** — Any conflict between a county or city charter and a public general law must be resolved in favor of the public general law. *Wilson v. Board of Supvrs. of Elections*, 273 Md. 296, 328 A.2d 305 (1974); *East v. Gilchrist*, 296 Md. 368, 463 A.2d 285 (1983); *Montgomery County v. Board of Supvrs. of Elections*, 311 Md. 512, 536 A.2d 641 (1988).

Laws governing the Public Service Commission and its regulatory control over telephone company are clearly public general laws such that any conflict between a county or city charter and public general law must be resolved in favor of public general law. *Rowe v. C & P Tel. Co.*, 56 Md. App. 23, 466 A.2d 538 (1983).

Court should enjoin the submission to the electorate of a proposed charter amendment which is in conflict with public general law. *Montgomery County v. Board of Supvrs. of Elections*, 311 Md. 512, 536 A.2d 641 (1988).

**Primary not necessary for election of county charter board.** — Since this section does not require a primary for the election of a county charter board, none is necessary. Con-

## Art. XI-A, § 1 REGISTRATION AND ELECTION LAWS

nor v. Board of Supvrs. of Elections, 212 Md. 379, 129 A.2d 396 (1957).

**Publication of petition for election of county charter board not required.** — There is no provision in the Maryland Constitution or the law that requires the publication of a petition for the election of a county charter board provided for in this section. Connor v. Board of Supvrs. of Elections, 212 Md. 379, 129 A.2d 396 (1957).

**The provisions of this section were followed to the letter** in the election of the charter board of Baltimore County and it was duly elected and constituted. Connor v. Board of Supvrs. of Elections, 212 Md. 379, 129 A.2d 396 (1957).

**Charter adopted under this section presumed valid.** — When a charter has been adopted by a county under the Home Rule Amendment it becomes the law of the county and is entitled to the presumption of validity that is applicable to any law regularly adopted. County Comm'rs v. Supervisors of Elections, 192 Md. 196, 63 A.2d 735 (1949).

**New charter to go into effect promptly after ratification.** — The provisions of the Home Rule Amendment indicate that it contemplates that any new charter shall go into effect promptly after its ratification by the people. County Comm'rs v. Supervisors of Elections, 192 Md. 196, 63 A.2d 735 (1949).

A proposed charter cannot become operational until it receives the imprimatur of the people through ratification at a popular election. Ritchmount Partnership v. Board of Supvrs. of Elections, 283 Md. 48, 388 A.2d 523 (1978).

**Charter may provide for prompt special election of first county council.** — A county which adopts a charter under the Home Rule Amendment may provide in it for a prompt special election of the first county council. County Comm'rs v. Supervisors of Elections, 192 Md. 196, 63 A.2d 735 (1949).

**County commissioners hold their offices subject to the possibility that they may be ousted** under the provisions of the Home Rule Amendment providing for the adoption of a charter. County Comm'rs v. Supervisors of Elections, 192 Md. 196, 63 A.2d 735 (1949).

**And elections need not be deferred until next quadrennial general election.** — A county is entitled, under the "Home Rule Amendment" of the State Constitution, to adopt a charter providing for a prompt special election of the first county council, and is not required to defer such election until the next quadrennial general election for State and county officers, and then to comply with all of the requirements for a general election. County Comm'rs v. Supervisors of Elections, 192 Md. 196, 63 A.2d 735 (1949).

**And may provide means and conditions under which election shall be held.** — The voters of a county, having the express power under the Home Rule Amendment to adopt a charter providing for an elective council, have implied power to provide for the means and conditions under which such election shall be held, including the power to specify in the charter the time and manner at which and in which vacancies in the council resulting from the adoption of the charter shall be filled in order that effect may be given to the charter itself. County Comm'rs v. Supervisors of Elections, 192 Md. 196, 63 A.2d 735 (1949).

**The provision of this article as to the newspapers in which the charter is to be published** is not so far mandatory as to render a charter after its adoption subject to attack on that ground, in the absence of proof that the failure to comply strictly with the constitutional provision affected the vote on the adoption of the charter. Williams v. Broening, 135 Md. 226, 108 A. 781 (1919); Jones v. Broening, 135 Md. 237, 108 A. 785 (1919).

**Baltimore City charter adopted under this article upheld.** — See Williams v. Broening, 135 Md. 226, 108 A. 781 (1919); Jones v. Broening, 135 Md. 237, 108 A. 785 (1919).

**Charter held to have been submitted to qualified voters of city.** — See Williams v. Broening, 135 Md. 226, 108 A. 781 (1919); Jones v. Broening, 135 Md. 237, 108 A. 785 (1919).

**Amendment of Baltimore City charter held not to be in excess of power conferred by this article.** Williams v. Broening, 135 Md. 226, 108 A. 781 (1919); Jones v. Broening, 135 Md. 237, 108 A. 785 (1919).

**The only limitations upon the police power of the City of Baltimore** are found among the provisions of this article, often referred to as the Home Rule Amendment, and the Baltimore City charter, the granting of which was made possible by this article. Heubeck v. Mayor of Baltimore, 205 Md. 203, 107 A.2d 99 (1954); Mayor of Baltimore v. Silver, 263 Md. 439, 283 A.2d 788 (1971), appeal dismissed, 409 U.S. 810, 93 S. Ct. 38, 34 L. Ed. 2d 65 (1972).

**What is a "local law".** — See Gaither v. Jackson, 147 Md. 655, 128 A. 769 (1925).

**A public general law can be repealed or modified by the General Assembly,** either directly or by a grant of power to the city under the Home Rule Amendment. Kimball-Tyler Co. v. Mayor of Baltimore, 214 Md. 86, 133 A.2d 433 (1957).

**Referendum by petition** is quite clearly a power affecting the form or structure of local government and therefore belongs to that class of powers vested directly in the people of the

several counties. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978); *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255 (1980).

**Referendum power could be incorporated into charter without an express grant of legislative power**, provided that it did not violate any other provision of this article. *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255 (1980).

**Article does not authorize City of Baltimore to repeal law authorizing Governor to appoint auctioneers in said city and that they shall pay license fees, etc., to State.** *Gaither v. Jackson*, 147 Md. 655, 128 A. 769 (1925).

**City may not legislate as to assessment of property for State taxation.** — The assessment of property in Baltimore City for State taxation is not a proper subject of legislation by the city under the provisions of this article. *Denhard v. Mayor of Baltimore*, 167 Md. 416, 173 A. 267 (1934).

**Power to refer legislation in Anne Arundel County.** — This section conferred upon the citizens of Anne Arundel County the right to reserve unto themselves, by express charter provision, the power to refer legislation enacted by the Anne Arundel County Council. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Act relating to purchase of voting machines in Baltimore not "local".** — Acts 1937, ch. 94, relating to purchase of voting machines in Baltimore City, is not "local" law within the meaning of this article. *Norris v. Mayor of Baltimore*, 172 Md. 667, 192 A. 531 (1937).

**Operation of day camp for children by Baltimore City and activities related to it are sanctioned by legislative authority.** *Austin v. Mayor of Baltimore*, 286 Md. 51, 405 A.2d 255 (1979).

**Act held local although title indicates general law.** — Former article 81, § 9 (28), of the Code, as enacted by Acts 1931, ch. 354, exempting property of certain institutions from assessments for improvement of streets, and made applicable only to Baltimore City, was a local law within the meaning of this article, although the title of the act indicated a general law. *Church Home & Infirmary v. Mayor of Baltimore*, 178 Md. 326, 13 A.2d 596 (1940).

**Act valid though not clothed in form of addition to charter powers.** — Acts 1931, ch. 287, conferring authority on Baltimore City to take referendum vote on ordinance regulating Sunday observance is valid even if not clothed in the form of an addition to charter powers. *Ness v. Supervisors of Elections*, 162 Md. 529, 160 A. 8 (1932).

**Act valid where county had not adopted**

**charter.** — Acts 1927, ch. 702, authorizing Commissioners of Montgomery County to license and regulate graveyards was not contrary to this article, since county had not adopted county charter. *Gordon v. Commissioners of Montgomery County*, 164 Md. 210, 164 A. 676 (1933).

**Mothers' Relief Act not in violation of this article.** — See *Mayor of Baltimore v. Puget*, 164 Md. 335, 165 A. 618 (1933).

**Ordinance held valid.** — A provision of the charter of Baltimore City granting power to the city to provide by ordinance for incorporating in city contracts the minimum rate of wages to be paid to employees of contractors performing work for the city, and the ordinance passed in pursuance thereof, did not constitute a delegation of legislative power to the board of estimates in violation of this article. *Roland Elec. Co. v. Mayor of Baltimore*, 210 Md. 396, 124 A.2d 783 (1956).

**A county is not liable for the tort of a police officer, and there is no merit in the argument that Baltimore County somehow stands in a different position in relation to this rule because of the adoption of its present charter under this article and article 25A, § 1 of the Code.** *State ex rel. Wilkerson v. Baltimore County*, 218 Md. 271, 146 A.2d 28 (1958).

**Intent and scope of article not involved.** — See *Levering v. Board of Supvrs. of Elections*, 137 Md. 281, 112 A. 301 (1920).

**Delegation of powers or functions to arbitrator.** — A charter county may not, absent authorization by public general law or charter provision consistent with this article, delegate to an arbitrator a discretionary governmental power or function which the charter vests in the county executive and county council. *Anne Arundel County v. Fraternal Order of Anne Arundel Detention Officers & Personnel*, 313 Md. 98, 543 A.2d 841 (1988).

**Applied in Prince George's County v. Board of Trustees**, 271 Md. 21, 313 A.2d 678 (1974); *Boswell v. Prince George's County*, 273 Md. 522, 330 A.2d 663 (1975); *Anderson v. Harford County*, 50 Md. App. 48, 435 A.2d 496 (1981).

**Quoted in Wicomico County v. Todd**, 256 Md. 459, 260 A.2d 328 (1970); *Hope v. Baltimore County*, 288 Md. 656, 421 A.2d 576 (1980); *Griffith v. Wakefield*, 298 Md. 381, 470 A.2d 345 (1984).

**Stated in Montgomery County v. Yost**, 223 Md. 150, 162 A.2d 462 (1960); *Taylor v. Prince George's County*, 377 F. Supp. 1004 (D. Md. 1974); *Prince George's County v. Silverman*, 58 Md. App. 41, 472 A.2d 104 (1984); *McCrorry Corp. v. Fowler*, 319 Md. 12, 570 A.2d 834 (1990).

**Cited in Engel v. Mayor of Baltimore**, 140 Md. 284, 117 A. 901 (1922); *Goldman v. Crowther*, 147 Md. 282, 128 A. 50 (1925); *Billig*

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v. State, 157 Md. 185, 145 A. 492 (1929); *Matthaei v. Housing Auth.*, 177 Md. 506, 9 A.2d 835 (1939); *Board of Educ. v. Mayor of Frederick*, 194 Md. 170, 69 A.2d 912 (1949); *Ames v. Board of Supvrs. of Elections*, 195 Md. 543, 74 A.2d 29 (1950); *Bratburd v. State*, 200 Md. 96, 88 A.2d 446, cert. denied, 344 U.S. 908, 73 S. Ct. 327, 97 L. Ed. 700 (1952), rehearing denied, 345 U.S. 914, 73 S. Ct. 638, 97 L. Ed. 1348 (1953); *Silver Spring Mem. Post No. 2562, V.F.W. v. Montgomery County*, 207 Md. 442, 115 A.2d 249 (1955); *Hitchins v. Mayor of Cumberland*, 208 Md. 134, 117 A.2d 854 (1955); *Maryland-National Capital Park & Planning Comm'n v. Randall*, 209 Md. 18, 120 A.2d 195 (1956); *Tyler v. Board of Supvrs. of Elections*, 213 Md. 37, 131 A.2d 247 (1957); *Baltimore County v. Missouri Realty, Inc.*, 219 Md. 155, 148 A.2d 424 (1959); *Liss v. Goodman*, 224 Md. 173, 167 A.2d 123 (1961); *Salganik v. Mayor of Baltimore*, 192 F. Supp. 897 (D. Md. 1961); *Board of Educ. v. Montgomery County*, 237 Md. 191, 205 A.2d 202 (1964); *Ellis v. Mayor of Baltimore*, 267 F. Supp. 263 (D. Md. 1967); *Maryland-National Capital Park & Planning Comm'n v. City of Rockville*, 269 Md. 240, 305 A.2d 122 (1973); *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976); *Gordon v. Commissioner of St. Michaels*, 278 Md. 128, 359 A.2d 543 (1976); *Supermarkets Gen. Corp. v. State*, 286 Md. 611, 409 A.2d 250 (1979); *Hope v. Baltimore County*, 44 Md. App. 481, 409 A.2d 753 (1979); *James v. Prince George's County*, 288 Md. 315, 418 A.2d 1173 (1980); *Howard County v. Mangione*, 47 Md. App. 350, 423 A.2d 263 (1980); *East v. Gilchrist*, 293 Md. 453, 445 A.2d 343 (1982); *Snowden v. Anne Arundel County*, 295 Md. 429, 456 A.2d 380 (1983); *Smuck v. Anne Arundel County*, 55 Md. App. 163, 461 A.2d 42 (1983); *Rosecroft Trotting & Pacing Ass'n v. Prince George's County*, 298 Md. 580, 471 A.2d 719 (1984); *Ronald Fishkind Realty v. Sampson*, 306 Md. 269, 508 A.2d 478 (1986); *Board of Trustees v. Mayor of Baltimore City*, 317 Md. 72, 562 A.2d 720 (1989), cert. denied, U.S. , 110 S. Ct. 1167, 107 L. Ed. 2d 1069 (1990); *Porten Sullivan Corp. v. State*, 318 Md. 387, 568 A.2d 1111 (1990); *Freeman v. Local 1802, AFSCME Council 67*, 318 Md. 684, 569 A.2d 1244 (1990).

### Section 1A. Alternate procedure for county to adopt charter.

The procedure provided in this section for adoption of a charter may be used in any county in lieu of the procedures provided in Section 1 of this Article, and a charter adopted pursuant to this section has the effect of a charter adopted in accordance with the provisions of Section 1. The board of county commissioners of any county at any time may appoint a charter board. Said charter board shall be registered voters and shall consist of an uneven number of members, not fewer than five or more than nine. The board of county commissioners shall appoint a charter board within thirty days after receiving a petition signed by five percent of the registered voters of the county or by ten thousand voters of the county, whichever is the lesser number. If additional charter board members are nominated by petitions signed by three percent of the registered voters of the county or by two thousand registered voters, whichever is the lesser number, delivered to the board of county commissioners within sixty days after the charter board is appointed, the board of county commissioners shall call a special election not less than thirty or more than ninety days after receiving petitions, unless a regular election falls within the designated period. The appointees of the board of county commissioners and those nominated by petitions shall be placed on the ballot in alphabetical order without party designation. The voters may cast votes for, and elect a number of nominees equal to the number of charter board members originally selected by the board of county commissioners, and those so elected are the charter board. The charter board, within twelve months from the date of its appointment, or if there was an election for some of its mem-

bers, within twelve months from the date of the election, shall present a proposed charter for the county to the board of county commissioners, which shall publish it at least twice in one or more newspapers of general circulation in the county within thirty days after it is presented. The charter shall be submitted to the voters of the county at a special or regular election held not earlier than thirty days or later than ninety days after publication of the charter. If a majority of the votes cast for and against the adoption of the charter are in favor of its adoption, the charter shall become effective as the charter of the county on the thirtieth day after the election or such later date as shall be specified in the charter. (1969, ch. 786, ratified Nov. 3, 1970.)

**University of Baltimore Law Review.** — For comment, "State and Local Legislative Powers: An Analysis of the Conflict and Preemption Doctrines in Maryland," see 8 U. Balt. L. Rev. 300 (1979).

For note discussing *Cheeks v. Cedclair Corp.*, 287 Md. 595, 415 A.2d 255 (1980), see 11 U. Balt. L. Rev. 158 (1981).

**Power to establish and organize local government** springs directly from this article and thus lies beyond the competence of the General Assembly or any other branch of State government to alter or erase. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Right of the people to adopt a particular form of government** is in no way dependent on legislative authorization or enactment. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

In adopting a home rule charter, the people have the right to make provision therein for any form of government they deem suitable for their needs, so long as they do not in the pro-

cess run afoul of the letter and spirit of the federal and State Constitutions. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Intent of article.** — This article was intended to encompass two distinct categories of home rule powers: the power to enact local law and the power to form and establish local government. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**When charter becomes operational.** — A proposed charter cannot become operational until it receives the imprimatur of the people through ratification at a popular election. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Applied in** *Ramsey v. Prince George's County*, 18 Md. App. 385, 308 A.2d 217 (1973).

**Stated in** *Taylor v. Prince George's County*, 377 F. Supp. 1004 (D. Md. 1974); *McCrorry Corp. v. Fowler*, 319 Md. 12, 570 A.2d 834 (1990).

### **Section 3. Legislative bodies; chief executive officers; enactment, publication and interpretation of local laws.**

Every charter so formed shall provide for an elective legislative body in which shall be vested the law-making 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 or Chairman 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 or



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Chairman 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 the title or a summary of all laws and ordinances proposed shall be published once a week for two successive weeks prior to enactment followed by publication once after enactment in at least one newspaper of general circulation in the county, so that the taxpayers and citizens may have notice thereof. The validity of emergency legislation shall not be affected if enacted prior to the completion of advertising thereof. These provisions concerning publication 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. (1914, ch. 416, ratified Nov. 2, 1915; 1955, ch. 557, ratified Nov. 6, 1956; 1972, ch. 371, ratified Nov. 7, 1972.)

**Maryland Law Review.** — For comment discussing County Council v. Montgomery Ass'n, 274 Md. 52, 333 A.2d 596 (1975), cited in the notes below, see 35 Md. L. Rev. 543 (1976).

**University of Baltimore Law Review.** — For comment, "State and Local Legislative Powers: An Analysis of the Conflict and Preemption Doctrines in Maryland," see 8 U. Balt. L. Rev. 300 (1979).

For note discussing Cheeks v. Cedlair Corp., 287 Md. 595, 415 A.2d 255 (1980), cited in the notes below, see 11 U. Balt. Rev. 158 (1981).

For note discussing county ordinance enacted pursuant to Express Powers Act as prevailing over ordinances enacted by municipalities within that county pursuant to municipal Express Powers Act, see 12 U. Balt. L. Rev. 191 (1982).

**The express language of this section is clear and unambiguous.** County Council v. Investors Funding Corp., 270 Md. 403, 312 A.2d 225 (1973).

**The purpose of the legislative exception in this section is quite obvious, and needs no "interpretation."** Montgomery County v. Eli, 20 Md. App. 269, 315 A.2d 136 (1974).

So long as the General Assembly enacted local laws, it was satisfied with the common-law principle that local laws prevailed over general laws in case of conflicts, as that principle was codified in article 1, § 13 of the Code. However, upon ratification of the constitutional provision authorizing counties to legislate exclusive of the legislature's control, the legislature could not chance a local government's obviating or preempting the authority and responsi-

bility entrusted to the General Assembly. *Montgomery County v. Eli*, 20 Md. App. 269, 315 A.2d 136 (1974).

**Intent of the framers of the 1972 amendment to this section** was to refer to the county in its corporate capacity by whatever name it might ultimately be known upon the adoption of a charter. *County Council v. Supervisor of Assmts.*, 274 Md. 116, 332 A.2d 897 (1975).

**Application of article XI-A.** — Article XI-A applies to counties that have formed a charter government under the provisions of that article. *Vermont Fed. Sav. & Loan Ass'n v. Wicomico County*, 263 Md. 178, 283 A.2d 384 (1971).

**One of the purposes of "home rule"** was to afford chartered counties a certain measure of independence from the General Assembly. *Murray v. Director of Planning*, 217 Md. 381, 143 A.2d 85 (1958).

**Article affords counties independence.** — By providing for the transfer to the counties, within well-defined limits, of legislative powers formerly reserved to the General Assembly, this article affords chartered counties a certain measure of independence from the State legislature. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**But does not constitute grant of absolute autonomy.** — This article in actuality does not constitute a grant of absolute autonomy to local governments. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Powers of county council upon adoption of a charter.** — Upon adoption of a charter the county council of a county has, subject to the Constitution and Public General Laws of the State, full power to enact local laws of said county including the power to repeal or amend local laws upon all matters covered by the express powers granted pursuant to § 2 of this article. *Turf Valley Associates v. Zoning Bd.*, 262 Md. 632, 278 A.2d 574 (1971).

With respect to the powers delegated to it, the county council is to have as ample and complete power to legislate over local affairs as the General Assembly possessed prior to the ratification of this article and the enactment of the Express Powers Act. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Section requires that council be primary legislative organ.** *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

The effect of the language in the opening sentence of this section is to render the council the ultimate repository of all legislative power possessed by the county and not expressly reserved to some other body. *Ritchmount Part-*

*nership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**But does not confer exclusive power to legislate.** — While this section bestows upon the county council ample and complete power to legislate within the limits set forth in the Express Powers Act, it does not necessarily confer the exclusive power to do so. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

The declaration in this section that the council have "full power" to enact local laws does not imply exclusivity. Rather, it is more likely that the phrase "full power" was meant to describe the quality of the legislative power vested in the council and granted by the General Assembly. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Referendum power not inconsistent with section.** — Because the referendum power is a power exercised by the voters after a law has been enacted, rather than a power to enact the law itself, the referendum power is not constitutionally inconsistent with the primacy of the county council as the elected lawmaking body under this section. *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255 (1980).

**Authority to legislate under Home Rule Amendment carefully restricted.** — Those who framed the Home Rule Amendment were fearful of a lawmaking body in continuous session and therefore the new authority to legislate was carefully restricted. *Scull v. Montgomery Citizens League*, 249 Md. 271, 239 A.2d 92 (1968).

**Special election for county council or executive permitted.** — This section permits a county charter to provide for local ordinances establishing special elections to fill vacancies on a county council or in the office of county executive. 66 Op. Att'y Gen. 105 (1981).

**Direct legislative initiative inconsistent with section.** — Direct legislative initiative in Maryland home rule jurisdictions is constitutionally at odds with the primacy of the elected legislative body. *Maryland State Admin. Bd. of Election Laws v. Talbot County*, 316 Md. 332, 558 A.2d 724 (1988).

**Power to initiate legislation cannot be reconciled with this section,** and consequently a charter amendment which concededly constitutes an exercise of the police power, an attempt to legislate by charter initiative, runs afoul of the dictates of this section. *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255 (1980).

**All legislation is to be enacted in legislative session and at the appointed time.** *Scull v. Montgomery Citizens League*, 249 Md. 271, 239 A.2d 92 (1968).

Hence, *Montgomery County "fair housing"*

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ordinance was held invalid because it was enacted by council in executive session when it should have been enacted in a legislative session. *Scully v. Montgomery Citizens League*, 249 Md. 271, 239 A.2d 92 (1968).

**The budget and levy-making power is not affected by the proviso in this section requiring all legislation to be enacted during the time designated for that purpose, and the budget, the appropriations and the tax levy are none of them "legislation" as the word is used in that proviso.** *Schneider v. Lansdale*, 191 Md. 317, 61 A.2d 671 (1948).

**Power of fixing county expenditures and raising money to defray them was not a new power conferred upon the counties but, on the contrary, was a power always previously exercised by an appropriate agency in every county and was not "legislation" in the ordinary acceptance of the term.** *Griffin v. Anne Arundel County*, 25 Md. App. 115, 333 A.2d 612 (1975).

**Chartered counties may alter, etc., English common law.** — Implicit within the grant of "full power" to chartered counties contained in this section is the grant of the power formerly reserved by the Declaration of Rights to the State legislature to alter, revise, or amend the English common law within the express powers granted and to the extent that such a grant by the Constitution is inconsistent with article 5 of the Declaration of Rights, the Constitution must prevail. *County Council v. Investors Funding Corp.*, 270 Md. 403, 312 A.2d 225 (1973).

**Conflict between charter and public general law.** — Any conflict between a county or city charter and a public general law must be resolved in favor of the public general law. *Wilson v. Board of Supvrs. of Elections*, 273 Md. 296, 328 A.2d 305 (1974).

If a charter provision of a county conflicts with a public general law, the State Constitution requires that the charter yield to that public general law. 64 Op. Att'y Gen. 51 (1979).

**Conflict between local charter and public general law governing Public Service Commission must be resolved in favor of latter.** — Laws governing the Public Service Commission and its regulatory control over telephone company are clearly public general laws such that any conflict between a county or city charter and public general law must be resolved in favor of public general law. *Rowe v. C & P Tel. Co.*, 56 Md. App. 23, 466 A.2d 538 (1983).

**Boiler and Pressure Vessel Safety Act does not impliedly preempt local legislation.** — The provisions of the Boiler and Pressure Vessel Safety Act, Article 48, §§ 167-180A, are neither extensive nor comprehensive in the field of boiler repairs, so as to

constitute an implied preemption of local legislation. *East Coast Welding & Constr. Co. v. Refrigeration, Heating & Air Conditioning Bd.*, 72 Md. App. 69, 527 A.2d 796 (1987).

**County guidelines for boiler repair not in conflict with Boiler and Pressure Vessel Safety Act.** — Guidelines for boiler repair adopted by county, which were stricter guidelines than those adopted by the Board of Boiler Rules, are harmonious with the policy and intent of the Boiler and Pressure Vessel Safety Act, Article 48, §§ 167-180A, which is to establish higher safety standards in the maintenance of boiler and pressure vessels, and are not, therefore, invalid as local legislation in conflict with the Public General Laws regarding the same matter. *East Coast Welding & Constr. Co. v. Refrigeration, Heating & Air Conditioning Bd.*, 72 Md. App. 96, 527 A.2d 796 (1987).

**Later public general law prevails over conflicting provision of Express Powers Act.** — When a provision of the Express Powers Act confers a power, which, if exercised, conflicts with a later public general law, the later public general law prevails and suspends exercise of the conflicting power conferred on the subdivision by this article even if the power is one which a charter county is to exercise by means of the property tax levy, and even if the property tax levy is not a "local law" within the meaning of the last sentence of this section. *Rosecroft Trotting & Pacing Ass'n v. Prince George's County*, 298 Md. 580, 471 A.2d 719 (1984).

**Employment discrimination.** — Although abusive employment practices constitute a statewide problem which has been addressed by the General Assembly in Article 49B of the Maryland Code and the Court in *Adler v. American Std. Corp.*, 291 Md. 31, 432 A.2d 464 (1981), the field has not been preempted by the State, and home rule counties have concurrent authority to provide administrative remedies not in conflict with State law; nevertheless, creating a remedy which has traditionally been the sole province of the General Assembly and the Court of Appeals, to combat a statewide problem such as employment discrimination, goes beyond a "matter of purely local concern" and such county code provision affects "matters of significant interest to the entire State" and cannot qualify as a "local law" under this article. *McCrorry Corp. v. Fowler*, 319 Md. 12, 570 A.2d 834 (1990).

**Concurrent power theory allows local legislation in certain fields where the State has acted if the local governments otherwise have authority to enact legislation on the subject.** *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

**Electorate may not circumvent local leg-**

**islative body through charter amendment.** — It is impermissible, under this section for the electorate, through the charter amendment process, to attempt to circumvent the local legislative body by effectively enacting local law. *Griffith v. Wakefield*, 298 Md. 381, 470 A.2d 345 (1984).

**Limitations on power of county to enact ordinances.** — Ordinances which conflict with public general laws are invalid. *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

Ordinances which deal with an area in which the legislature has acted with such force that an intent by the State to occupy the entire field must be implied are invalid. *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

Ordinances which deal with matters which are a part of an entire subject matter on which the legislature has expressly reserved to itself the right to legislate are invalid. *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

Under this section, any ordinance enacted by a county council must meet two tests: First, its subject matter must be affirmatively authorized in the Express Powers Act; and, second, even if the subject matter falls within the county's express powers, the ordinance cannot conflict with any public general law enacted by the Maryland legislature. 63 Op. Att'y Gen. 377 (1978).

**County cannot enact laws effective only for or within particular municipality and not effective elsewhere in the county.** Mayor of Forest Heights v. Frank, 291 Md. 331, 435 A.2d 425 (1981).

The restriction in this section that a county may not enact laws "for" a municipality of any matter within the municipality's power does not mean that a county's general legislation is not effective in municipalities; rather, this restriction reflects an intent that an article XI-A home rule county may not enact a law solely for, and limited to, a particular municipality or particular municipalities if the municipality has power to legislate regarding the matter. Mayor of Forest Heights v. Frank, 291 Md. 331, 435 A.2d 425 (1981).

**But county charter may provide that local laws enacted by county council will not apply in any incorporated municipality without the consent of that municipality's own legislative body.** 67 Op. Att'y Gen. 300 (1982).

**Conflicts between legislative powers of charter counties and municipalities.** — When both a charter county and a municipality exercise their respective home-rule powers on the same subject, there is a potential conflict; such conflicts may be dealt with by the General Assembly through legislation that

regulates and defines the respective legislative powers of the charter counties and municipalities and it is not necessary to amend the Constitution for this purpose. 67 Op. Att'y Gen. 254 (1982).

**Limitations on power of city to enact local laws or ordinances.** — The limitations upon the power of the city of Baltimore to enact local laws or ordinances, including the exercise of its police power, are clear and unmistakable. If a local law or ordinance conflicts in any manner with the Constitution or a public general law, then the local law or ordinance is invalid. *Heubeck v. Mayor of Baltimore*, 205 Md. 203, 107 A.2d 99 (1954).

If a local law or ordinance conflicts in any manner with the Constitution or a public general law, the local law or ordinance is invalid to the extent of such conflict. *Mayor of Baltimore v. Stuyvesant Ins. Co.*, 226 Md. 379, 174 A.2d 153 (1961).

Ordinances which assume directly or indirectly to permit acts or occupations which the State statutes prohibit, or to prohibit acts permitted by statute or the Constitution, are, under the familiar rule for validity of ordinances, uniformly declared to be null and void. *Mayor of Baltimore v. Stuyvesant Ins. Co.*, 226 Md. 379, 174 A.2d 153 (1961); *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969).

Where provisions of a locally enacted law and a law enacted by the legislature are inconsistent, and irreconcilable, a conflict exists and the State law preempts the locally enacted law and is controlling. *Abbott v. Administrative Hearing Bd.*, 33 Md. App. 681, 366 A.2d 756 (1976).

**When conflict exists between ordinance and statute.** — A conflict exists only when an ordinance prohibits something permitted by the legislature, or permits something prohibited by the legislature. *Heubeck v. Mayor of Baltimore*, 205 Md. 203, 107 A.2d 99 (1954); *Montgomery County v. Eli*, 20 Md. App. 269, 315 A.2d 136 (1974).

**Power to repeal or amend local laws on matters covered by express powers granted.** — A regulation of the traffic director of Baltimore City setting speed limits adopted pursuant to an authorizing ordinance was not invalid on the ground that it violated the Baltimore City charter, in view of the fact that this section provides that after the adoption of a charter, the mayor and city council shall have full power to enact local laws of the city, including the power to repeal or amend local laws of the General Assembly, upon all matters covered by the express powers granted, and the charter confers upon the mayor and city council the power to regulate the use of streets. *Pressman v. Barnes*, 209 Md. 544, 121 A.2d 816 (1956).

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This section authorizes a chartered county to repeal or amend local laws of the county enacted by the General Assembly upon all matters covered by powers granted by article 25A of the Code. *Murray v. Director of Planning*, 217 Md. 381, 143 A.2d 85 (1958).

The power to enact local laws conferred upon charter counties by this section includes "the power to repeal or amend local laws . . . enacted by the General Assembly, upon all matters covered by the express powers" granted to such counties. *Montgomery County v. Maryland Soft Drink Ass'n*, 281 Md. 116, 377 A.2d 486 (1977).

Under this section, a chartered county has full power to repeal or amend local laws of the General Assembly applicable solely to the county, so long as the county legislation is covered by one or more of the express powers enumerated in article 25A. *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**A political subdivision may not prohibit what the State by general public law has permitted, but it may prohibit what the State has not expressly permitted.** Stated another way, unless a general public law contains an express denial of the right to act by local authority, the State's prohibition of certain activity in a field does not impliedly guarantee that all other activity shall be free from local regulation and in such a situation the same field may thus be opened to supplemental local regulation. *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969); *County Council v. Investors Funding Corp.*, 270 Md. 403, 312 A.2d 225 (1973).

**Hence, ordinances must not directly or indirectly contravene the general law.** *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969).

**But additional regulation by ordinance to that of State law does not constitute a conflict therewith.** *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969).

That an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith. *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969).

The mere fact that the State, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two, and the requirements of the municipal bylaw are not in themselves pernicious, as being unreasonable or discriminatory, both will stand. The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith, unless the statute limits the requirement for all cases

to its own prescription. Thus, where both an ordinance and a statute are prohibitory and the only difference between them is that the ordinance goes further in its prohibition, but not counter to the prohibition under the statute, and the municipality does not attempt to authorize by the ordinance what the legislature has forbidden or forbid what the legislature has expressly licensed, authorized, or required, there is nothing contradictory between the provisions of the statute and the ordinance because of which they cannot coexist and be effective. Unless legislative provisions are contradictory in the sense that they cannot coexist, they are not deemed inconsistent because of mere lack of uniformity in detail. *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969).

**Inconsistency in General Assembly's act repealed by implication through county's later legislation.** — Where, sometime subsequent to adopting a charter form of government, a county enacted a budget and bond authorization legislation for the same capital project which had previously been authorized by act of the General Assembly, any inconsistent provisions found in the General Assembly's act were repealed by the county's later legislation by implication. *James v. Anderson*, 281 Md. 137, 377 A.2d 865 (1977).

**Municipal authorities may be given concurrent power with the State to punish certain offenses.** *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969).

**City minimum wage ordinance not in conflict with State law.** — A city minimum wage ordinance, in including businesses exempted under State law and prescribing higher minimum wage than that prescribed by State law, was not in conflict with State minimum wage law, but supplemental and complementary thereto. *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969).

Passage of the State minimum wage law does not preempt the field of minimum wage regulation. *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969).

**This article does not require a right of referendum in a charter.** *Scull v. Montgomery Citizens League*, 249 Md. 271, 239 A.2d 92 (1968).

**Act licensing and regulating paper hangers not a "local" law.** — Acts 1935, ch. 335, licensing and regulating paper hangers in Baltimore City, is not a "local" law within meaning of this article. *Dasch v. Jackson*, 170 Md. 251, 183 A. 534 (1936).

**Ordinances passed under the powers conferred upon chartered counties by art. 25A, § 5 (T), are local and are circumscribed by the constitutional provision in this section which mandates that in "any conflict between**

said local law and any Public General Law now or hereafter enacted the Public General Law shall control." *Board of Appeals v. Marina Apts., Inc.*, 272 Md. 691, 326 A.2d 734 (1974).

**Ordinance revoking exemption from taxation held valid.** — An ordinance revoking and repealing the exemption from taxation of certain personal property used in connection with manufacturing and raw material and manufactured products on hand is valid under the Baltimore City charter and the Home Rule Amendment. *Weiss v. Abramson* (Cir. Ct. of Baltimore City), Daily Record, February 28, 1957.

**Appointment and removal of county officers.** — Under the Home Rule Amendment, a home rule county has full power to enact local laws on the subjects covered by the Express Powers Act, and § 5 (Q) of article 25A of the Code empowers a charter county to provide for the appointment and removal of all county officers except those whose appointment or election is provided for by the Constitution or public general law. *Murray v. Director of Planning*, 217 Md. 381, 143 A.2d 85 (1958).

An act passed by the county council of Baltimore County, which provided, inter alia, for the appointment, by the county administrative officer, of a director of planning and zoning, who would then appoint a deputy director of planning, a zoning commissioner and a deputy zoning commissioner, to take the place of the director of planning, the zoning commissioner and the deputy zoning commissioner appointed by the county administrative officer pursuant to the charter, did not conflict with the Home Rule Amendment or the Express Powers Act. *Murray v. Director of Planning*, 217 Md. 381, 143 A.2d 85 (1958).

**Regulation of taxi stands.** — Since the adoption of a charter by Baltimore City in 1918 pursuant to the Home Rule Amendment to the Maryland Constitution, the mayor and city council have had the power to regulate taxicab stands in that city and may, by ordinance, repeal or amend a law in regard to them, which had been enacted by the General Assembly prior to the adoption of the charter. *G.I. Veterans' Taxicab Ass'n v. Yellow Cab Co.*, 192 Md. 551, 65 A.2d 173 (1949).

**Charter provision not suspended or repealed.** — Section 553 of the Baltimore City charter (1938 ed.) was not suspended or repealed by Acts 1943, ch. 479. *Wells v. Price*, 183 Md. 443, 37 A.2d 888 (1944).

**The president of a board of county commissioners is the chief executive officer of that body.** *Walker v. Board of County Comm'rs*, 208 Md. 72, 116 A.2d 393, cert. denied, 350 U.S. 902, 76 S. Ct. 180, 100 L. Ed. 792 (1955).

**Montgomery County's charter did not**

**provide for an elected chief executive.** Rather, it conferred upon the county council not only the legislative power which this article demands, but also the executive functions of government. *Scull v. Montgomery Citizens League*, 249 Md. 271, 239 A.2d 92 (1968).

**Montgomery County Fair Landlord-Tenant Relations Act properly enacted.** — The Montgomery County Council had the authority, within the limits of the powers granted to it by this article and article 25A of the Code, to enact the Montgomery County Fair Landlord-Tenant Relations Act containing provisions in derogation of the common law. *County Council v. Investors Funding Corp.*, 270 Md. 403, 312 A.2d 225 (1973).

Montgomery County Council had the basic authority under its Home Rule Charter to enact local legislation regulatory of the apartment rental business and landlord-tenant relationships and activities within the county. *County Council v. Investors Funding Corp.*, 270 Md. 403, 312 A.2d 225 (1973).

**But certain of its provisions violate section.** — Provisions of the Montgomery County Fair Landlord-Tenant Relations Act which make retaliatory evictions unlawful are in conflict with RP § 8-402 (b) which grants a landlord a substantive legal right to evict, whether in retaliation or otherwise, and therefore are invalid under this section. *County Council v. Investors Funding Corp.*, 270 Md. 403, 312 A.2d 225 (1973).

Provisions of the Montgomery County Fair Landlord-Tenant Relations Act which require that leases be executed in duplicate and a copy provided to the tenant at the time of execution are in conflict with RP §§ 5-101 and 5-102, which recognize and permit oral leases, and therefore are invalid under this section. *County Council v. Investors Funding Corp.*, 270 Md. 403, 312 A.2d 225 (1973).

**Montgomery County ordinances designed to regulate campaign finance practices are invalid.** — The Montgomery County ordinances designed to regulate campaign finance practices of candidates for the county executive and the County Council are invalid because the General Assembly has preempted the field of election financing practices. *County Council v. Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596 (1975).

**Provisions of Baltimore County charter for countywide election of councilmen from residence districts are valid under State and county law.** *Gray v. Board of Supvrs. of Elections*, 243 Md. 657, 222 A.2d 176 (1966).

**Washington Suburban Sanitary Commission's jurisdiction not countermanded by board established under local law.** — The Washington Suburban Sanitary Commission's jurisdiction, which it possesses under the pub-

## Art. XI-A, § 3A REGISTRATION AND ELECTION LAWS

lic general law, to authorize sewer service cannot be countermanded by a board established under local law to enforce a local building code. Therefore, even though section adopted by the Montgomery County Code may be interpreted on its face as granting broad power to the County in this sewer availability area, this authority may not be exercised so as to impinge upon the decisions made by the Washington Suburban Sanitary Commission under its general law jurisdiction. *Board of Appeals v. Marina Apts., Inc.*, 272 Md. 691, 326 A.2d 734 (1974).

**County tax imposed on distributors of nonreusable beverage containers to dealers.** — A county tax of moderate amount, which was imposed on every distributor who supplied nonreusable beverage containers to dealers was not a regulatory measure but a revenue-raising device, and hence was not enacted in contravention of this section. *Montgomery County v. Maryland Soft Drink Ass'n*, 281 Md. 116, 377 A.2d 486 (1977).

**Historic preservation.** — Chartered counties have the power to enact laws for historic preservation. 60 Op. Att'y Gen. 569 (1975).

**Certification of group residential facilities.** — State law precludes a charter county from enacting local laws requiring county certification of group residential facilities, because the legislature has preempted this licensing field. 63 Op. Att'y Gen. 377 (1978).

**Field of education has been preempted by the State.** *McCarthy v. Board of Educ.*, 280 Md. 634, 374 A.2d 1135 (1977).

**Prince George's County is a government**

**of limited powers.** 63 Op. Att'y Gen. 377 (1978).

**Applied in** *Dietrich v. Canton R.R.*, 220 Md. 127, 151 A.2d 163 (1959); *Leet v. Montgomery County*, 264 Md. 606, 287 A.2d 491 (1972); *Prince George's County v. Maryland-National Capital Park & Planning Comm'n*, 269 Md. 202, 306 A.2d 223, cert. denied, 414 U.S. 1068, 94 S. Ct. 577, 38 L. Ed. 2d 473 (1973); *Hampton Assocs. v. Baltimore County*, 66 Md. App. 551, 505 A.2d 537 (1986).

**Quoted in** *Yorkdale Corp. v. Powell*, 237 Md. 121, 205 A.2d 269 (1964); *Montgomery Citizens League v. Greenhalgh*, 253 Md. 151, 252 A.2d 242 (1969); *Barranca v. Prince George's County*, 264 Md. 562, 287 A.2d 286 (1972); *Montgomery County Bd. of Realtors, Inc. v. Montgomery County*, 287 Md. 101, 411 A.2d 97 (1980); *Hope v. Baltimore County*, 288 Md. 656, 421 A.2d 576 (1980).

**Stated in** *County Comm'rs v. Supervisors of Elections*, 192 Md. 196, 63 A.2d 735 (1949); *Prince George's County v. Blumberg*, 288 Md. 275, 418 A.2d 1155 (1980), cert. denied, 449 U.S. 1083, 101 S. Ct. 869, 66 L. Ed. 2d 808 (1981).

**Cited in** *Herman v. Mayor of Baltimore*, 189 Md. 191, 55 A.2d 491 (1947); *Ames v. Board of Supvrs. of Elections*, 195 Md. 543, 74 A.2d 29 (1950); *Hitchins v. Mayor of Cumberland*, 208 Md. 134, 117 A.2d 854 (1955); *Pressman v. D'Alesandro*, 211 Md. 50, 125 A.2d 35 (1956); *Harford County v. Board of Supvrs. of Elections*, 272 Md. 33, 321 A.2d 151 (1974); *Harbor Island Marina, Inc. v. Board of County Comm'rs*, 286 Md. 303, 407 A.2d 738 (1979).

### Section 3A. Method of election of members of county councils; special provisions for Harford County.

(a) The charter for the government of any county governed by the provisions of this Article may provide for the election of members of the county council by the voters of councilmanic districts therein established, or by the voters of the entire county, or by a combination of these methods of election.

(b) Repealed.

(c) Repealed.

(d) Notwithstanding any other provision of this Constitution, the Charter for the government of Harford County under the provisions of this Article, either as adopted, or by amendment, shall provide for the election of members of the County Council by the voters of the entire county. (1971, ch. 358, ratified Nov. 7, 1972; 1975, ch. 785, ratified Nov. 2, 1976; 1977, ch. 682, ratified Nov. 7, 1978; 1980, ch. 136, ratified Nov. 4, 1980; 1982, ch. 729, ratified Nov. 2, 1982; 1986, ch. 694, ratified Nov. 4, 1986; 1986, ch. 707, ratified Nov. 4, 1986.)

**Section 5. Amendments to charters.**

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 the City of Baltimore, or the Council of the County, or by a petition signed by not less than 20% of the registered voters of the City or County, provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition. A petition shall be filed with the Mayor of Baltimore or the President of the County Council. An amendment so proposed shall be submitted to the voters of the City or County at the next general or congressional election occurring after the passage of the resolution or the filing of the petition. If at the election the majority of the votes cast for and against the amendment shall be in favor thereof, the amendment shall be adopted and become a part of the charter of the City or County from and after the thirtieth day after said election. The amendments shall be published by the Mayor of Baltimore or President of the County Council once a week for five successive weeks prior to the election in at least one newspaper published in said City or County. (1914, ch. 416, ratified Nov. 2, 1915; 1977, ch. 681, ratified Nov. 7, 1978.)

**University of Baltimore Law Review.** — For note discussing *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255 (1980), cited in the notes below, see 11 U. Balt. L. Rev. 158 (1981).

**Charter amendment is limited in substance.** — Absent an intention to permit a contrary usage, a charter amendment, within the context of this article, is necessarily limited in substance to amending the form or structure of government initially established by adoption of the charter. A charter amendment, therefore, differs in its fundamental character from a simple legislative enactment. *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255 (1980).

**Article 33, § 23-5 (4)'s limitation on expenditure for petition solicitors in initiative measures is an undue infringement on the rights of political expression and to that extent is void.** *Ficker v. Montgomery County Bd. of Elections*, 670 F. Supp. 618 (D. Md. 1985).

**Amendment deemed legislative in character.** — Where an amendment is not addressed to the form or structure of government in any fundamental sense and is not, therefore, "charter material," it is essentially legislative in character. *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255 (1980).

**Conflict between proposed charter amendment and public general laws.** — Court should enjoin the submission to the electorate of a proposed charter amendment which

is in conflict with public general law. *Montgomery County v. Board of Supvrs. of Elections*, 311 Md. 512, 536 A.2d 641 (1988).

**The charter of Baltimore City may be amended only as outlined in this section.** *Graham v. Joyce*, 151 Md. 298, 134 A. 332 (1926).

**Amendment not given retroactive effect.** — An amendment to the Baltimore City charter, creating the commission on city plan, was not to be given a retroactive effect. *Chayt v. Maryland Jockey Club*, 179 Md. 390, 18 A.2d 856 (1941).

**Submission of bond bills to voters in Harford County.** — Harford County may, by charter amendment but not solely by ordinance, provide that certain bond bills must be submitted to county voters for their approval. 63 Op. Att'y Gen. 291 (1978).

**Amendment to charter to establish a comprehensive system of rent control is in derogation of this system.** *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255 (1980).

**Applied in** *Cole v. Secretary of State*, 249 Md. 425, 240 A.2d 272 (1968).

**Quoted in** *Harford County v. Schultz*, 280 Md. 77, 371 A.2d 428 (1977); *Griffith v. Wakefield*, 298 Md. 381, 470 A.2d 345 (1984).

**Cited in** *Montgomery County Council v. Garrott*, 243 Md. 634, 222 A.2d 164 (1966); *Ritchmont Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).



**Art. XI-A, § 7 REGISTRATION AND ELECTION LAWS**

**Section 7. "Petition" defined; authentication of signatures; duties of General Assembly; false signing and false affidavits.**

The word "Petition" as used in this Article means one or more sheets written or printed, or partly written and partly printed. There shall be attached to each paper of signatures filed with a petition an affidavit of the person procuring those signatures that the signatures were affixed in his presence and that, based upon the person's best knowledge and belief, every signature on the paper is genuine and bona fide and that the signers are registered voters at the address set opposite or below their names. The General Assembly shall prescribe by law the form of the petition, the manner for verifying its authenticity, and other administrative procedures which facilitate the petition process and which are not in conflict with this Article. 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. (1914, ch. 416, ratified Nov. 2, 1915; 1982, ch. 849, ratified Nov. 2, 1982.)

**Purpose of this provision is that there be substantial public support for proposed charter amendment** before it is submitted to the voters of a county. *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

**Approved amendment not invalidated by omission of signers' districts from petition.** — Where a proposed county charter amendment restricting the levy of real property taxes was approved by voters at a general election, the adoption of the amendment was not invalid for failure of the amendment petition to include the election districts and precincts of the signers. *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

**Significance of ward or district and precinct requirement.** — What is known today as "permanent registration" did not exist at the time of the adoption of this section at the general election of 1915. At that time, two registry books (one for the registrar of each of the major parties) were provided for each polling place; to verify whether the signer of a petition was registered, one would have had to check the registry book for the signer's polling place. Thus, it would have been important to know the ward or district and precinct in which he was registered. *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

## ARTICLE XI-F

## HOME RULE FOR CODE COUNTIES

**Section 2. Procedure for becoming code county.**

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. (1965, ch. 493, ratified Nov. 8, 1966.)

University of Baltimore Law Review. — non-legislative body, see 11 U. Balt. L. Rev.  
For note discussing exercise of police power by 158 (1981).

**Art. XIV, § 1 REGISTRATION AND ELECTION LAWS**

**ARTICLE XIV**

**AMENDMENTS TO THE CONSTITUTION**

**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 requirement in this section that an amendment proposed by the General Assembly shall be embraced in a separate bill shall not be construed or applied to prevent the General Assembly from (1) proposing in one bill a series of amendments to the Constitution of Maryland for the general purpose of removing or correcting constitutional provisions which are obsolete, inaccurate, invalid, unconstitutional, or duplicative; or (2) embodying in a single Constitutional amendment one or more Articles of the Constitution so long as that Constitutional amendment embraces only a single subject. The bill or bills proposing amendment or amendments shall be publicized, either by publishing, 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, or as otherwise ordered by the Governor in a manner provided by law, 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. If the General Assembly determines that a proposed constitutional amendment affects only one county or the City of Baltimore, the proposed amendment shall be part of the Constitution if it receives a majority of the votes cast in the State and in the affected County or City of Baltimore, as the case may be. When two or more amendments shall be submitted to the voters of this State at the same election, they shall be so submitted as that each amendment shall be voted on separately. (1941, ch. 337, rejected Nov. 3, 1942; 1943, ch. 476, ratified Nov. 7, 1944; 1972, ch. 367, ratified Nov. 7, 1972; 1977, ch. 679, ratified Nov. 7, 1978; 1978, ch. 975, ratified Nov. 7, 1978.)

**Maryland Law Review.** — For article, "County Home Rule — Sharing the State's Legislative Power with Maryland Counties," see 28 Md. L. Rev. 327 (1968).

For note, "Discipline of Judges in Maryland," see 34 Md. L. Rev. 612 (1974).

**History and purpose of this section.** — See *Andrews v. Governor of Md.*, 294 Md. 285, 449 A.2d 1144 (1982).

**The language of this article is clear, explicit and unambiguous.** *Bourbon v. Governor of Md.*, 258 Md. 252, 265 A.2d 477 (1970).

**Methods of amending various Maryland Constitutions and prerogative of Governor thereunder.** — See *Warfield v. Vandiver*, 101 Md. 78, 60 A. 538 (1905).

**The provisions of this section are mandatory.** *Hillman v. Stockett*, 183 Md. 641, 39 A.2d 803 (1944).

The provisions of the Constitution as to its own amendment are mandatory upon the legislature, and if they are not followed, a proposal not in conformity with them should not be submitted to the voters. *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

Provisions of a constitution regulating its own amendment, otherwise than by a convention, are not merely directory, but are mandatory; and a strict observance of every substantial requirement is essential to the validity of the proposed amendment. *Andrews v. Governor of Md.*, 294 Md. 285, 449 A.2d 1144 (1982).

The word "amendment," as used in this section, means a proposal of changes in a particular subject, such as the State judiciary. The legislature was empowered in the first instance to determine what changes it considered advisable and to put these changes in one bill, this whether they were all in one section of the Constitution or whether they were in several sections, or whether they were not in the Constitution at all, and new sections had to be added. *Hillman v. Stockett*, 183 Md. 641, 39 A.2d 803 (1944).

**Legislature's power limited.** — In acting under a provision in a state constitution like this section, the legislature does not exercise its ordinary legislative power or any sovereignty of the people that has been entrusted to it, but acts under a limited power which the people have conferred upon it and which with equal propriety and appropriateness might have been conferred upon either house, the Governor, a special commission or other body or tribunal. In proposing amendment of the Constitution the legislature does not have the plenary powers it has in enacting laws but only the powers specifically delegated to it. *Bourbon v. Governor of Md.*, 258 Md. 252, 265 A.2d 477 (1970).

**Legislature cannot remake the Constitution.** — The general power of the State legisla-

ture 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. *Bourbon v. Governor of Md.*, 258 Md. 252, 265 A.2d 477 (1970).

**Section designed to prevent "logrolling" in submission of constitutional amendment.** — The provisions of this section are aimed at preventing the pernicious practice of "logrolling" in the submission of a constitutional amendment. Logrolling occurs when two or more propositions essentially dissimilar in subject matter are submitted to the electorate in one amendment so that the voter may cast one expression of his vote answer on the measure as a whole. The voter is thus bound in order to secure the enactment of the provision he favors, to vote for others of which he may disapprove. *Andrews v. Governor of Md.*, 294 Md. 285, 449 A.2d 1144 (1982).

**Procedures in making proposal.** — The people contemplated in adopting this section that in making a proposal for amendment the legislature necessarily would avail itself of some of the powers and procedures customarily used in legislating. *Bourbon v. Governor of Md.*, 258 Md. 252, 265 A.2d 477 (1970).

The people in this section have delegated to the legislature the power to suggest, to propose, to offer to the electorate a proposal or project for their adoption or rejection. This proposal or project is to be set forth in a bill passed as specified. *Bourbon v. Governor of Md.*, 258 Md. 252, 265 A.2d 477 (1970).

**General Assembly may propose amendments and prescribe form in which they are submitted.** — The Constitution declares that proposed amendments shall be submitted in a form to be prescribed by the General Assembly. Obviously this means that the same body which may propose amendments may also prescribe the form, that is the method, in which they shall be submitted. *Morris v. Governor of Md.*, 263 Md. 20, 281 A.2d 216 (1971).

The legislature may prescribe the form in which an amendment is to be submitted to the voters by the general enactment which is now § 16-6 of article 33 of the Code, and the authority given the Secretary of State to choose between a legislative title for a proposed amendment and a summary he has prepared is not an impermissible delegation of legislative power. *Morris v. Governor of Md.*, 263 Md. 20, 281 A.2d 216 (1971).

**Separate vote and separate bill provisions of this section must be construed together** as serving the same objectives and as being directed at the same evils. *Andrews v. Governor of Md.*, 294 Md. 285, 449 A.2d 1144 (1982).

**Separate vote requirement not violated**

## Art. XIV, § 1 REGISTRATION AND ELECTION LAWS

**where proposals constitute consistent and workable whole.** — When two or more amendments dealing with the same subject are so functionally interrelated that they may have been submitted as one amendment, but, for purposes of highlighting their significance and to avoid confusion of the electorate, are set out individually, and when the connection and interdependence of such amendments are emphasized by making the passage of one contingent on the passage of the other to the effect that the proposals constitute a consistent and workable whole then, in such case, the separate vote requirement of this section has not been violated. *Andrews v. Governor of Md.*, 294 Md. 285, 449 A.2d 1144 (1982).

**Every reasonable presumption favoring validity of ratified constitutional amendment will be indulged.** — When a constitutional amendment has been ratified by the electorate every reasonable presumption in favor of its validity will be indulged in and the party challenging its validity will be saddled with the burden of clearly establishing its constitutional infirmity. *Andrews v. Governor of Md.*, 294 Md. 285, 449 A.2d 1144 (1982).

**Series of amendments proposing removal or correction of constitutional provisions** properly characterized as obsolete, inaccurate, unconstitutional or duplicative may be combined in a single bill and submitted to the voters as a single ballot question. 60 Op. Att'y Gen. 78 (1975).

**Each section to be changed need not be placed in separate amendment.** — It is a reasonable conclusion that the framers of the Constitution did not intend, if the legislature desired to change two or more sections of an article, that each section had to be placed in a separate amendment. *Hillman v. Stockett*, 183 Md. 641, 39 A.2d 803 (1944).

**And only sections to be amended need be set out in bill.** — If certain changed sections of an article are proposed as one amendment, it is only necessary to include those sections as amended, in the bill, and it is neither necessary nor proper to put all the other sections of the article which are not amended in the bill with the amended sections. *Hillman v. Stockett*, 183 Md. 641, 39 A.2d 803 (1944).

**Amendments which simply relocate and renumber various sections of Constitution** could legally be included in a single omnibus amendment removing or correcting various obsolete and similar provisions as permitted by this section. 61 Op. Att'y Gen. 139 (1976).

**Proposed amendment containing unrelated matters.** — It cannot be assumed that the legislature would propose an amendment, which might contain matters obviously not related, but if it did, then the courts would have power to pass upon the proposal and to deter-

mine whether or not this article had been followed. In the absence of a clear violation, the judgment of the legislature as to what is related and what is not related should be respected, and the courts should not interfere. *Hillman v. Stockett*, 183 Md. 641, 39 A.2d 803 (1944).

**Bill need not be set out verbatim on journals.** — An act proposing an amendment to the Constitution need not be set out verbatim on the journals. *Worman v. Hagan*, 78 Md. 152, 27 A. 616 (1893).

**The term "General Assembly" as used in this section means the two houses of the legislature.** *Warfield v. Vandiver*, 101 Md. 78, 60 A. 538 (1905).

**Bill inoperative until adopted.** — A bill embodying an amendment is no more than a proposal and is inoperative from its passage until its adoption by the electorate. *Bourbon v. Governor of Md.*, 258 Md. 252, 265 A.2d 477 (1970).

The bill which is the proposal or project is inoperative unless and until adopted by the voters. To use the loose analogy of contract law, the legislature makes an offer to the people which the people have no chance or right to accept until it is, as directed by this section, published during the weeks immediately preceding the election, at which the offer is to be accepted or refused by the voters. *Bourbon v. Governor of Md.*, 258 Md. 252, 265 A.2d 477 (1970).

**The legislature can validly recall and reframe a proposal for amendment of the Constitution before the specified time for submitting the proposal to the electorate arises.** *Bourbon v. Governor of Md.*, 258 Md. 252, 265 A.2d 477 (1970).

In this section, the people made the legislature the entity to formulate and offer to the electorate proposals for its approval or rejection for changes in the organic law, and this section does not say or indicate that such a proposal that has not actually come before the electorate for consideration in the manner specified may not be reconsidered and reformulated by the proposing entity. *Bourbon v. Governor of Md.*, 258 Md. 252, 265 A.2d 477 (1970).

The people did not reserve a vested right to vote on a formalized proposal for amendment that has not yet been published, and the same legislature that has made a proposal under the power conferred on it by the people in this section can later reconsider its action and offer another proposal, formalized as this section requires. *Bourbon v. Governor of Md.*, 258 Md. 252, 265 A.2d 477 (1970).

**And proposed amendment need not be submitted to Governor for his approval.** — A proposed amendment to the Constitution need not be submitted to the Governor for his

approval before it is voted on by the people, and the Governor has no authority to veto such a bill. *Warfield v. Vandiver*, 101 Md. 78, 60 A. 538 (1905).

A bill proposing an amendment to the Constitution need not be submitted to the Governor for signature because it is not a potential law enacted under the Constitution but a potential part of the Constitution. *Bourbon v. Governor of Md.*, 258 Md. 252, 265 A.2d 477 (1970).

**Bills held not to contain distinct legislation requiring approval of Governor.** — Bills proposing constitutional amendments did not contain such distinct legislation as to require the approval of the Governor. *Warfield v. Vandiver*, 101 Md. 78, 60 A. 538 (1905).

**Mandamus may issue to command the governor to publish proposed amendments to the Constitution in accordance with this section.** *Warfield v. Vandiver*, 101 Md. 78, 60 A. 538 (1905).

**Governor has exclusive power to ascertain result to vote.** — Since this section confides to the Governor exclusively the power and duty of ascertaining the result of a vote on a constitutional amendment, no jurisdiction is conferred on the Court of Appeals to revise his decision. *Worman v. Hagan*, 78 Md. 152, 27 A. 616 (1893).

**And on his proclamation amendment becomes part of Constitution.** — Upon the proclamation of the Governor that a proposed amendment has received a majority of the votes cast, it becomes eo instanti a part of the Constitution. *Worman v. Hagan*, 78 Md. 152, 27 A. 616 (1893).

**The words "general election" are mandatory.** *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

**And cannot be circumvented.** — The mandatory provision of this section that amendments be submitted at the next ensuing general election cannot be circumvented by merely calling a special election a "general election." *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

**The words "general election" used in this section are clear and unambiguous.** *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

**"General election" defined.** — A "general election" is an election at which State or national officers are elected on a statewide basis. *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

"General elections" are those regularly scheduled for the purpose of selecting officers by the electoral process. *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

A "general election" regularly recurs at fixed intervals without any other requirements than

the lapse of time. *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

A "general election" is defined, in part, as "One at which the officers to be elected are such as belong to the general government — that is, the general and central political organization of the whole State; as distinguished from an election for a particular locality only. Also, one held for the selection of an officer after the expiration of the full term of the former officer." *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

A "general election" is concerned with the statewide election of representatives of the people and is "general" both in the sense of scope and in the sense of the principal purpose of elections, i.e., the selection of representatives of the people by ballot. A "general election" is to be contrasted with a "special election" which may be limited as to "scope," as, for example, when local officials in a particular political subdivision are elected, or as to "purpose," when, for example, an issue or issues are presented to the electorate, or to a "primary election" which may be statewide in scope, but which involves only the selection of candidates of particular political parties or independent candidates for presentation to the electorate at the next general election. *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

Any election which is not regularly held for the election of officers or for some other purpose which shall come before citizens at regular fixed intervals is a "special election"; whilst "general elections" are those held upon fixed dates for the choosing of officers for regular periods of time and at which voters may exercise their choice by casting their ballots. *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

A "special election" is defined, in part, as an election for a particular emergency; out of the regular course. In determining whether an election is special or general, regard must be had to the subject matter as well as the date of the election, and, if an election occurs throughout the State uniformly by direct operation of law, it is a "general election." *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

The submission of an issue apart from the election of officers cannot be a "general election." *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

The submission of the amendments for adoption or rejection does not constitute a "general election" but the submission is at the next ensuing general election, which is one as ordinarily and usually defined. *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

The consideration of proposed constitutional amendments under this section does not, in itself, constitute a "general election," since such

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consideration by the electorate is submitted to "the next ensuing general election, at which the proposed amendment or amendments shall be submitted." *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

**"Special election" defined.** — An "election" for the sole purpose of the submission of issues to the electorate is a "special election." *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

**Acts 1969, ch. 76, unconstitutional.** — The election provided for by Acts 1969, ch. 76, is not a "general election" under the meaning of the constitutional language, but is a "special election" at which constitutional amendments may not be submitted for adoption or rejection by the electorate. It is therefore unconstitutional and void as being in conflict with the provisions of the fundamental law. *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

**Act proposing amendment held to comply with section.** — Acts 1943, ch. 772, proposing an amendment to article IV, held to comply with provisions of this article. *Hillman v. Stockett*, 183 Md. 641, 39 A.2d 803 (1944).

**Chapters 523 and 524, Acts 1980, do not violate this section.** — Chapters 523 and 524, Acts 1980, concerning, respectively, the consolidation of the Baltimore City court system and the removal of causes, do not violate this section and they represent valid amendments to the Maryland Constitution. *Andrews v. Governor of Md.*, 294 Md. 285, 449 A.2d 1144 (1982).

**Quoted in** *Dutton v. Tawes*, 225 Md. 484, 171 A.2d 688, appeal dismissed, 368 U.S. 345, 82 S. Ct. 385, 7 L. Ed. 2d 342 (1961).

**Stated in** *Maryland Comm. for Fair Representation v. Tawes*, 228 Md. 412, 180 A.2d 656 (1962); *Maryland Comm. for Fair Representation v. Tawes*, 377 U.S. 656, 84 S. Ct. 1442, 12 L. Ed. 2d 595 (1964).

**Cited in** *Brawner v. Supervisors of Elections*, 141 Md. 586, 119 A. 250 (1922); *Maryland-National Capital Park & Planning Comm'n v. Randall*, 209 Md. 18, 120 A.2d 195 (1956); *Bell v. Maryland*, 378 U.S. 226, 84 S. Ct. 1814, 12 L. Ed. 2d 822 (1964); *Board of Supvrs. of Elections v. Attorney General*, 246 Md. 417, 229 A.2d 388 (1967); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

### Section 1A. Provisions of limited duration.

A proposed Constitutional Amendment which, by provisions that are of limited duration, provides for a period of transition, or a unique schedule under which the terms of the amendment are to become effective, shall set forth those provisions in the amendment as a section or sections of a separate article, to be known as "Provisions of Limited Duration", and state the date upon which or the circumstances under which those provisions shall expire. If the Constitutional Amendment is adopted, those provisions of limited duration shall have the same force and effect as any other part of the Constitution, except that they shall remain a part of the Constitution only so long as their terms require. Each new section of the article known as "Provisions of Limited Duration" shall refer to the title and section of the other article of the Constitution of which it, temporarily, is a part. (1977, ch. 680, ratified Nov. 7, 1978.)

### 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. (1956, ch. 99, ratified Nov. 6, 1956.)

**Maryland Law Review.** — For article discussing the history of Maryland legislative apportionment, see 25 Md. L. Rev. 1 (1965).

**Representation in legislature.** — Notwithstanding the unconstitutionality of Maryland Constitution, former article III, § 5, the representation in the legislature does not violate the civil rights statutes, nor this section of the Maryland Constitution, nor articles 1, 7 and 45 of the Maryland Declaration of Rights. Maryland Comm. for Fair Representation v. Tawes, Equity Case No. 13,920 in the Circuit Court of Anne Arundel County, May 24, 1962.

**Applied in** *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

**Quoted in** Maryland Comm. for Fair Representation v. Tawes, 377 U.S. 656, 84 S. Ct. 1442, 12 L. Ed. 2d 595 (1964).

**Stated in** Maryland Comm. for Fair Representation v. Tawes, 228 Md. 412, 180 A.2d 656 (1962).

**Cited in** Board of Supvrs. of Elections v. Attorney General, 246 Md. 417, 229 A.2d 388 (1967).



ARTICLE XV

MISCELLANEOUS

**Section 2. Suspension and removal of elected officials convicted of crimes.**

Any elected official of the State, or of a county or of a municipal corporation who during his term of office is convicted of or enters a plea of nolo contendere to any crime which is a felony, or which is a misdemeanor related to his public duties and responsibilities and involves moral turpitude for which the penalty may be incarceration in any penal institution, shall be suspended by operation of law without pay or benefits from the elective office. During and for the period of suspension of the elected official, the appropriate governing body and/or official authorized by law to fill any vacancy in the elective office shall appoint a person to temporarily fill the elective office, provided that if the elective office is one for which automatic succession is provided by law, then in such event the person entitled to succeed to the office shall temporarily fill the elective office. If the conviction becomes final, after judicial review or otherwise, such elected official shall be removed from the elective office by operation of Law and the office shall be deemed vacant. If the conviction of the elected official is reversed or overturned, the elected official shall be reinstated by operation of Law to the elective office for the remainder, if any, of the elective term of office during which he was so suspended or removed, and all pay and benefits shall be restored. (1974, ch. 879, ratified Nov. 5, 1974; 1977, ch. 681, ratified Nov. 7, 1978.)

**Maryland Law Review.** — For note, "Discipline of Judges in Maryland," see 34 Md. L. Rev. 612 (1974).

For article, "Survey of Developments in Maryland Law, 1986-87," see 47 Md. L. Rev. 739 (1988).

**Section should be construed with equity.** — The important constitutional remedies provided by this section when a conviction is reversed or overturned should be construed in accordance with the concept of equity. 67 Op. Att'y Gen. 334 (1982).

**Maryland law governs definition conviction** in this section. 62 Op. Att'y Gen. 365 (1977).

**Meaning of "conviction".** — "Conviction" in this section means judgment of conviction, which includes imposition of sentence. 62 Op. Att'y Gen. 365 (1977).

The word "convicted" in this section means the judgment of conviction which occurs upon sentencing. 62 Op. Att'y Gen. 365 (1977).

**Suspension cannot be delayed pending appeal.** — Suspension of an elected official for a conviction cannot be delayed pending appeal but becomes effective upon denial of a motion for new trial and the imposition of sentence. 62 Op. Att'y Gen. 365 (1977).

Under this section, the suspension of an elected official convicted of a specified crime takes effect without regard to the pendency of any appeal. 62 Op. Att'y Gen. 365 (1977).

**Temporary appointee entitled to officeholder's normal salary.** — The temporary appointment of a person to fill an elective office made vacant by operation of law under the conditions described in this section entitles that person to the officeholder's normal salary. 60 Op. Att'y Gen. 60 (1975).

**Effect of reversal of conviction.** — Under the plain terms of this section, a suspended elected official is entitled to the return of his office, as well as back pay and lost benefits, if his conviction is "reversed or overturned." 67 Op. Att'y Gen. 334 (1982).

**Time of judgment in appellate court determines occurrence of reversal.** — Because the time of judgment is the essential factor in determining when a conviction has occurred under this section, consistency would dictate that the time of judgment in the appellate court similarly be the central factor in determining when a reversal has occurred. 67 Op. Att'y Gen. 334 (1982).

**Effect of section in case of gubernatorial**

suspension for conviction of a crime is to expand the succession scheme of Md. Const., article II, § 6 to provide for a special type of disability by operation of law during which the Lieutenant Governor serves as acting Governor under a somewhat special mandate but otherwise subject to the succession provisions. 62 Op. Att'y Gen. 464 (1977).

**Effect of suspension upon Governor.** — Upon suspension from office pursuant to this section, the Governor is denied the pay and benefits of his office, but would be entitled to back pay and the restoration of compensation and benefits if his conviction is reversed. 62 Op. Att'y Gen. 464 (1977).

**Pension payments to convicted Governor.** — This section does not mandate the suspension of legislative or gubernatorial pension payments to a former Governor because of the reinstatement of his conviction. 65 Op. Att'y Gen. 445 (November 5, 1980).

**Effect upon Lieutenant Governor of gubernatorial suspension for criminal conviction.** — When a Governor is suspended from office pursuant to this section, the Lieutenant Governor becomes acting Governor and does not acquire title to the office of Governor. 62 Op. Att'y Gen. 464 (1977).

During period Governor is suspended from office pursuant to this section, the Lieutenant Governor retains his existing office and should

not subscribe to a new oath of office. 62 Op. Att'y Gen. 464 (1977).

When the Governor is suspended from office by operation of law as set forth in this section, the Lieutenant Governor becomes acting Governor without creating a vacancy in either office and accordingly, an acting Governor is not authorized to appoint a Lieutenant Governor during the period of the Governor's suspension from office. 62 Op. Att'y Gen. 464 (1977).

During period Governor is suspended from office pursuant to this section, the Lieutenant Governor is entitled to the compensation of that office and not the compensation of the office of Governor. 62 Op. Att'y Gen. 464 (1977).

During period Governor is suspended from office pursuant to this section, the Lieutenant Governor as acting Governor is entitled to receive the advantages and perquisites provided to the Governor to enable him to discharge the duties and responsibilities of the office. 62 Op. Att'y Gen. 464 (1977).

During period Governor is suspended from office pursuant to this section, the Lieutenant Governor as acting Governor may utilize the staffs of both those offices. 62 Op. Att'y Gen. 464 (1977).

**Payment of back pay in 1979 to former Governor Marvin Mandel was proper** under the provisions of this section. 67 Op. Att'y Gen. 334 (1982).

### **Section 3. Members of certain organizations ineligible to hold office or positions of profit or trust.**

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. (1896, ch. 459, rejected Nov. 2, 1897; 1947, ch. 721, ratified Nov. 2, 1948; 1977, ch. 681, ratified Nov. 7, 1978.)

Quoted in *Whitehill v. Elkins*, 389 U.S. 54, 19 L. Ed. 2d 228, 88 S. Ct. 184 (1967).

Cited in *Hammond v. Lancaster*, 194 Md. 462, 71 A.2d 474 (1950); *Shub v. Simpson*, 196 Md. 177, 76 A.2d 332, appeal dismissed, 340 U.S. 881, 71 S. Ct. 198, 95 L. Ed. 640 (1950).

### **Section 7. Time for holding general elections.**

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. (1956, ch. 99, ratified Nov. 6, 1956.)

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**Applied in** *Maryland Citizens for a Representative Gen. Assy. v. Governor of Md.*, 429 F.2d 606 (4th Cir. 1970).

**Cited in** *Wells v. Munroe*, 86 Md. 443, 38 A. 987 (1897); *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

ARTICLE XVI

THE REFERENDUM

**Section 1. Reservation of power of referendum in people; article self-executing; additional legislation.**

(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;

(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. (1914, ch. 673, ratified Nov. 2, 1915.)

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

**University of Baltimore Law Review.** — For article, "State Constitutional Law for Maryland Lawyers: Individual Civil Rights," see 7 U. Balt. L. Rev. 299 (1978).

For note discussing stadium enactments which are not subject to referendum because they fall within appropriations exception to referendum amendment, see 18 U. Balt. L. Rev. 212 (1989).

**History.** — Prior to the amendment of the Constitution on 2 November 1915, when this article was ratified, referendum by petition did not exist in Maryland. Legislative referendum was possible only with respect to local laws, since the Court of Appeals had consistently held that to condition the operative effect of a law of general applicability upon approval by the voters of the State was an improper delegation of legislative authority. *Cole v. Secretary of State*, 249 Md. 425, 240 A.2d 272 (1968).

Prior to the ratification of this article, legislative referendum with respect to a law of general applicability did not exist in Maryland. *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

**Meaning and limitations of article.** — See *Beall v. State ex rel. Jenkins*, 131 Md. 669, 103 A. 99 (1917).

**Design of this section.** — See *Dinneen v. Rider*, 152 Md. 343, 136 A. 754 (1927).

By this article the people of Maryland reserved to themselves the power to have submitted to the voters any act or part of an act of the General Assembly. *McGinnis v. Board of Supvrs. of Elections*, 244 Md. 65, 222 A.2d 391 (1966); *Spaulding v. Blair*, 403 F.2d 862 (4th Cir. 1968); *Abell v. Secretary of State*, 251 Md. 319, 247 A.2d 258 (1968).

The power of the people to bring to referendum a law passed by the General Assembly and the procedure to exercise that power is found in this article. *Gittings v. Board of Supvrs. of Elections*, 38 Md. App. 674, 382 A.2d 349 (1978).

**Meaning of "referendum".** — See *Beall v. State ex rel. Jenkins*, 131 Md. 669, 103 A. 99 (1917).

**Article III, § 31, modified but not repealed by article.** — Acts 1917, ch. 13, prohibiting the sale of liquor in certain districts of Prince George's County, is valid under article III, § 31 of the Constitution, which was modified, but not repealed or wholly suspended, by this article. *Beall v. State ex rel. Jenkins*, 131 Md. 669, 103 A. 99 (1917).

This article qualifies article III, § 31 of the Constitution. *Dinneen v. Rider*, 152 Md. 343, 136 A. 754 (1927).

**Mandatory provisions may not be eliminated or modified.** — The Court of Appeals cannot by construction eliminate (or modify) a mandatory provision in this article. *Abell v. Secretary of State*, 251 Md. 319, 247 A.2d 258 (1968).

**Referendum procedure is fundamental part of State's legislative process.** *Spaulding v. Blair*, 403 F.2d 862 (4th Cir. 1968).

The vote on a referendum is a part of the State's legislative process, as is the passage of a bill by the General Assembly and its approval by the Governor. *Spaulding v. Blair*, 291 F. Supp. 149 (D. Md.), *aff'd*, 403 F.2d 862 (4th Cir. 1968).

**Strict compliance required.** — Those seeking to exercise the right of referendum in this State must strictly comply with the conditions prescribed. *Selinger v. Governor of Md.*, 266 Md. 431, 293 A.2d 817 (1972), *cert. denied*, 409 U.S. 1111, 93 S. Ct. 922, 34 L. Ed. 2d 693 (1973).

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The language of this article must be strictly complied with by those seeking to avail themselves of the right of referendum. *Gittings v. Board of Supvrs. of Elections*, 38 Md. App. 674, 382 A.2d 349 (1978).

The phrase "if approved by the Governor," found in subsection (a) is explained by what immediately follows, and taken together, these provisions mean that the referendum is available whether the bill is signed by the Governor or passed by the General Assembly over his veto. *Keeney v. Wineland*, Cir. Ct. for Montgomery County, *Levine, J.*, June 9, 1971.

Petitions designed to take a bill to referendum may be circulated for signature at any time after a bill has been enacted by the General Assembly, without awaiting the Governor's signature, even though such petitions have never in the past been filed with the Secretary of State until after the Governor has signed a bill. *Selinger v. Governor of Md.*, 266 Md. 431, 293 A.2d 817 (1972), cert. denied, 409 U.S. 1111, 93 S. Ct. 922, 34 L. Ed. 2d 693 (1973).

**Rejection of act not discriminatory.** — There is a clear distinction between (a) an ordinance, an act, or a constitutional provision which "expressly authorized and constitutionalized the private right to discriminate," and (b) the submission to the voters by way of referendum of a proposed act in which a State undertakes to prohibit certain discriminatory acts and to enforce such prohibition in a particular way. The mere submission of the referendum question does not create a new statutory right to discriminate, nor repeal any present statutory prohibition. The rejection of chapter 385, Laws 1967, by a "No" vote would not nullify the Thirteenth or Fourteenth Amendment, would not deprive plaintiffs of their rights under any federal statute, now existing or to be-

come effective on January 1, 1969, nor destroy any right plaintiffs now have under any Maryland statute. Submission of chapter 385 to referendum would not prevent the State from adopting a new statute stronger or weaker than chapter 385, at any time in the future. *Spaulding v. Blair*, 291 F. Supp. 149 (D. Md.), aff'd, 403 F.2d 862 (4th Cir. 1968).

**A court of equity may preliminarily enjoin a referendum vote** prior to the hearing on the merits. *Tyler v. Secretary of State*, 230 Md. 18, 185 A.2d 385 (1962).

The Court of Appeals upheld a mandatory injunction placing a question on an election ballot pending further action of the chancellor on the sufficiency of petitions for referendum, either before or after the election. *Tyler v. Secretary of State*, 230 Md. 18, 185 A.2d 385 (1962).

**Unconstitutional ordinance may be enjoined.** — The district court has power to enjoin the submission to the voters of an ordinance which would be unconstitutional if passed. *Spaulding v. Blair*, 291 F. Supp. 149 (D. Md.), aff'd, 403 F.2d 862 (4th Cir. 1968).

**Budget Bill** is not per se excluded from the referendum. *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

**Quoted in** *First Continental Sav. & Loan Ass'n v. Director, State Dep't of Assmts. & Taxation*, 229 Md. 293, 183 A.2d 347 (1962); *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964); *Anne Arundel County v. McDonough*, 277 Md. 271, 354 A.2d 788 (1976).

**Cited in** *Norris v. Mayor of Baltimore*, 172 Md. 667, 192 A. 531 (1937); *Bell v. Maryland*, 378 U.S. 226, 84 S. Ct. 1814, 12 L. Ed. 2d 822 (1964); *Blumenthal v. Clerk of Circuit Court*, 278 Md. 398, 365 A.2d 279 (1976); *Ficker v. Montgomery County Bd. of Elections*, 670 F. Supp. 618 (D. Md. 1985).

### Section 2. When laws to take effect; effect of filing of referendum petition.

No law enacted 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 contains a Section declaring such law an emergency law and necessary for the immediate preservation of the public health or safety and is passed upon a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly. The effective date of a law other than an emergency law 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. 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. (1914, ch. 673, ratified Nov. 2, 1915; 1977, ch. 681, ratified Nov. 7, 1978.)

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

**University of Baltimore Law Review.** — For note discussing stadium enactments which are not subject to referendum because they fall within appropriations exception to referendum amendment, see 18 U. Balt. L. Rev. 212 (1989).

**Purpose.** — Purpose of this section is to obviate the public and private uncertainty, disorder, and confusion which would result from an emergency measure which might change the duty of an officer. 69 Op. Att'y Gen. 271 (1984).

**By this section all acts, retrospective and prospective in operation alike, not classed as emergency enactments, take effect on June 1st following the session of the Assembly at which they are passed, and since the adoption of that constitutional provision, beginning with the Acts of 1916, all enactments of the Maryland Assembly, except the emergency enactments and a few uniform laws prepared out of the State, have alike contained the express provision that they shall take effect on June 1st following. Equally applicable to all these acts, therefore, it does not mar any as retroactive.** Taggart v. Mills, 180 Md. 302, 23 A.2d 832 (1942).

**This article designates Secretary of State as official to receive petitions for referendum.** Gittings v. Board of Supvrs. of Elections, 38 Md. App. 674, 382 A.2d 349 (1978).

**Initial determination as to whether requisite number of valid signatures were appended to bring to referendum any enacted law or ordinance of the Baltimore County Council lies with the board of supervisors of elections of Baltimore County, rather than the Secretary of State.** Gittings v. Board

of Supvrs. of Elections, 38 Md. App. 674, 382 A.2d 349 (1978).

**Dates of presentment and gubernatorial signature do not control the circulation of referendum petitions.** 63 Op. Att'y Gen. 157 (1978).

**But date of final action in the last House of the General Assembly is the crucial date for the purposes of this article.** 63 Op. Att'y Gen. 157 (1978).

**Ineffective provision that act shall take effect prior to June 1st.** — If the legislature provides that an act, which under this section may not take effect until June 1st, is to take effect sooner, the act stands but will not take effect until June 1st. Allied Am. Mut. Fire Ins. Co. v. Commissioner of Motor Vehicles, 219 Md. 607, 150 A.2d 421 (1959).

**Act undertaking to affect taxes levied prior to June 1st.** — The contention that Acts 1918, ch. 82, extending the limits of Baltimore City, violated this article because it undertook to affect taxes levied prior to June 1, 1918, the date the act became effective, was overruled. McGraw v. Merryman, 133 Md. 247, 104 A. 540 (1918).

**Effective date is integral part of act.** — The fact that the legislature may make an act effective earlier or later than June 1st, or may provide that it shall be effective on June 1st, suggests that the effective date must be an integral part of the act and the court has so held. Thomas v. Police Comm'r, 211 Md. 357, 127 A.2d 625 (1956).

**Act signed after effective date.** — Acts 1941, ch. 209, article 56, § 74, of the Code, licensing vending machines, was held valid though signed by the Governor after May 1st, the time fixed for it to become effective. Robey v. Broersma, 181 Md. 325, 26 A.2d 820 (1942), modified, 29 A.2d 827 (1943).

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The words "said first day of June" refer to the previously mentioned "first day of June next after the session at which it is passed" and this language definitely establishes when the referendum petition must be filed to be effective. *Abell v. Secretary of State*, 251 Md. 319, 247 A.2d 258 (1968).

**Signatures may be obtained before signing of act by Governor.** — There is no provision in the Constitution or laws of this State precluding signatures from being obtained prior to the date of signing by the Governor. *Keeney v. Wineland, Cir. Ct. for Montgomery County, Levine, J.*, June 9, 1971.

The Governor cannot circumvent the right of referendum by merely signing a controversial act of the legislature as late as on the last day of May. *Keeney v. Wineland, Cir. Ct. for Montgomery County, Levine, J.*, June 9, 1971.

**When petition to be filed.** — This section requires that a petition for a referendum must be filed before the first day of June next after the session at which the act in question was passed, regardless of the date the act is to go into effect and regardless of any date or dates contained within the act providing for a phase-out or other staggered period. *Abell v. Secretary of State*, 251 Md. 319, 247 A.2d 258 (1968).

The petition must be filed before the first day of June next after the session at which the law was passed. *Abell v. Secretary of State*, 251 Md. 319, 247 A.2d 258 (1968).

**The courts possess no power to extend the deadline** for obtaining signatures which, under § 3 of this article, are required to be filed by June 1st. *Keeney v. Wineland, Cir. Ct. for Montgomery County, Levine, J.*, June 9, 1971.

**Period in which law is not law.** — If a proper petition seeking a referendum is duly filed, the law "shall not become a law or take effect until thirty days after its approval by a majority of the electors voting thereon." This period of suspension is a period when the law is not a law. *Spaulding v. Blair*, 403 F.2d 862 (4th Cir. 1968).

**When period of suspension of referred law ends.** — The period of suspension, which begins at the time specified by this article (following the filing of the requisite number of sworn-to signatures) ends either when the voters approve the law or when a court holds that suspension has not been effected for want of proper compliance with this article. *First Continental Sav. & Loan Ass'n v. Director, State Dep't of Assmts. & Taxation*, 229 Md. 293, 183 A.2d 347 (1962); *McGinnis v. Board of Suprvs. of Elections*, 244 Md. 65, 222 A.2d 391 (1966).

**Views of Attorney General cannot operate to terminate suspension of referred**

law. — The views of the Attorney General as to compliance with the requirements of this article are advisory only and cannot operate to terminate the suspension of a referred law any more than his opinion that a law is unconstitutional makes that law inoperative. *First Continental Sav. & Loan Ass'n v. Director, State Dep't of Assmts. & Taxation*, 229 Md. 293, 183 A.2d 347 (1962); *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

Once the Secretary of State has accepted a referendum petition as valid and thereby suspended the operation of an act until the election, the Attorney General has no legal power to resuscitate the statute. *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964).

**Emergency legislation on subject matter of referred bill not prohibited.** — There is nothing in the Maryland Constitution or elsewhere forbidding the legislature to meet an emergency by legislating under this article on the subject matter of a bill which has been referred. *First Continental Sav. & Loan Ass'n v. Director, State Dep't of Assmts. & Taxation*, 229 Md. 293, 183 A.2d 347 (1962).

**Legislature alone has power to determine whether emergency exists.** — The legislature alone has the power to determine whether such an emergency as is contemplated by this section exists, and its determination of that question is not judicially reviewable. *Gebhart v. Hill*, 189 Md. 135, 54 A.2d 315 (1947).

**If legislation comes within this article,** whether an emergency in fact exists is for the legislature and not for the courts. *Culp v. Commissioners of Chestertown*, 154 Md. 620, 141 A. 410 (1928); *First Continental Sav. & Loan Ass'n v. Director, State Dep't of Assmts. & Taxation*, 229 Md. 293, 183 A.2d 347 (1962).

**But declaration of emergency is nugatory if act is not within article.** — A declaration that an act is an emergency measure is nugatory if the act is not within the terms of this article. *Dinneen v. Rider*, 152 Md. 343, 136 A. 754 (1927).

The declaration of the legislature that an act is an emergency act does not make it so if it does not come within the purposes and provisions of this article. *Strange v. Levy*, 134 Md. 645, 107 A. 549 (1919).

**Acts held properly enacted as emergency laws.** — Acts 1933, ch. 281, held to have been properly enacted as emergency law. *Bevard v. Baughman*, 167 Md. 55, 173 A. 40 (1934).

Emergency clause of Acts 1937, ch. 94, is valid for purpose of this section. *Norris v. Mayor of Baltimore*, 172 Md. 667, 192 A. 531 (1937).

**Purpose of provision that certain acts**

shall not be enacted as emergency laws. — This section provides "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." The purpose of this quoted clause is to obviate the public and private uncertainty, disorder and confusion which would result from an emergency measure which might create or abolish an office, or change the salary, term or duty of an officer, or grant a franchise or special privilege, or create a vested right or interest, merely from the time of its passage, since an emergency act is effective from that date, until, by virtue of a referendum, it would "stand repealed thirty days after having been rejected by a majority of the qualified electors voting thereon." *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940).

**Meaning of failure to pass bill as emergency measure.** — Failure to pass a bill as an emergency measure ordinarily would mean no more than that not enough members thought the public interest required immediate emergency aid, not that the legislative body intended to do away with the usual rules as to the application and effect of new or changed laws. *Yorkdale Corp. v. Powell*, 237 Md. 121, 205 A.2d 269 (1964).

Both the State legislature, under this section, and the council, under the city charter, can pass almost any bill as an emergency measure, and because they do not do so in any given instance, whether they in terms vote against so doing or merely fail to act at all on the proposition, should not be accorded significance as an indication that they intended the bill they pass as an ordinary measure should not be subject to the usual rules as to the effect of new or changed laws. *Yorkdale Corp. v. Powell*, 237 Md. 121, 205 A.2d 269 (1964).

**Effect of bill designated emergency failing to receive necessary vote.** — So long as a bill is passed by a majority vote and is otherwise validly enacted, it is not a nullity merely because it is designated to be an emergency measure but fails to receive a three-fifths vote of both houses of the General Assembly. *County Council v. Carl M. Freeman Assocs.*, 281 Md. 70, 376 A.2d 860 (1977).

**Referendum subject to express limitations.** — The general application of the referendum is subject to three express limitations. This section contains two of them, and the third limitation appears in § 6 of this article. *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

The limitation in this section with respect to a law "making any appropriation for maintaining the State Government" has two requirements for the exclusion of a law from the refer-

endum: (1) The law must make an "appropriation" of public funds; and (2) such appropriation must be for "maintaining the State Government." *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

**Article III, § 35, not abrogated by this section.** — The legislature may not reduce the salary of a public officer before the expiration of the term of office for which he was appointed under the provisions of the third sentence of this section relating to measures "creating or abolishing any office, or changing the salary, term or duty of any officer." Article III, § 35, which says "... nor shall the salary or compensation of any public officer be increased or diminished during his term of office," is still in the Constitution and has not been abrogated. *Woelfel v. State*, 177 Md. 494, 9 A.2d 826 (1939).

**Provision as to act creating or abolishing office does not apply to public local laws.** — The prohibition as to creating or abolishing office as emergency law does not apply to public local laws. *Wilkinson v. McGill*, 192 Md. 387, 64 A.2d 266 (1949).

**Act creating, etc., office is referable.** — An act which is not in the form of an emergency measure, but which creates or establishes any office, or changes the salary, term or duty of any public officer is referable. *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940).

**Conferring power or authority.** — This section does not prohibit emergency legislation conferring a "power" or "authority" on an officer, as opposed to imposing a "duty"; a duty imposed on an officer "incidental" to the conferral of a power is not within the prohibition. 69 Op. Att'y Gen. 271 (1984).

**Imposition of additional duties.** — Additional duties imposed by an emergency bill upon a public officer that are already within the general duties of his or her office do not violate this section. 69 Op. Att'y Gen. 271 (1984).

**Act held not to create new office.** — The additional duties imposed upon the Attorney General by Acts 1949, ch. 86, and the provision for another assistant, held not to amount to creation of a new office. *Hammond v. Lancaster*, 194 Md. 462, 71 A.2d 474, 483 (1950).

**An allowance to a sheriff for keeping prisoners is not salary** within meaning of this section. *Bowman v. County Comm'rs*, 166 Md. 296, 171 A. 48 (1934).

**Law conferring "special privilege".** — A law does not confer a special privilege simply because it applies to a given class of citizens. The term "special privilege" is not to be construed so rigidly as to result in injustice to a given class. *Gebhart v. Hill*, 189 Md. 135, 54 A.2d 315 (1947).

**Referendum would neither validate nor**



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**invalidate inherently unenforceable act.** — The approval or rejection by popular vote under the referendum amendment would neither validate nor invalidate an act which was inherently unenforceable for failure to fulfill the conditions prescribed for the withdrawal of public money from the treasury. *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940).

**Appropriation defined.** — An appropriation of public funds is made by a constitutional mandate or a lawful legislative act, whose primary object is to authorize the withdrawal from the State treasury of a certain sum of money for a specified public object or purpose to which such sum is to be applied. *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940).

**Language "not exceeding the next previous appropriation for the same purpose" refers to laws for maintaining or aiding any public institution,** but not to laws making any appropriation for maintaining the State government. *Kelly v. Marylanders for Sports Sanity, Inc.*, 310 Md. 437, 530 A.2d 245 (1987).

**Law passed for purpose of maintaining State government may be referable.** — Although an act of the General Assembly may be passed for the purpose of maintaining the State government, the act is nevertheless subject to the referendum, unless it be an act so appropriating public funds for that purpose. *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940).

**And incidental provision for appropriation does not convert it into appropriation act.** — An act of the General Assembly which relates primarily and specifically to a subject matter of general legislation cannot be converted into an appropriation bill merely because there may be an incidental provision for an appropriation of public funds. *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940).

Chapters 353 and 354, Acts 1939, abolishing the theretofore existing Conservation Commission and substituting two separate commissions, the State Game and Inland Fish Commission (now the Game and Inland Fish Commission) and the Commission of Fisheries (now the Commission of Tidewater Fisheries) are not laws making "any appropriation for maintaining the State government" within the meaning of this section, and are referable. *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940).

**But act to raise revenue for maintenance of State government is not referable.** — There is no sound basis for the construction that a law imposing or providing for a tax levy or other means of raising revenue for the maintenance of the State government is a law referable to the electorate pursuant to the terms of the referendum amendment. *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940).

Article III, § 34 of the Constitution pre-

scribes that no debt is to 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 the debt as it falls due and also to discharge the principal thereof within 15 years from the time of the contracting of the debt. It is evident that the referendum amendment did not mean to include within the purview of its operation a statute to raise revenues for these specific purposes by a levy of taxes or by the imposition of other fiscal measures. *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940).

No law making any appropriation for maintaining the State government may be subject to the referendum. *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

By its own language, this article does not appear to apply to any appropriation for the maintenance of State government. *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

An appropriation for maintaining the State government is not subject to a referendum vote. 63 Op. Att'y Gen. 579 (1978).

**Although revenue is to be disbursed without express authorization in act.** — Revenue measures to raise the public funds to pay the appropriations of the budget bill are excepted from the operation of the referendum amendment, although the revenue thus procured is disbursed by the treasury through the provisions of the budget without any express authorization in the money bill for its disbursement. *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940).

**If an appropriation is for a primary function of the State,** it is for maintaining the State government. *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

**Provision of medical services for indigent persons** is a primary function of government and an appropriation to carry out that function is not an appropriation for "maintaining the State Government," so as to invoke the referendum limitation. *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

**Acts 1927, ch. 118, imposing additional license tax on motor fuels for building lateral roads is an "appropriation"** act within this article. Such act and Budget Act, 1927, were in pari materia. *Winebrenner v. Salmon*, 155 Md. 563, 142 A. 723 (1928).

**State Office Bond Bill not subject to referendum.** — The State Office Bond Bill, Acts 1937, ch. 368, is within the exception, and not subject to referendum. *Bickel v. Nice*, 173 Md. 1, 192 A. 777 (1937).

**Referral of article 27, § 264B, to electorate properly refused.** — See *Abell v. Secretary of State*, 251 Md. 319, 247 A.2d 258 (1968).

**Item 32.01.05.03 of the Budget Bill for fiscal year 1979** makes an appropriation within the contemplation of this section. *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

Item 32.01.05.03 of the Budget Bill for fiscal year 1979 designated an appropriation for "Medical Assistance Provider Reimbursements" relating to a "Medical Care Program" generally called the Maryland Medicaid Program. The appropriation is a composite of State and federal funds and is designed to provide direct payments to physicians, hospitals, clinics and other medical facilities undertaking to provide medical and hospital care for indigent persons. Such appropriation bill is not subject to constitutional referendum. *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

**Part of an excepted law is ordinarily not referable.** *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

**Amendment of referred measure.** — The General Assembly may amend a referred measure in good faith to accomplish proper and appropriate governmental ends and may do so as an emergency measure. 62 Op. Att'y Gen. 405 (1977).

**Repeal of referred measure.** — The General Assembly may validly repeal a referred measure, thus causing the question to be removed from the ballot. 62 Op. Att'y Gen. 405 (1977).

The General Assembly may repeal a referred measure and reenact a law on the same subject matter as long as it is done in good faith to accomplish proper and appropriate governmental ends. 62 Op. Att'y Gen. 405 (1977).

The General Assembly may not repeal a referred measure and reenact the same measure with the intention of frustrating the referendum process. 62 Op. Att'y Gen. 405 (1977).

**Maryland Stadium Authority not "public institution"**. — Merely because the Maryland Stadium Authority is designated by statute as a "public corporation" in addition to a State instrumentality does not make it a "public institution" under this article. *Kelly v. Marylanders for Sports Sanity, Inc.*, 310 Md. 437, 530 A.2d 245 (1987).

**Camden Yards Stadium legislation is not referable.** — The acts comprising the Camden Yards Stadium legislation, Chapters 122, 123, and 124 of the Laws of Maryland of 1987, may not be referred to referendum under the provisions of this article of the Maryland Constitution. 72 Op. Att'y Gen. — (May 28, 1987).

The stadium bills, Acts 1987, chs. 122, 123, and 124, were packaged together for implementation as a single entity, their parts being mutually dependent upon one another. Since the legislative purpose of this project, to finance the acquisition of a site upon which to construct sports stadiums and then finance the facility, constitutes, in effect, a single, inseparable "law" making an appropriation for maintaining the State government, none of the individual parts of the package is referable under this article to a vote of the people. *Kelly v. Marylanders for Sports Sanity, Inc.*, 310 Md. 437, 530 A.2d 245 (1987).

**Applied in** *Ireland v. Shipley*, 165 Md. 90, 166 A. 593 (1933); *Cole v. Secretary of State*, 249 Md. 425, 240 A.2d 272 (1968).

**Quoted in** *Selinger v. Governor of Md.*, 266 Md. 431, 293 A.2d 817 (1972), cert. denied, 409 U.S. 1111, 93 S. Ct. 922, 34 L. Ed. 2d 693 (1973).

**Stated in** *Maryland Comm. for Fair Representation v. Tawes*, 377 U.S. 656, 84 S. Ct. 1429, 12 L. Ed. 2d 595 (1964); *Board of Supvrs. of Elections v. Attorney Gen.*, 246 Md. 417, 229 A.2d 388 (1967); *Secretary of State v. McLean*, 249 Md. 436, 239 A.2d 919 (1968); *Mills v. Agnew*, 286 F. Supp. 107 (D. Md. 1968).

**Cited in** *County Comm'rs v. Monnett*, 164 Md. 101, 164 A. 155 (1933); *Kelch v. Keehn*, 183 Md. 140, 36 A.2d 544 (1944); *Tubman v. Berwager*, 190 Md. 193, 57 A.2d 822 (1948); *Board of Educ. v. Mayor of Frederick*, 194 Md. 170, 69 A.2d 912 (1949); *Washington Sub. San. Comm'n v. Buckley*, 197 Md. 203, 78 A.2d 638 (1951); *Marquette Cement Mfg. Co. v. Younkins*, 237 Md. 116, 205 A.2d 235 (1964); *Potts v. Governor of Md.*, 255 Md. 445, 258 A.2d 180 (1969); *Blumenthal v. Clerk of Circuit Court*, 278 Md. 398, 365 A.2d 279 (1976); *Aviles v. Eshelman Elec. Corp.*, 281 Md. 529, 379 A.2d 1227 (1977).

### **Section 3. Number of signers necessary for petition; effect of petition signed by more than one third required number; time for filing petitions; meaning of "passed" and "enacted"; signing after passage.**

(a) The referendum petition against an Act or part of an Act passed by the General Assembly, shall be sufficient if signed by three percent of the quali-

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fied voters of the State of Maryland, calculated upon the whole number of votes cast for Governor at the last preceding Gubernatorial election, of whom not more than half are residents of Baltimore City, or of any one County. However, any Public Local Law for any one County or the City of Baltimore, shall be referred by the Secretary of State only to the people of the County or City of Baltimore, upon a referendum petition of ten percent of the qualified voters of the County or City of Baltimore, as the case may be, calculated upon the whole number of votes cast respectively for Governor at the last preceding Gubernatorial election.

(b) If more than one-third, 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 the 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.

If an Act is passed less than 45 days prior to June 1, it may not become effective sooner than 31 days after its passage. To bring this Act to referendum, the first one-third of the required number of signatures to a petition shall be submitted within 30 days after its passage. If the first one-third of the required number of signatures is submitted to the Secretary of State within 30 days after its passage, the time for the Act to take effect and for filing the remainder of the signatures to complete the petition shall be extended for an additional 30 days.

(c) In this Article, "pass" or "passed" means any final action upon any Act or part of an Act by both Houses of the General Assembly; and "enact" or "enacted" means approval of an Act or part of an Act by the Governor.

(d) Signatures on a petition for referendum on an Act or part of an Act may be signed at any time after the Act or part of an Act is passed. (1914, ch. 673, ratified Nov. 2, 1915; 1962, ch. 6, ratified Nov. 6, 1962; 1976, ch. 548, ratified Nov. 2, 1976.)

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

**Power reserved to people.** — By this article, known as "The Referendum," the people reserved to themselves power 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. The method of accomplishing this is by a petition signed by the designated number of voters, or percentage (depending upon whether the act to be submitted is a general or a local law), the petition to be filed before the first day of June following the passage of the act. *Abell v. Secretary of State*, 251 Md. 319, 247 A.2d 258 (1968).

**Signatures may be obtained before act**

**signed by Governor.** — There is no provision in the Constitution or laws of this State precluding signatures from being obtained prior to the date of signing by the Governor. *Keeney v. Wineland*, Cir. Ct. for Montgomery County, Levine, J., June 9, 1971.

The Governor cannot circumvent the right of referendum by merely signing a controversial act of the legislature as late as on the last day of May. *Keeney v. Wineland*, Cir. Ct. for Montgomery County, Levine, J., June 9, 1971.

**The courts possess no power to extend the deadline** for obtaining signatures which, under this section prior to the 1976 amendment, were required to be filed by June 1. *Keeney v. Wineland*, Cir. Ct. for Montgomery County, Levine, J., June 9, 1971.

**This article does not apply to public local laws for any city other than Baltimore.** Thus Acts 1918, ch. 205, applicable to the City of Annapolis, did not come within the purview

of this article. *Strange v. Levy*, 134 Md. 645, 107 A. 549 (1919).

**Or for any rural section other than a county.** — This article makes no provision for referendum to voters of any city other than Baltimore, or of any rural section less than a county. Thus Acts 1927, ch. 359, providing for construction of roadways, sewers, etc., in Chestertown is not within this article, but was governed by article III, § 31 of the Constitution. *Culp v. Commissioners of Chestertown*, 154 Md. 620, 141 A. 410 (1928).

As this article does not apply to public local laws affecting political subdivisions of State other than Baltimore City or a county, provision of Acts 1924, ch. 529, creating Metropolitan District of Baltimore County, making it effective from date of its passage, was not invalid under this article. *Dinneen v. Rider*, 152 Md. 343, 136 A. 754 (1927).

**Act creating People's Court of Cecil County held a public local law.** — Chapter 256, Acts 1967, creating the People's Court of Cecil County and providing for transfer to it of civil and criminal jurisdiction formerly exercised by justices of the peace and trial magistrates, was a public local law, being in subject matter and substance confined in its operation to prescribed territorial limits, equally applicable to all persons within such limits and not affecting any matters of significant interest to entire State, and was properly a subject of petition for referendum by voters of Cecil County. *Cole v. Secretary of State*, 249 Md. 425, 240 A.2d 272 (1968).

**Not more than half required number of signatures may be from Baltimore City or any one county.** — Not more than half of the number of signatures required for either the initial or the completed referendum petition may be counted as subscribed by residents of Baltimore City or of any one county. *Phifer v. Diehl*, 175 Md. 364, 1 A.2d 617 (1938).

**Purpose of requirement.** — The "full number" of signers required for a completed referendum petition is 10,000, of whom not more than half shall be residents of any one county or of Baltimore City. It was the purpose of the prescribed diversification that the right to a

statewide referendum should depend upon a sufficiently extensive demand by voters of more than one of the designated political subdivisions of the State. That purpose is equally inherent in the provision under which the preliminary petition, if signed by "more than one-half" of the "full number" of voters eventually requisite, would have the effect of postponing for a month the operation of a general State law. *Phifer v. Diehl*, 175 Md. 364, 1 A.2d 617 (1938).

**It is applicable to petition under subsection (b).** — Under subsection (b) of this section it is essential to the validity of a petition for a referendum on an act that it should be signed before June 1st, by more than 5,000 voters duly allocated as to residence. The signing voters of Baltimore City can be considered at that time only to the extent of one half of the full number of 5,000 which might be finally apportioned to the city. Since fewer than 2,500 voters of the counties signed the petition prior to June 1st, such a deficiency rendered the petition nugatory. *Phifer v. Diehl*, 175 Md. 364, 1 A.2d 617 (1938).

**Signatures held not to comply with constitutional requirements.** — Referendum election on Acts 1931, ch. 485, Taxicabs, enjoined on ground that signatures attached to petitions did not comply with constitutional requirements. *Sun Cab Co. v. Cloud*, 162 Md. 419, 159 A. 922 (1932).

**Applied in Secretary of State v. McLean**, 249 Md. 436, 239 A.2d 919 (1968).

**Quoted in Selinger v. Governor of Md.**, 266 Md. 431, 293 A.2d 817 (1972), cert. denied, 409 U.S. 1111, 93 S. Ct. 922, 34 L. Ed. 2d 693 (1973); *Mayor of Forest Heights v. Frank*, 291 Md. 331, 435 A.2d 425 (1981).

**Stated in Barnes v. State ex rel. Pinkney**, 236 Md. 564, 204 A.2d 787 (1964); *Ritchmount Partnership v. Board of Supvrs. of Elections*, 283 Md. 48, 388 A.2d 523 (1978).

**Cited in Herman v. Mayor of Baltimore**, 189 Md. 191, 55 A.2d 491 (1947); *Board of Educ. v. Mayor of Frederick*, 194 Md. 170, 69 A.2d 912 (1949); *Spaulding v. Blair*, 403 F.2d 862 (4th Cir. 1968).

## Section 4. Form of petition; verification of authenticity.

A petition may consist of several papers, but each paper shall contain the full text, or an accurate summary approved by the Attorney General, of the Act or part of Act petitioned. There shall be attached to each paper of signatures filed with a petition an affidavit of the person procuring those signatures that the signatures were affixed in his presence and that, based upon the person's best knowledge and belief, every signature on the paper is genuine and bona fide and that the signers are registered voters at the address set opposite or below their names. The General Assembly shall prescribe by law

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the form of the petition, the manner for verifying its authenticity, and other administrative procedures which facilitate the petition process and which are not in conflict with this Article. (1914, ch. 673, ratified Nov. 2, 1915; 1976, ch. 548, ratified Nov. 2, 1976; 1982, ch. 849, ratified Nov. 2, 1982.)

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

**History of section.** — See Tyler v. Secretary of State, 229 Md. 397, 184 A.2d 101 (1962).

**Provisions of this section are mandatory** which require that there be attached to each of the papers making up a petition for referendum an affidavit of the person procuring the signatures stating that to his own personal knowledge every signature is genuine and bona fide and that of a registered voter. Gittings v. Board of Supvrs. of Elections, 38 Md. App. 674, 382 A.2d 349 (1978).

**Section must be taken in conjunction with § 1 (b).** — This section's provision that "no other verification shall be required" must be taken in conjunction with the provisions of § 1 (b) of this article. Barnes v. State ex rel. Pinkney, 236 Md. 564, 204 A.2d 787 (1964).

**The purpose of this requirement is to fairly identify for the benefit of the signatories** what is sought to be petitioned and, furthermore, to insure that no fraud is practiced upon them or the people of this State. Keeney v. Wineland, Cir. Ct. for Montgomery County, Levine, J., June 9, 1971.

**The chapter number is not a necessary part of "the full text"** within the meaning of the section. Keeney v. Wineland, Cir. Ct. for Montgomery County, Levine, J., June 9, 1971.

**Strict compliance.** — The stringent language employed in this section shows an intent that those seeking to exercise the right of referendum in this State must as a condition precedent, strictly comply with the conditions prescribed. Tyler v. Secretary of State, 229 Md. 397, 184 A.2d 101 (1962); Ferguson v. Secretary of State, 249 Md. 510, 240 A.2d 232 (1968); Gittings v. Board of Supvrs. of Elections, 38 Md. App. 674, 382 A.2d 349 (1978).

There must be a strict compliance with the mandatory provisions of this section. Ferguson v. Secretary of State, 249 Md. 510, 240 A.2d 232 (1968).

**Contents of effective referendum petition.** — A referendum petition to be effective must contain not only the names of the requisite number of signers, but such signers must be registered voters, not only of the State, but of the political subdivision if the law referred is local in its application. Tyler v. Secretary of State, 229 Md. 397, 184 A.2d 101 (1962).

**Purpose of affidavit.** — The purpose of the

requirement of the affidavit is to give a prima facie presumption of validity to the petition to which it is attached. Tyler v. Secretary of State, 229 Md. 397, 184 A.2d 101 (1962).

**The affidavit is an integral part of the referendum petition.** Tyler v. Secretary of State, 229 Md. 397, 184 A.2d 101 (1962); Ferguson v. Secretary of State, 249 Md. 510, 240 A.2d 232 (1968).

**Requirement of affidavit does not go to the form of the petition** to which the affidavit is to be attached. Barnes v. State ex rel. Pinkney, 236 Md. 564, 204 A.2d 787 (1964).

**Personal knowledge, not merely belief, exacted.** — Maryland exacts of the affiant not merely his belief, but his personal knowledge of the matters to which he makes oath. Tyler v. Secretary of State, 229 Md. 397, 184 A.2d 101 (1962).

The requirement of "personal knowledge" in regard to the signer's registration does add a substantial difficulty to the obtention and preparation of the required petitions for referendum, but the Court of Appeals cannot by construction eliminate a mandatory provision deliberately adopted by the General Assembly requiring that the affidavit in regard to the signer's registration be made on the affiant's personal knowledge. Ferguson v. Secretary of State, 249 Md. 510, 240 A.2d 232 (1968); Gittings v. Board of Supvrs. of Elections, 38 Md. App. 674, 382 A.2d 349 (1978).

**Such knowledge should be original.** — The personal knowledge of the affiant as to the truth of the matters to which he makes oath should be original and not depend on information or hearsay. Tyler v. Secretary of State, 229 Md. 397, 184 A.2d 101 (1962).

**And its absence raises a presumption of fraud.** — If the circulator of a referendum petition in this State makes affidavit that, of his own personal knowledge, the signers of the petition which he has circulated are registered voters of the State, and the county, as set opposite their names when in fact, he has no such personal knowledge, the falsity of his affidavit gives rise, at least to a presumption of fraud. Tyler v. Secretary of State, 229 Md. 397, 184 A.2d 101 (1962).

The intent to deceive is not ordinarily susceptible of direct proof and in the absence of evidence to the contrary may be presumed where the falsity was necessarily known to the affiant. Tyler v. Secretary of State, 229 Md. 397, 184 A.2d 101 (1962).

Where an affidavit accompanying a referen-

dum petition was alleged to be fraudulent the crux of the matter was not so much the falsity of the statement in the affidavit that certain facts were true, but the falsity of the statement that, of the affiant's own personal knowledge such facts were true. *Tyler v. Secretary of State*, 229 Md. 397, 184 A.2d 101 (1962).

**Personal knowledge may be obtained by examination of lists of registered voters.** *Ferguson v. Secretary of State*, 249 Md. 510, 240 A.2d 232 (1968).

**Execution of affidavit not sole ground of fraud.** — The fraudulency of a referendum petition need not be predicated solely on the execution of an affidavit. *Tyler v. Secretary of State*, 229 Md. 397, 184 A.2d 101 (1962).

**Showing affiant pretended to personal knowledge is sufficient.** — To establish the fraud of an affiant in certifying as to the truth of matters within his personal knowledge, it is only necessary to show that he pretended to a knowledge which he must, according to principles of reason and good faith have known that he did not possess at the time of the misrepresentation made. *Tyler v. Secretary of State*, 229 Md. 397, 184 A.2d 101 (1962).

**Whether the affiant's fraud be actual or constructive is immaterial,** "constructive fraud," sometimes called "legal fraud," is, nevertheless, fraud, although it rests more upon presumption and less upon furtive intent, than moral fraud. *Tyler v. Secretary of State*, 229 Md. 397, 184 A.2d 101 (1962).

**Effect of fraudulent affidavit.** — If it is shown that the affidavit is fraudulent as to all or part of the petition it supports, the prima facie presumption of the validity of the petition must fail. *Tyler v. Secretary of State*, 229 Md. 397, 184 A.2d 101 (1962).

Upon proof of the falsity of the affidavit, the prima facie presumption of the validity of the petition, or a sheet thereof, ostensibly verified by the affidavit, must fail, along with all the

signatures thereon, and the burden is cast upon the proponents of the referendum to affirmatively show that the remaining signatures on such petition or sheet thereof are genuine and bona fide and that the signers are registered voters as required by law. *Tyler v. Secretary of State*, 229 Md. 397, 184 A.2d 101 (1962).

**Signatures of nonregistered voters not considered regardless of verification.** — With or without a verification under oath, the signatures of those found not to be registered voters cannot be taken into account. *Tyler v. Secretary of State*, 229 Md. 397, 184 A.2d 101 (1962).

**The one procuring the petitions or circulating them is the agent of the signers.** *Tyler v. Secretary of State*, 229 Md. 397, 184 A.2d 101 (1962); *Ferguson v. Secretary of State*, 249 Md. 510, 240 A.2d 232 (1968).

**Data required as to qualifications of signers is as important as the signatures themselves.** *Tyler v. Secretary of State*, 229 Md. 397, 184 A.2d 101 (1962); *Ferguson v. Secretary of State*, 249 Md. 510, 240 A.2d 232 (1968).

**Whether person is registered voter is a matter of fact.** — The question as to whether or not a person is a registered voter is not a matter of legal conclusion. It is a matter of fact to be ultimately determined by an examination of the lists of registered voters compiled and kept by the supervisors of elections. *Tyler v. Secretary of State*, 229 Md. 397, 184 A.2d 101 (1962).

**Quoted in** *Secretary of State v. McLean*, 249 Md. 436, 239 A.2d 919 (1968); *Selinger v. Governor of Md.*, 266 Md. 431, 293 A.2d 817 (1972), cert. denied, 409 U.S. 1111, 93 S. Ct. 922, 34 L. Ed. 2d 693 (1973).

**Cited in** *Pickett v. Prince George's County*, 291 Md. 648, 436 A.2d 449 (1981).

## **Section 5. Text of measures to be furnished to voters; ballots; proclamation of result of election.**

(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.

(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 legisla-

## Art. XVI, § 6 REGISTRATION AND ELECTION LAWS

tive title, but in any case the legislative title shall be sufficient. Upon each of the 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. (1914, ch. 673, ratified Nov. 2, 1915.)

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

**Publication of text of act.** — Despite the fact that the text of article 66C, former § 261A (see now NR § 4-306) of the Code was inadvertently published in only one newspaper having a general circulation throughout the State, the act and the referendum adopting it were given wide publicity by news articles and editorials in several newspapers throughout the State and over radio and television news broadcasts, so that the purposes of article 33, former § 170, to acquaint the electorate fully with the law, were substantially achieved, and the record

failed to show that the deviation from the prescribed mode of acquainting the electorate misled the voters or prevented, frustrated or interfered with a free, full and intelligent expression of the popular will. *Dutton v. Tawes*, 225 Md. 484, 171 A.2d 688, appeal dismissed, 368 U.S. 345, 82 S. Ct. 385, 7 L. Ed. 2d 342 (1961).

**The Secretary of State has been authorized to and has prepared ballot titles for proposed amendments.** This approach met the approval of the Attorney General and was approved by the voters as to questions put to referendum. *Morris v. Governor of Md.*, 263 Md. 20, 281 A.2d 216 (1971).

Cited in *Hanrahan v. Alterman*, 41 Md. App. 71, 396 A.2d 272 (1979).

### Section 6. Laws relating to malt or spirituous liquors not to be referred.

No law, licensing, regulating, prohibiting, or submitting to local option, the manufacture or sale of malt or spirituous liquors, shall be referred or repealed under the provisions of this Article. (1914, ch. 673, ratified Nov. 2, 1915; 1977, ch. 681, ratified Nov. 7, 1978.)

**Maryland Law Review.** — For discussion of interaction and interpretation of the budget and referendum amendments of the Maryland Constitution, see 39 Md. L. Rev. 558 (1980).

**University of Baltimore Law Review.** — For note discussing stadium enactments which are not subject to referendum because they fall within appropriations exception to referendum amendment, see 18 U. Balt. L. Rev. 212 (1989).

**The intention of this section was to deny a referendum vote upon any act dealing with the subjects mentioned in this section.** This section was not intended as a limitation upon the gen-

eral power of the General Assembly. *Poisel v. Cash*, 130 Md. 373, 100 A. 364 (1917).

**Referendum subject to express limitations.** — The general application of the referendum is subject to three express limitations. Section 2 of this article contains two of them, and the third limitation appears in this section. *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978).

**Act amending law as to distribution of profits from county dispensary not referable.** — Acts 1937, ch. 301, amending law as to distribution of profits from county dispensary,

cannot be referred under this article. *Mayor of Berlin v. Shockley*, 174 Md. 442, 199 A. 500 (1938).

**Referral as condition of bill becoming effective.** — The voters of the State may not petition a bill pertaining to the regulation of the sale or manufacture of alcoholic beverages to referendum, but the General Assembly may,

as a part of the bill, provide for its referral to the voters as a condition for its becoming effective. 61 Op. Att'y Gen. 17 (1976).

Quoted in *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940).

Cited in *Board of Educ. v. Mayor of Frederick*, 194 Md. 170, 69 A.2d 912 (1949).



**Art. XVII, § 1 REGISTRATION AND ELECTION LAWS**

**ARTICLE XVII  
QUADRENNIAL ELECTIONS**

**Section 1. Purpose of article; "officers" defined.**

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 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. 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. (1922, ch. 227, ratified Nov. 7, 1922; 1977, ch. 681, effective Nov. 7, 1978.)

**Terms of office of gubernatorial appointees**, as fixed by the General Assembly, are to prevail over any other provisions of the State Constitution setting the term or commencement of an office. 64 Op. Att'y Gen. 246 (1979).  
**Quoted** in County Comm'rs v. Supervisors

of Elections, 192 Md. 196, 63 A.2d 735 (1949); Cohen v. Governor of Md., 255 Md. 5, 255 A.2d 320 (1969).  
**Cited** in Hanrahan v. Alterman, 41 Md. App. 71, 396 A.2d 272 (1979).

**Section 2. When elections for State and county officers to be held.**

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. (1922, ch. 227, ratified Nov. 7, 1922.)

**Quoted** in Cohen v. Governor of Md., 255 Md. 5, 255 A.2d 320 (1969).  
**Cited** in County Comm'rs v. Supervisors of

Elections, 192 Md. 196, 63 A.2d 735 (1949); Hanrahan v. Alterman, 41 Md. App. 71, 396 A.2d 272 (1979).

**Section 3. Terms of State and county officers elected by voters.**

All State and county 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) shall hold office for terms of four years, and until their successors shall qualify. (1922, ch. 227, ratified Nov. 7, 1922; 1966, ch. 10, ratified Nov. 8, 1966; 1972, ch. 370, ratified Nov. 7, 1972; 1977, ch. 681, ratified Nov. 7, 1978.)

**Purpose of article.** — The Quadrennial Elections Amendment was designed for, and its effect is limited to, the establishment of a system to regulate general elections for the purpose of selecting officers after the expiration of the full terms of former officers. *Cohen v. Governor of Md.*, 255 Md. 5, 255 A.2d 320 (1969).

**Conflict with Home Rule Amendment.** — If there is a conflict between the provisions of the Home Rule Amendment and the provisions of the Fewer Elections Amendment, the Court of Appeals, in construing the meaning of the Constitution, bears in mind that it is dealing with an instrument of government. *County Comm'rs v. Supervisors of Elections*, 192 Md. 196, 63 A.2d 735 (1949).

**Article not applicable to special election to fill initial vacancies in offices of county councilmen.** — The Quadrennial Elections Amendment or Fewer Elections Amendment was designed for, and its effect is limited to, the establishment of a system to regulate general elections for the purpose of selecting officers after the expiration of the full terms of former officers. It is not designed to regulate, nor does it prohibit, a special election to fill

initial vacancies in the offices of county councilmen pursuant to a new charter adopted for the government of a county under the Home Rule Amendment. *County Comm'rs v. Supervisors of Elections*, 192 Md. 196, 63 A.2d 735 (1949).

**An election in 1926** of three county commissioners, without distinction as to how long they were to serve, was invalid; the incumbents held over. *Benson v. Mellor*, 152 Md. 481, 137 A. 294 (1927).

**Officer may hold over until successor qualifies.** — The Court of Appeals has held that an elected or appointed officer may remain in office at the expiration of his term and is entitled to exercise the powers of the office until his successor qualifies, whether or not the statute creating the office so provides. *Reed v. President & Comm'rs*, 226 Md. 229, 172 A.2d 536 (1961).

**Cited in** *Ames v. Board of Supvrs. of Elections*, 195 Md. 543, 74 A.2d 29 (1950); *Buckler v. Bowen*, 198 Md. 357, 84 A.2d 99 (1951); *Tyler v. Board of Supvrs. of Elections*, 213 Md. 37, 131 A.2d 247 (1957); *Perkins v. Eskridge*, 278 Md. 619, 366 A.2d 21 (1976).

#### Section 4. Commencement of terms of judges and other officers.

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. 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 qualification. (1977, ch. 681, ratified Nov. 7, 1978.)

#### Section 5. Terms of officers appointed by Governor and county commissioners.

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 terms of four years, unless otherwise duly changed by law. (1922, ch. 227, ratified Nov. 7, 1922; 1956, ch. 99, ratified Nov. 6, 1956; 1977, ch. 681, ratified Nov. 7, 1978.)

**Terms of office of gubernatorial appointees**, as fixed by the General Assembly, are to prevail over any other provisions of the State Constitution setting the term or commencement of an office. 64 Op. Att'y Gen. 246 (1979).

**Indefinite terms of office.** — This section, and not Md. Const., article II, § 10, provides the General Assembly with the requisite au-

thority to set indefinite terms of office. 64 Op. Att'y Gen. 246 (1979).

There is nothing in this section that requires the term to be of definite duration. 64 Op. Att'y Gen. 246 (1979).

**Cited in** *County Comm'rs v. Supervisors of Elections*, 192 Md. 196, 63 A.2d 735 (1949).

## **Art. XVII, § 6 REGISTRATION AND ELECTION LAWS**

### **Section 6. Commencement of terms of members of boards of supervisors of elections.**

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. (1922, ch. 227, ratified Nov. 7, 1922; 1977, ch. 681, ratified Nov. 7, 1978.)

**Cited in** County Comm'rs v. Supervisors of Elections, 192 Md. 196, 63 A.2d 735 (1949); **Potts v. Governor of Md.**, 255 Md. 445, 258 A.2d 180 (1969).

### **Section 7. Sections inapplicable to elective local boards of education.**

Sections 1, 2, 3, and 5 of this Article do not apply or refer to members of any elective local board of education. (1922, ch. 227, ratified Nov. 7, 1922; 1966, ch. 10, ratified Nov. 8, 1966; 1972, ch. 370, ratified Nov. 7, 1972; 1977, ch. 681, ratified Nov. 7, 1978.)

**Cited in** Ames v. Board of Supvrs. of Elections, 195 Md. 543, 74 A.2d 29 (1950); Buckler v. Bowen, 198 Md. 357, 84 A.2d 99 (1951); Tyler v. Board of Supvrs. of Elections, 213 Md. 37, 131 A.2d 247 (1957); Perkins v. Eskridge, 278 Md. 619, 366 A.2d 21 (1976).

### **Section 8. Tied elections.**

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. (1977, ch. 681, ratified Nov. 7, 1978.)

**Stated in** County Comm'rs v. Supervisors of Elections, 192 Md. 196, 63 A.2d 735 (1949). **Cited in** Hanrahan v. Alterman, 41 Md. App. 71, 396 A.2d 272 (1979).

### **Section 9. Provisions inconsistent with article repealed or abrogated.**

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. (1922, ch. 227, ratified Nov. 7, 1922; 1977, ch. 681, ratified Nov. 7, 1978.)

**Article did not supersede prior constitutional provisions for special elections.** — The adoption of the Fewer Elections Amendment or Quadrennial Elections Amendment in 1922, even though it contains the words "all elections" and in addition words repealing inconsistent constitutional provisions and statutes, did not supersede or invalidate prior constitutional provisions for special elections.

County Comm'rs v. Supervisors of Elections, 192 Md. 196, 63 A.2d 735 (1949).

**Terms of office of gubernatorial appointees**, as fixed by the General Assembly, are to prevail over any other provisions of the State Constitution setting the term or commencement of an office. 64 Op. Att'y Gen. 246 (1979).

**Stated in** Cohen v. Governor of Md., 255 Md. 5, 255 A.2d 320 (1969).

## ARTICLE XVIII

## PROVISIONS OF LIMITED DURATION

1. Any provision of limited duration adopted pursuant to Article XIV is set forth below. As each expires, it shall stand repealed, and no further action shall be required to remove it from the Constitution.

2. (a) For the purpose of implementing the amendments, proposed by Chapter .... of the Acts of 1980 (H.B. 1729) (OLR 3623) or (S.B. 784) (OLR 0746), concerning the creation of a consolidated Circuit Court of Baltimore City, this section temporarily is a part of Article IV — Judiciary Department, §§ 5, 25, and 26 of the Constitution. This section shall expire (in accordance with Article XIV, § 1A of the Constitution) when, under the provisions of subsection (b) of this section, all of the Judges of the Supreme Bench of Baltimore City who are serving on December 31, 1982 have completed their then existing terms, or otherwise have vacated their offices without completing those terms.

(b) Each Judge of the Supreme Bench of Baltimore City, who is in office on December 31, 1982, shall continue in office as a Judge of the Circuit Court for Baltimore City, for the remainder of the term to which he was appointed or elected, subject to the provisions of Article IV, Sections 3, 4, 4A, 4B, and 5 of the Constitution.

(c) Each Clerk and each deputy clerk of a Court of the Supreme Bench of Baltimore City who is in office on December 31, 1982 shall become a deputy clerk of the Circuit Court for Baltimore City with no diminution of salary and as such shall occupy a position in the Personnel Merit System for the office of the Clerk of the Circuit Court for Baltimore City. These persons shall serve subject to the provisions of Article IV, Section 26 of the Constitution. Each person who otherwise has been employed in the office of a Clerk of a Court of the Supreme Bench of Baltimore City in a position authorized prior to June 30, 1982, shall become an employee of the office of the Clerk of the Circuit Court for Baltimore City and occupy a position in the Personnel Merit System for that office, with no diminution in salary, subject to the provisions of Article IV, Section 26 of the Constitution.

(d) At the primary and general elections occurring in 1982 in Baltimore City, there shall be nominated and elected one Clerk who shall be designated as Clerk of the Circuit Court for Baltimore City as created under the amendments proposed in Section 2 of said Chapter ...., Acts of 1980. A clerk of one of the Courts of the Supreme Bench of Baltimore City is eligible to run in this election.

(e) The amendments to Article IV and this Article XVIII of the Constitution (proposed by the above referenced Chapter .... of the Acts of 1980), if approved by the voters at the general election in November, 1980, shall take effect on January 1, 1983.

3. Of the methods of election of county commissioners authorized by Section 1 of Article VII, and of members of county councils authorized by Section 3A (a) of Article XI-A, of this Act, that method in effect in each county immedi-

**Art. XVIII      REGISTRATION AND ELECTION LAWS**

ately preceding the effective date of this Act shall remain in effect unless changed on or after that date pursuant to this Constitution. (1977, ch. 680, ratified Nov. 7, 1978; 1980, ch. 523, ratified Nov. 4, 1980; 1986, ch. 707, ratified Nov. 4, 1986.)

**Editor's note.** — Senate Bill 784, referred to in subsection (a) of section 2, was enacted as ch. 523, Acts 1980. Chapter 707, Acts 1986 took effect on June 1, 1986, and was ratified on November 4, 1986.

**PROVISIONS**  
**of the**  
**CONSTITUTION OF THE UNITED STATES RELATING**  
**TO ELECTIONS.**

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**Article I**

Sec.

2. House of Representatives, how constituted, power of impeachment.
3. The Senate, how constituted, impeachment trials.
4. Election of Senators and Representatives.
5. Quorum, journals, meetings, adjournments.
8. Powers of Congress.

**Article II.**

1. Executive power, election, qualifications of the President.

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**AMENDMENTS.**

**Amendment XII.**

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2. Apportionment of Representatives in Congress.
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**Amendment XV.**

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2. Time of convening Congress.
3. Death of President elect.
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**Amendment XXIII.**

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**Amendment XXV.**

1. Succession upon death, resignation or removal of President.
2. Vacancy in office of Vice President.
3. Declaration by President of inability to perform duties.
4. Declaration of President's disability by Vice President and other officers; determination of issue.

**Amendment XXVI.**

1. Voting by persons eighteen years of age.
2. Power to enforce this article.

ARTICLE I.

Section 2.

*[House of Representatives, How Constituted, Power of Impeachment]*

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen. (Par. 2.)

\* \* \* The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; \* \* \* (Par. 3.)

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies. (Par. 4.)

Section 3.

*[The Senate, How Constituted, Impeachment Trials]*

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote. (Par. 3.)

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.] (Par. 2.)

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen. (Par. 3.)

Section 4.

*[Election of Senators and Representatives]*

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators. (Par. 1.)

Section 5.

*[Quorum, Journals, Meetings, Adjournments]*

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, \* \* \*. (Par. 1.)

Section 8.

*[Powers of Congress]*

The Congress shall have Power \* \* \*

To establish an uniform Rule of Naturalization, \* \* \* throughout the United States; \* \* \*. (Par. 4.)



ARTICLE II.

Section 1.

*[Executive Power, Election, Qualifications of the President]*

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows: (Par. 1.)

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. (Par. 2.)

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States. (Par. 4.)

## ARTICLE VI.

*[Debts, Supremacy, Oath]*

The Senators and Representatives before mentioned, and 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; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## AMENDMENTS TO THE CONSTITUTION.

## [AMENDMENT XII]

*[Election of President and Vice-President]*

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

## [AMENDMENT XIV]

## Section 1.

*[Citizenship Rights Not to Be Abridged by States]*

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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

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deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

*[Apportionment of Representatives in Congress]*

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

*[Persons Disqualified from Holding Office]*

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 5.

*[Power to Enforce This Article]*

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[AMENDMENT XV]

Section 1.

*[Negro Suffrage]*

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

**Amend. XV, § 2 REGISTRATION AND ELECTION LAWS**

Section 2.

*[Power to Enforce This Article]*

The Congress shall have power to enforce this article by appropriate legislation.

[AMENDMENT XVII]

*[Popular Election of Senators]*

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

[AMENDMENT XIX]

*[Woman Suffrage]*

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

[AMENDMENT XX]

Section 1.

*[Terms of Office]*

The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2.

*[Time of Convening Congress]*

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

CONSTITUTION OF UNITED STATES Amend. XXII, § 2

Section 3.

*[Death of President Elect]*

If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4.

*[Election of the President]*

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

[AMENDMENT XXII]

Section 1.

*[Terms of Office of the President]*

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. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2.

*[Ratification within Seven Years]*

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

**Amend. XXIII, § 1 REGISTRATION AND ELECTION LAWS**

[AMENDMENT XXIII]

Section 1.

*[Electors for President and Vice President in District of Columbia]*

The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2.

*[Power to Enforce Article]*

The Congress shall have power to enforce this article by appropriate legislation.

[AMENDMENT XXIV]

Section 1.

*[Poll Tax Payment Not Required to Vote in Federal Elections]*

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2.

*[Power to Enforce Article]*

The Congress shall have power to enforce this article by appropriate legislation.

CONSTITUTION OF UNITED STATES Amend. XXV, § 4

[AMENDMENT XXV]

Section 1.

*[Succession upon Death, Resignation or Removal of President]*

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2.

*[Vacancy in Office of Vice President]*

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3.

*[Declaration by President of Inability to Perform Duties]*

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4.

*[Declaration of President's Disability by Vice President and Other Officers; Determination of Issue]*

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, deter-



**Amend. XXVI, § 1 REGISTRATION AND ELECTION LAWS**

mines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

[AMENDMENT XXVI]

Section 1.

*[Voting by Persons Eighteen Years of Age]*

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2.

*[Power to Enforce This Article]*

The Congress shall have power to enforce this article by appropriate legislation.

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# **INSTRUCTIONS of the Attorney General**

## **For the Use of Officers of Registration and Elections.**

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**TO:** The Registration and Election Officials of the State of Maryland

**FROM:** J. Joseph Curran, Jr., Attorney General

For your guidance in registration and election matters, I have prepared the instructions that appear on the following pages.

These instructions have been prepared in accordance with Article 33 of the Annotated Code of Maryland (1986 Replacement Volume, 1989 Supplement). They reflect statutory changes made to April, 1990.

Please read these instructions carefully because of the changes in the Election Laws. If you are in doubt as to the proper course to pursue in any given case, consult the election law referred to in the instructions. You may also obtain advice from your local board of supervisors of elections and its attorney. The Attorney General is the advisor to the Supervisors of Elections in Baltimore City and any inquiries of that board may be addressed to him. In the counties, if the matter involved concerns uniform practice in the conduct of registration and elections, the Attorney General will undertake to give advice to, and upon request of, the State Administrator of Election Laws.



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**PART I**  
**Registration**

**SECTION I**

**PERMANENT REGISTRATION.**

**Schedule of Dates for Registration**

Persons qualified to register or to change their registration may do so at the office of the board of supervisors of elections at any time the office is open, except (i) after the fifth Monday preceding a primary, special primary, general, or special election; (ii) during the 10 days following a primary or special primary election; or (iii) during the 15 days following a general or special election. A registered voter may change party affiliation at any time except (i) when registration is closed (ii) within the 12 weeks or 84 days preceding any primary election or (iii) on or after the date on which the Governor issues a proclamation directing that a special election be held. If a voter cancelled his or her registration during the 12 weeks or 84 days preceding a primary election or after the issuance of the Governor's proclamation of a special election, the voter may not reregister during that period in the same county with a different party affiliation. (Sec. 3-8)\*

Each board shall be open for registration on whatever days and during whatever hours it chooses. However, any board where there are less than 20,000 registered voters in the county shall be open not less than two days per week; any board where there are more than 20,000, but not more than 50,000 registered voters in the county shall be open not less than three days per week; and any board where there are more than 50,000 registered voters in the county shall be open five days per week. Board offices shall be open during the regular business hours for the county or Baltimore City offices or at other times for an equivalent number of hours if the board determines that greater public convenience would be served. Supplemental registration may be conducted at other hours and places, authorized by the board upon 5 days public notice. (Secs. 3-1, 3-2)

**1990 Election Dates**

|   |                    |
|---|--------------------|
| Final Date for Changing party affiliation ..... | June 18, 1990      |
| Final Registration before Primary .....         | August 13, 1990    |
| Primary Election .....                          | September 11, 1990 |
| Registration Re-opens .....                     | September 24, 1990 |
| Final Registration before General .....         | October 9, 1990    |
| General Election .....                          | November 6, 1990   |
| Registration Re-opens .....                     | November 23, 1990  |

\*All Section references are to Article 33 of the Annotated Code of Maryland (1990 Repl. Vol.), unless otherwise indicated.

## REGISTRATION AND ELECTION LAWS

### Registration by Mail.

Registration by mail is available throughout the State. (Sec. 3-1) This program is administered under Regulation 14.02.02, adopted by the State Administrative Board of Election Laws in accordance with the Administrative Procedure Act.

Some provisions of Article 33 pertaining to the in-person registration of voters do not apply when registration by mail procedures are used.

Uniform statewide voter registration forms are available to any person who desires to register in Maryland. This form may be obtained from the State Administrative Board of Election Laws, any local board of supervisors of elections, any local health department, any local office of the State Social Services Administration, and the headquarters and any regional office of the State Motor Vehicle Administration. This form must be accepted by the appropriate board as a valid application for registration. (Sec. 3-2(e) and Sec. 3-12(d)).

### In Person Registration.

#### Registrars.

Registration is conducted by boards of registry consisting of two registrars of opposite political parties appointed by the board. The State Administrative Board of Election Laws may appoint boards of registry to conduct registration of qualified voters at places where large numbers of citizens from various counties temporarily reside, such as institutions of higher learning. (Sec. 3-10(a))

#### Duties of Boards of Registry.

The boards of registry are responsible for performing all the business of registration and shall make the entries on registration forms. The original and duplicate forms must be compared, conformed, and signed at the end of each session. (Sec. 3-11(a) and Sec. 3-13(b))

## SECTION II

### ABSENTEE REGISTRATION

Any qualified voter in the following categories may register and vote as an absentee, provided that the application for an absentee ballot must be received by the proper board not later than the Tuesday before the election: (Secs. 3-7, 27-4).

(1) Any person who is physically disabled and confined in a hospital, or who is permanently confined to bed as a result of a physical disability, or whose confinement in or restriction to an institution prevents the voter from being present to register or reregister at the office of any board or with any board of registry;

## INSTRUCTIONS

(2) A member of any branch of the armed forces of the United States (including those honorably discharged during the period beginning thirty (30) days prior to the last registration day prior to an election and continuing up to and including the date of the election) and the member's spouse or dependents, if the application is received by the board prior to the close of the polls on election day;

(3) Any citizen and resident who is continuously absent from his or her county of residence for thirty (30) days prior to the closing of registration before any election, provided he applies for registration and voting during those thirty (30) days prior to the close of registration, if the application is received by the board no later than the fifth Monday which is four weeks before the election for which the application is made;

(4) A person serving as an officer or member of the crew of any vessel documented under the laws of the United States or enrolled for such employment with the federal government, and his or her spouse or dependents;

(5) A civilian employee of the United States in all categories serving outside the United States, whether or not subject to the civil service laws, and whether or not paid from funds appropriated by Congress, and his or her spouse or dependents;

(6) Any person serving with the American Red Cross, the Society of Friends, and Women's Auxiliary Service Pilots, and the United Service Organization who is attached to or serving with the armed forces of the United States outside the United States, and his or her spouse or dependents. (Sec. 3-7)

## SECTION III

### GENERAL REGISTRATION INSTRUCTIONS

A person registered as a qualified voter may not be required to reregister unless the voter's registration is cancelled as provided by law. (Secs. 3-3, 3-7(d))

#### Oath.

The questions required to be asked of a person who applies for registration in person must be answered under oath, in the form specified in Sec. 3-6 of Article 33.

#### Applicant Must Sign.

An applicant may not decline to sign the register unless he cannot write his or her name. If the applicant can write his or her name, the effect of declining to sign the register is to nullify the registration. The law provides that the applicant "shall sign his full legal name . . . . if he can do so." If the applicant cannot write, provision is made for registration officials to enter in the register a brief description of the applicant, including height, color of eyes and any

## REGISTRATION AND ELECTION LAWS

distinguishing physical marks. The registrars shall also make the entry "cannot sign" on the forms in the place of his signature. (Sec. 3-13)

### Changes of Address.

A voter who has moved from the county or Baltimore City in which he or she is registered to vote to another county or to Baltimore City must apply to the board in the voter's new place of residence for registration. Before being registered, the voter must sign and acknowledge a cancellation authorization, which is sent to the former place of registry. If a registered voter has not applied to the board to have his or her address changed within 30 days of such removal, then the board, upon becoming aware of this fact, shall notify the voter, by mail, at his or her last registration address (and at the new address, if it is known), that if the voter does not advise the board in writing of his or her correct address within two weeks, the voter's registration will be cancelled and he or she will have to reregister to vote in the future. (Sec. 3-17)

Voters must also promptly notify their board of changes of address *within* the county or Baltimore City.

### Affiliation.

In its registration records, the board of registry must enter the name of the political party, if any, to which the voter is inclined, and with which the voter desires to be recorded as affiliated. The board of registry should explain that the statement of such party affiliation does not bind the voter to vote for the candidate of such party at any general election, and that the voter has the right to decline to state any party affiliation, but that no one who is not recorded upon the registries as affiliated with a political party will be qualified to vote at primary elections of that party.

Whenever a voter declines to state a party affiliation, the word "Declined" should be recorded opposite his or her name so that, for every registered voter, either a party affiliation or the word "Declined" is recorded. The preferred term to use is "Declined", rather than "Independent".

Changes in party affiliation are governed by Section 3-8(b). In general, a voter may change his or her party affiliation except during the 12 weeks or 84 days preceding a primary election. A voter who has voluntarily cancelled his or her registration may not reregister in the same county with a different party affiliation during that period.

Only voters who are affiliated with the party holding a primary election may vote in that primary. *Hennegan v. Geartner*, 186 Md. 551 (1946). In this regard, judges should carefully read the portions of these instructions pertaining to primary elections.

### Satisfaction of Registrars as to Qualifications.

No person can be registered as a qualified voter without the consent of both persons acting as registrars. While it is the right and duty of every registrar



## INSTRUCTIONS

to vote against registering an applicant because of a genuine belief that the applicant is ineligible, yet no registrar has the right, out of a mere whim of stubbornness or for any partisan purpose, to deny an applicant registration when there is no good ground to believe that the applicant is not qualified. Any registrar who, for any reason, shall refuse registration to any person whom the registrar believes to be entitled to register, is guilty of an offense which is severely punishable. On the other hand, no matter how certain any registrar may be that an applicant is entitled to be registered, the registrar must not enter the voter as qualified in the registration records unless both registrars decide that the applicant is a qualified voter. If both registrars decide that an applicant for registration is a qualified voter, the applicant shall be recorded as such and shall sign his or her full legal name in the designated place on the registration forms. If the registrars determine that the applicant is not qualified to be a voter, the applicant shall be advised of his or her right of appeal and an entry signed by the registrars shall be made on the reverse side of the registration forms stating the reason the applicant is not qualified. (Sec. 3-13) Such appeals may be brought at any time except not later than the third Tuesday preceding the election. (Sec. 3-21)

### **Inspection of Permanent Registration Records.**

The registration records shall be open to public inspection under reasonable regulations at all times when the office of the board is open for business. (Sec. 3-11)

### **Election Officers Late or Absent.**

The unnecessary absence of any officer of registration during the hours prescribed by law for the registration of voters, or of any election judge or clerk of election during the operation of the election polls, the canvass of ballots or the making up of the returns is a misdemeanor election punishable by imprisonment for not less than 10 days nor more than six months, or by a fine of not less than \$20 nor more than \$500. (Sec. 24-5)

### **Election Officers Voting by Absentee Ballot.**

Judges and other election officials who work outside their own polling places on election day may vote by absentee ballot, so as not to absent themselves from the location where they are working. (Sec. 27-1)

### **Powers.**

The supplemental boards of registry have authority to keep the peace and to preserve order and enforce obedience to their lawful commands at and around their places of registration. They are authorized to keep access to such places open and unobstructed, to prevent and suppress riots, tumult, violence and disorder, and to prevent any improper practices at and around such places.

## REGISTRATION AND ELECTION LAWS

They may compel by summons the presence of witnesses before them for any purpose connected with the duties of their office. (Sec. 3-10(b))

They also have the power to issue any summons to the sheriff or to any police officer, to be served as if issued by a court of competent jurisdiction. (Sec. 3-10(c))

### **Police.**

The police authorities for Baltimore City and the respective counties shall detail such number of police officers as may be required to preserve order at the places of registration. (Sec. 3-10(d))

### **Universal Registration.**

Note: Beginning January 1, 1990, registration with a county board of elections by a voter who resides in a municipal corporation located within the county, shall be deemed registration for elections in that municipal corporation. A person continues to have the choice to register only with the municipal corporation for its elections and not to register with the county board for county elections.

## SECTION IV

### QUALIFICATIONS OF APPLICANTS

#### **Who Are Entitled.**

Every citizen of the United States who is at least 18 years old and who is a resident of the State and of Baltimore City or of the county in which he or she will vote, as of the closing of the registration books next preceding the election, shall be entitled to vote in the ward or election district in which he or she resides. (Sec. 3-4; Constitution of Maryland Art. I, Sec. 1; 26th Amendment, U. S. Const.; *Dunn v. Blumstein*, 405 U. S. 330 (1972))

#### **Citizenship.**

Citizenship may be acquired in two ways, i.e., either by birth under certain circumstances or by naturalization in accordance with the Federal statutes in effect from time to time. Consequently, when a person appears for registration, it will be your duty to ascertain, under oath, whether the applicant is a citizen of the United States.

#### **16 Years of Age.**

Any person having reached his sixteenth birthday, who will be eighteen years of age on or before the day of the next succeeding general or special election shall be entitled to vote at such general or special election, and shall also be entitled to vote at the primary election preceding such general or

## INSTRUCTIONS

special election, if otherwise entitled to be registered as a qualified voter. His or her date of birth must be shown in the registry records. (Sec. 3-5)

### **Residence Defined.**

A person's residence for voting purposes is his or her "true, fixed, permanent home." Ordinarily, this is where a person actually resides. However, residence is a matter of intent and where the intent is not clear, as where a person spends time in several different dwellings, other factors are considered in order to ascertain the person's true intent. Some factors are the ownership of property, banking arrangements, and the address given for receiving mail. See *Dorf v. Skolnik*, 280 Md. 101, 116-118; 69 Opinions of the Attorney General 238 (1984).

### **Who Are Not Entitled.**

No person convicted of an infamous crime, unless pardoned, shall be entitled to vote at any election in this State. For the first such conviction, the disqualification shall extend only for the length of the sentence imposed, including any period of probation. If a person has been convicted of more than one infamous crime during a *single* criminal proceeding, for the purposes of this section, it is considered one conviction. (See *State vs. Broadwater*, 317 Md 342 (1989)). For the second such conviction, the disqualification shall be permanent, in the absence of a pardon. No person shall be entitled to vote while under guardianship for mental disability. (Sec. 3-4; Constitution of Maryland, Art. I, Sec. 4)

Conviction for illegal voting; procuring illegal voting; and offering, giving or receiving a bribe in connection with voting permanently disqualifies a person from voting. (Md. Const., Art. I, Sec. 6)

Disqualifying convictions must be final — that is, a person is not disqualified while a direct appeal is pending.

### **Disqualification By Conviction of Crime.**

To disqualify by conviction of crime a person otherwise qualified to vote, three things must exist:

First — The person is unpardoned. A pardon restores the right to vote.

Secondly — The crime of which the person was convicted is an infamous crime. (Constitution of Maryland, Art. I, Secs. 4 and 6)

Thirdly — The person (i) has been convicted of bribery in connection with voting or of illegal voting; or (ii) has been convicted two or more times of other infamous crimes; or (iii) is still under sentence, including probation, for a first conviction of an infamous crime. (Sec. 3-4)

### **What are Infamous Crimes.**

The place in which the person convicted has been confined in consequence of his conviction has nothing to do with determining whether the crime of which

## REGISTRATION AND ELECTION LAWS

he or she was convicted was infamous. Larceny and all statutory and common law felonies, as well as certain nonfelonious offenses involving an element of fraud, deceit or corruption, such as perjury, are infamous crimes. (Sec. 1-1(a)(9)).

The following is a listing of Maryland crimes that, by their very nature, are always infamous crimes.

### Article 27

|        |  |
|--------|--|
| §2     | Child abduction                            |
| §2A(d) | Child abduction — outside the state        |
| §6     | Arson                                      |
| §7     | "  |
| §8(c)  | "  |
| §9     | "  |
| §10(a) | "  |
| §10A   | "  |
| §11    | "  |
| §12    | Assault with intent to murder, rape or rob |
| §18    | Bigamy                                     |
| §23    | Bribery                                    |
| §24    | "  |
| §25    | "  |
| §26    | "  |
| §27    | "  |
| §28    | "  |
| §29    | Burglary                                   |
| §30    | "  |
| §32    | "  |
| §33    | "  |
| §34    | Burglary with explosives                   |
| §35A   | Child abuse                                |
| §36A-1 | Carrying weapons aboard aircraft           |
| §44    | Counterfeiting and forgery                 |
| §45    | " " " — public documents                   |
| §45A   | False entries — public records             |
| §46    | Counterfeiting — public seals              |
| §47    | Counterfeiting — Comptroller's stamp       |
| §48    | Forgery and uttering                       |
| §49    | Forgery — inspection documents             |
| §50    | Forgery — tobacco export                   |
| §51    | False marking                              |
| §52    | Tobacco inspection offense                 |
| §53    | Counterfeiting and forgery — State stock   |
| §54    | " " " — food canning instruments           |
| §55    | Counterfeiting and forgery — prescriptions |
| §56    | " " " — tickets and tokens                 |

## INSTRUCTIONS

|              |   |
|--------------|---|
| §57          | Slugs — use   |
| §58          | Slugs — manufacture                                     |
| §61          | Injuring of race horse                                  |
| §112         | Railroad cars — breaking and entering                   |
| §113         | Railroad cars — destruction of property                 |
| §114         | Railroad cars — breaking and entering                   |
| §115         | " " " " "   |
| §119         | Dynamiting property [including conspiracy]              |
| §126         | Embezzlement  |
| §127         | Destroying or secreting will                            |
| §132         | Embezzlement  |
| §135         | Fraud — maritime cargo                                  |
| §139         | Escape  |
| §141         | Bad checks  |
| §145         | Credit card fraud, theft, or forgery                    |
| §150         | False reports to police                                 |
| §151         | False reports to government officials                   |
| §151A        | False statements — bomb threats                         |
| §156         | False fire alarms                                       |
| §163         | Fraud — bailments                                       |
| §173         | Fraud — partnership assets                              |
| §174         | Fraud — corporation finances                            |
| §191A        | Fraud — donated food commodities                        |
| §195         | False advertising                                       |
| §198         | " "   |
| §207         | Conversion of leased goods                              |
| §209         | Fraud — insurance companies                             |
| §214         | Fraud — mortgaged property                              |
| §214B        | Fraud — obtaining representation by Public Defender     |
| §216         | Fraud — special partnerships                            |
| §229         | Fraud — merchandise in storage                          |
| §230         | Fraud — medicinal alcohol                               |
| §230A        | Welfare fraud   |
| §230C        | Medicaid fraud  |
| §233C        | Fraud — pari-mutuel tickets                             |
| §234         | Escape  |
| §275A        | Obstruction of justice — concealment of medical records |
| §286         | Manufacture or distribution of drugs                    |
| §286A        | Importation of drugs                                    |
| §286B        | Distribution of fake controlled substances              |
| §287(b)      | Fraud in obtaining drugs or paraphernalia               |
| §287(c)      | "   |
| §289         | Distribution of drugs                                   |
| §300(g-1)(2) | Fraud — prescription drugs                              |
| §335         | Incest  |
| §337         | Kidnapping  |
| §338         | "   |

## REGISTRATION AND ELECTION LAWS

|       |   |
|-------|---|
| §342  | Theft [\$300 or greater]  |
| §373  | Machine guns  |
| §384  | Mayhem  |
| §385  | Malicious injury  |
| §386  | Assault with intent to maim   |
| §387  | Manslaughter  |
| §407  | Murder  |
| §408  | "   |
| §409  | "   |
| §410  | "   |
| §411  | "   |
| §419A | Child pornography   |
| §428  | Procuring and related offenses  |
| §429  | "   |
| §430  | "   |
| §431  | "   |
| §432  | Procuring and related offenses  |
| §435  | Perjury   |
| §437  | "   |
| §438  | Subornation of perjury  |
| §440  | Impersonating police officers   |
| §450  | Attempt to poison person  |
| §451  | Poisoning or contaminating water, drink, food or food products [including conspiracy] |
| §453  | Obstruction of railway  |
| §454  | " " " — murder  |
| §462  | Rape  |
| §463  | "   |
| §464  | Sexual offenses   |
| §464A | " "   |
| §464B | " "   |
| §486  | Robbery   |
| §486A | "   |
| §488  | Robbery with deadly weapon  |
| §536  | Sabotage  |
| §537  | "   |
| §538  | Sabotage — attempt  |
| §539  | Sabotage — conspiracy   |
| §553  | Sodomy  |
| §561  | Threatening letters   |
| §562  | Threatening verbally  |
| §562B | Extortion   |
| §562C | "   |
| §562D | "   |
| §563  | "   |

## INSTRUCTIONS

### Article 2B

§139(b) Fraud — alcoholic beverages  
§139(c) " " " "

### Article 10

§45M(a) Fraud — legal assistance

### Article 21

§8-601(e) Fraud — minority business enterprises  
§8-601(f) False statements — minority business enterprises  
§9-107 Procurement offenses — architectural and engineering services — transportation  
§9-108 " "  
§9-109 " "  
§9-110 " "  
§9-111 " "  
§9-112 " "  
§9-113 " "  
§9-114 " "  
§9-115 " "  
§9-207 Procurement offenses — architectural and engineering services  
§9-208 " "  
§9-209 " "  
§9-210 " "  
§9-211 " "  
§9-212 " "  
§9-213 " "  
§9-214 " "  
§9-215 " "

### Article 23

§16A(a) Misrepresentation — cemetery perpetual care

### Article 31

§16 Fraud — public securities

### Article 33

§7-2 False statements — nominating petitions  
§23-4 Misrepresentation — referendum petitions  
§23-5 False statements — referendum petitions

## REGISTRATION AND ELECTION LAWS

|              |                                   |
|--------------|-----------------------------------|
| §24-1        | False registration                |
| §24-2        | False voting                      |
| §24-3        | Fraud — election officials        |
| §24-7        | False poll list                   |
| §24-9        | False vote tally                  |
| §24-10       | Stuffing ballot box               |
| §24-12       | Perjury — election                |
| §24-13       | Subornation of perjury — election |
| §24-14       | Fraud — voting                    |
| §24-18       | Destroying election records       |
| §24-20       | Fraud — election certificates     |
| §24-22(a)(3) | False statements — voting         |
| §26-15       | Perjury-campaign reports          |

### Article 38A

|      |  |
|------|--|
| §27A | Explosives — possession [including conspiracy] |
| §31  | Explosives — sale                              |

### Article 41

|          |  |
|----------|--|
| §15B-1   | Fraud — emergency powers                     |
| §103J(b) | Misrepresentation — charitable solicitations |

### Article 48A

|       |  |
|-------|--|
| §233  | Fraud — insurance                      |
| §233A | Fraud — motor vehicle theft            |
| §345  | Misrepresentation — insurance policies |
| §486H | Fraud — insurance                      |

### Article 56

|                            |  |
|----------------------------|--|
| §81(b)                     | False statements — private detective licensing |
| §156B(b)                   | Tax evasion — fuel tax                         |
| §157F(i)                   | Fraud — gasoline sales                         |
| §261(a)(3), (4), (6) & (9) | Fraud — home improvements                      |
| §343(a)(4), (5) & (8)      | False statements — land surveying              |
| §365A                      | Fraud — franchises                             |
| §412(a) & (b)              | Fraud — business opportunities                 |
| §415(b)                    | ” ” ”  |

### Article 73B

|      |                        |
|------|------------------------|
| §18  | Fraud — pension system |
| §97  | ”                      |
| §125 | ”                      |



## INSTRUCTIONS

§153

”

### Article 75<sup>1/2</sup>

§18(a)(4), (5) & (8) Fraud — engineers

### Article 75A

§14(a), (b), (d), (e) & (f) False representation — accountants

### Article 81

§221 Willful failure to file income tax  
§302(b) Fraudulent return — income tax  
§312(f)(1) Fraudulent exemption certificate — income tax  
§369(a), (b) & (c) Willful failure to pay sales tax  
§369(d) False statement — sales tax  
§369(f) Evasion — sales tax  
§411(1) & (2) Willful failure to pay amusement tax  
§411(3) False statements — amusement tax  
§443 Forgery — cigarette tax stamps  
§455 Cigarette tax offenses

### Article 88A

§62(a) Perjury — fraud — social services

### Article 88B

§35 Perjury — fraud State police retirement system  
§61 ”

### Article 101

§41 False claims — workmen's compensation  
§76(c) Fraud — State Accident Fund

### Agriculture

§4-123(9), (12), (13) & (15) False statements or forgery — meat products  
§4-123(19) & (20) Bribery — meat products  
§4-218(7), (11) & (12) False statements — poultry products  
§4-228(a) (1) (i), (ii) & (iv) False statements — poultry product reports  
§11-213(c) Impersonation of inspection officers  
§11-213(d) (1), (4), (5), (9) & (10) Fraud — weights and measures  
§11-307(a) Misrepresentation — packaging  
§11-310(a) Misrepresentation — prices

## REGISTRATION AND ELECTION LAWS

### Commercial Law

|                       |  |
|-----------------------|--|
| §12-304(a)            | False advertising — consumer loans             |
| §12-403(a)            | False advertising — secondary mortgage loan    |
| §13-301(1)—(9) & (11) | Deceptive trade practices                      |
| §14-12A-02(3) & (4)   | Deceptive trade practices — waterproofing      |
| §14-302(6), (11)      | Deceptive trade practices — door-to-door sales |
| §14-903(a) & (b)      | Misrepresentation — kosher products            |
| §14-905(a) & (b)      | ”  |
| §14-908               | ”  |
| §18-202               | Fraud — bills of lading                        |
| §18-203               | ”  |
| §18-204               | ”  |
| §18-205               | ”  |
| §18-206               | ”  |
| §18-207               | ”  |
| §18-303               | Fraud — warehouse statements                   |
| §18-306               | ”  |

### Corporations and Associations

|               |                                    |
|---------------|------------------------------------|
| §2-216(a)(3)  | False entries — corporate records  |
| §11-301       | Securities fraud                   |
| §11-302(a)    | ”                                  |
| §11-303       | False statements — securities      |
| §11-304(b)    | Misrepresentation — securities     |
| §11-904(b)(1) | Fraud — corporate take-over offers |

### Courts and Judicial Proceedings

|           |  |
|-----------|--|
| §8-401(c) | Misrepresentation of facts on juror qualification form |
| §10-402   | Wiretapping and interception of communications         |
| §10-403   | Possession of interception device                      |
| §10-412   | Breaking and entering — wiretapping                    |

### Financial Institutions

|              |                             |
|--------------|-----------------------------|
| §5-803       | False bank records          |
| §5-807(a)(1) | False advertising — banking |

### Health—Environment

|                                |   |
|--------------------------------|---|
| §4-256(1)—(3), (5)—(7), & (10) | Misrepresentation — food, drugs and cosmetics |
| §4-258(b)(4)—(12)              | Fraud — drugs                                 |
| §4-259(1)                      | False reports — food and drugs                |
| §4-1107                        | Barbiturates                                  |

## INSTRUCTIONS

- §5-118 False entry — poison records
- §7-265 Hazardous waste offenses
- §9-1023 Fraud — water quality lab certification

### Health—General

- §4-226(c) Alteration of vital records

### Health—Occupations

- §2-401(b) Fraud — audiologists
- §2-402 Misrepresentation — audiologists
- §2-403 False statements — audiologists
- §2-404 Fraud — audiologists
- §2-405 " "
- §3-502 Misrepresentation — chiropractors
- §3-503 Fraud — chiropractors
- §4-602 Misrepresentation — dentists
- §5-602 Misrepresentation — electrologists
- §6-502 Misrepresentation — morticians
- §7-703 Misrepresentation — nurses
- §7-704 Fraud — nurses
- §7-705 " "
- §8-402 Misrepresentation — nursing homes
- §8-403 Fraud — nursing homes
- §9-402 Misrepresentation — occupational therapists
- §9-403 " " "
- §10-502 Misrepresentation — optometrists
- §12-702 False representation — pharmacists
- §12-704 Misrepresentation — pharmacists
- §14-702 Misrepresentation — physicians
- §14-703 False statements — physicians
- §15-502 Misrepresentation — podiatrists
- §16-402 Misrepresentation — psychologists
- §17-401 Misrepresentation — sanitarians
- §18-402 Misrepresentation — social workers
- §18-403 Fraud — social workers
- §18-404 False statements — social workers
- §19-401(b) Fraud — speech pathologists
- §19-402 Misrepresentation — speech pathologists
- §19-403 False statements — speech pathologists
- §19-404 Fraud — speech pathologists
- §19-405 Transfer of license — speech pathologists
- §21-502 Misrepresentation — well drilling

### Natural Resources

- §1-207 Impersonating an officer

## REGISTRATION AND ELECTION LAWS

### Tax—Property

|          |  |
|----------|--|
| §14-1002 | Willful failure to provide information               |
| §14-1004 | Willfully providing false information or answer      |
| §14-1006 | Willful failure to submit property tax report        |
| §14-1009 | Willful failure to answer interrogatory              |
| §14-1012 | Misrepresenting consideration on recorded instrument |

### Transportation

|                             |   |
|-----------------------------|---|
| §5-1008                     | Firearms or explosives aboard aircraft        |
| §12-301(d)                  | Fraud — identification cards                  |
| §14-107(d)                  | Misrepresentation — vehicle registration      |
| §14-110                     | Forgery — vehicle registration                |
| §15-312(2) & (3)            | Fraud — vehicle sales                         |
| §15-313(a) (1)              | False advertising — vehicle sales             |
| §15-314(1)                  | Misrepresentation — vehicle sales — licensing |
| §15-411(4)                  | ” ” ”   |
| §16-301(a), (b)(2) & (b)(3) | Fraud — driver’s license                      |
| §22-415                     | Tampering with odometer                       |

### Common Law Offenses

|              |                 |
|--------------|-----------------|
| Arson        | Mayhem          |
| Bigamy       | Murder          |
| Burglary     | Perjury         |
| Forgery      | Robbery         |
| Kidnapping   | Sodomy          |
| Manslaughter | Theft — attempt |

The following is a list of some of the most frequently encountered offenses that are *not* “infamous crimes”:

### Article 27

|         |   |
|---------|---|
| §8(b)   | Arson — personal property, when damage is under \$1,000       |
| §10(b)  | Arson — attempts to burn personal property or goods and wares |
| §15     | Prostitution  |
| §38     | Conspiracy  |
| §111    | Malicious destruction of property                             |
| §121    | Disturbing the peace  |
| §122    | Disturbing the peace  |
| §123    | Disorderly conduct  |
| §268F   | Harboring a fugitive  |
| §268G   | Harboring a prisoner  |
| §287(a) | Drug possession   |
| §287(b) | Possession of drug paraphernalia                              |

## INSTRUCTIONS

|       |                              |
|-------|------------------------------|
| §342  | Theft [less than \$300]      |
| §388  | Manslaughter by automobile   |
| §464C | Fourth degree sexual offense |
| §490  | Rogues and vagabonds         |

### Common Law Offense

Assault  
Solicitation to Murder

Persons convicted of any of the infamous crimes on the above list cannot be registered unless they have been pardoned or, if it is the first such conviction, the sentence (including any period of probation) has expired. We believe that the above list will cover almost all Maryland crimes with which the officers of registration will ordinarily have to deal, but it does not necessarily include all infamous crimes. If the offense of which the applicant for registration has been convicted is not included in the above list of infamous crimes, is not a felony and does not involve a clear element of fraud, deceit or corruption, the probability is that the voter is entitled to be registered.

If a prospective registrant indicates a prior Maryland conviction (without pardon) of a crime which does not specifically appear on the list and which does not clearly involve an element of fraud, deceit or corruption, then the person should not be denied registration unless such denial is first approved by the Attorney General's office. If a prospective registrant indicates a prior conviction (without pardon) of a crime in another jurisdiction (state or federal) which would clearly constitute a disqualifying crime under Maryland law, then that person is not entitled to register. If it appears, but is not certain, that a non-Maryland criminal conviction constitutes a disqualifying crime under Maryland law, the counsel to the Board of Supervisors of Elections of your county, and the Attorney General's office in particularly doubtful cases, will advise you. Close questions should be resolved in favor of the applicant and disenfranchisement should only occur when clearly required. The list of crimes in question will be updated and revised from time to time by the Attorney General's office as circumstances warrant.

## SECTION V

### REVISION OF REGISTRIES

Any voter may file with the board or with the board of registry objections to the registration of any person whom such voter has reason to believe is not eligible to vote. A voter may also file a request for the addition of any person whose name has been erroneously omitted or dropped from the registration list of any precinct. Application for the correction of any such precinct registration list or a challenge of the right to vote of a person named on such list may be made by any qualified voter at the office of the board at any time except during the 45 days prior to any election. (Sec. 3-16(b)(2))

Such applications or challenges shall be made in the form prescribed by the State Administrative Board of Election Laws and the forms shall be provided

## REGISTRATION AND ELECTION LAWS

by the board for that purpose. The voter shall state, under oath and of his or her own personal knowledge, the reason for the application or challenge. Thereafter, the voter so applying or challenging shall be required to appear in person at the time of the hearing on the application or challenge and for willful failure to so appear shall be subject to the penalties provided for in Section 24-27. (Sec. 3-16(d))

Persons whose right to register has been challenged and persons whose names are alleged to have been erroneously omitted or dropped from the registration lists shall be given written notice, sent by mail, addressed to the voter at the last address given on his or her registration form. Any voter so notified may appear in person or by counsel. (Sec. 3-16(c))

At the request of either party or on its own motion, the board shall issue subpoenas to witnesses to appear at such hearings. The witnesses shall then be sworn and examined. All cases shall be decided promptly after hearing. No voter as to whom an application or a challenge has been made shall be removed from the registration lists unless the application or challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter as to whom the application or challenge was made is properly registered. If the board is satisfied that the person so challenged, omitted or dropped from the registration lists has actually moved to another precinct and is presently residing within that other precinct, the board may transfer that person to the registration list of the precinct in which he or she presently resides. (Sec. 3-16(d)(e))

The board also has the power to correct clerical errors at any time. The board shall notify the person whose record has been corrected by first-class mail. (Sec. 3-16(a))

### **Precinct Checks.**

Whenever the board shall determine that any precinct or a portion of a precinct is in need of a detailed check for the purpose of correcting the registration lists, it shall deliver to one or more of its clerks a copy of the registration list of all voters registered in the precinct or portion of a precinct. The board shall, at the same time, furnish to each of such clerks a sufficient number of change of residence cards on which registrants who have changed their residence may apply to the board for a transfer of registration, and a sufficient number of cards to be handed to nonregistered voters indicating when and where to register. (Sec. 3-24(a))

## **PART II**

### **Voting**

#### **Scope.**

Since voting machines or other voting systems are now used throughout the State, Part II relates to the use of the machines or systems. Paper ballots are used in absentee voting and special cases and their use is treated in Part V.

#### **SECTION I**

##### **QUALIFICATION OF JUDGES OF ELECTIONS**

Each person appointed as an election judge must be a registered voter, residing in the election district or ward in which the precinct for which he or she is appointed is located. However, if a qualified person residing in that election district or ward cannot be found with reasonable effort, then the judge so appointed must be a registered voter residing in Baltimore City or the county in which the precinct is located. Every judge must be able to speak, read and write the English language. During the time of acting as a judge, he or she must not hold or be a candidate for any public or political party office. Nor may an election judge be a campaign manager for a candidate or treasurer for a candidate or political committee. Each board may prescribe such rules and regulations as it may deem necessary for determining the qualifications of persons proposed for appointment as judges. (Secs. 2-7(b) and 2-6)

#### **SECTION II**

##### **GENERAL INSTRUCTIONS FOR JUDGES AT POLLS**

#### **Hours.**

Polling places throughout the State shall be opened by the judges at 7:00 a.m. and closed at 8:00 p.m. on the same day. (Sec. 15-2) Any person waiting in line at 8:00 p.m. shall be permitted to vote. (Sec. 16-15)

Absence or lateness of judges not justified by urgent necessity is an offense punishable by fine or imprisonment. (Sec. 24-5) At least four election judges shall be present at each precinct, with an equal number of such judges being selected from the majority party and the principal minority party in the State. (Sec. 2-7) Such judges shall meet at their respective polls on election day at least one-half hour before the opening of the polls and shall, one-half hour before the opening of the polls, inspect the equipment furnished to make certain that everything is operational by 7 A.M. (Sec. 16-11(b))

#### **Vacancies.**

If any judge is not present at the expiration of 15 minutes after the time fixed for the opening of the polls, the judge or judges present shall fill the

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place of the absent judge by appointing as substitute a person of the same political party as the absentee. One of the judges shall administer to the newly appointed judge the oath required of the judge originally appointed. (Sec. 2-8(a))

(Note: The appointment of a substitute judge does not relieve an original judge from the penalties by law imposed for absence or lateness without urgent necessity.)

### **Substitutes.**

After the polls are opened, a judge may not depart until the ballots have been cast and counted and the returns completed. If absolute necessity compels the absence of a judge, such judge, before leaving, must appoint and administer the oath to some fit person of the same political party to act in his or her stead until the judge returns. Blank forms for the appointment of such substitute judges, and of the oath to be taken by them, will be furnished at each polling place by the board. The oath administered shall be preserved and returned to the board by the judges in the poll book together with a record of the appointment and swearing in of each substitute, and the reason therefor, and of the time such substitute began and ceased to serve. When the judge in whose stead the substitute was appointed returns, such substitute shall cease to act. (Sec. 2-8(b), (c), (d))

### **Division of Duties Among the Judges.**

Half of the judges shall handle the registries and half of the judges shall act as machine or system judges.

### **What Is to Be Done Before Voter Allowed to Enter Machine or Voting Booth.**

A voter must identify himself or herself by signing a voting authority card. Each voting authority card shall be numbered and dated, and they shall be handed to the voters in numerical order. Unless an electronically reproduced precinct register is used, the signature shall be compared with the signature on the registration card. If the signatures do not appear to be identical, the judges may make inquiry to determine whether the applicant is the same person whose name appears on the registry. Where an electronically reproduced precinct register is used, or where the entry "cannot sign" appears on the registration card, then the applicant shall be required to state his or her age or month and day of birth, which shall be compared with the listed voter registration information which appears on the registry, or the applicant shall identify himself or herself by reference to other information in the registration record. If, after that inquiry, the majority of the judges are satisfied that the person offering to vote is the same person whose name appears on the registry, the judge having charge of the precinct register shall approve and initial the voting authority card and the person shall be permitted to vote.



## INSTRUCTIONS

Remember, however, that a person's handwriting can change, that judges are not handwriting experts, and that the misspelling of a name, an incorrect address, or wrong initials do not disenfranchise.

If the voter has changed his or her name or address after registration, or after the last time he or she voted, that fact shall be disclosed to the judges at the time the voting authority card is applied for. The judges shall indicate the change of name or address and report the fact to the board. When electronically reproduced voter authority cards are used, the voter shall enter his or her date of birth in the spaces provided, if such information is not preprinted. (Sec. 15-4)

### **Power of Arrest.**

Each judge of election has authority to keep the peace, and to cause any person to be arrested who has committed any breach of the peace or of the election laws or who has interfered with the conduct of the election or with the count of the ballots. It is the duty of all officers of the law to obey the order of any judge of election; and an officer making an arrest by order of such judge will be protected in so doing as fully as if a warrant had been issued to the officer to make such arrest.

Any one of the judges can order the arrest. It is not necessary that a majority of the judges concur in the order. (Sec. 15-1)

## SECTION III

### **CHALLENGERS AND WATCHERS**

#### **Rights and Duties of Challengers.**

Each candidate, political party or other body of voters having a candidate, candidates, principle or proposition appearing on the ballot, shall have the right to designate a registered voter as a challenger and watcher at each polling place. It is the duty of the judges of election and the police to protect the challengers and watchers in the discharge of their duty. Each challenger shall have a certificate signed by a party or candidate, in the form prescribed by the State Administrative Board of Election Laws. (Sec. 15-3(a), (b), and (f))

#### **Challengers May Be Removed by the Persons Appointing Them.**

A challenger or watcher may be removed at any time by the same person who made the appointment. (Sec. 15-3(d))

#### **Presence of Challengers and Watchers Prior to Opening of Polls.**

A challenger or watcher has the right to enter a polling place one half hour before the polls open. However, if a majority of the judges present find that the presence of the challengers and watchers in the polling place prior to its

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opening will prevent the timely opening of the polls, the judges may direct all challengers and watchers to leave the polling place. Election judges are not required to admit, before the polls open, any challenger or watcher who was not present at the polls at least one half hour before its opening. A challenger or watcher has the right to enter or be present at the polling place at any time the polls are open, and may remain until the returns are completed. (Sec. 15-3(c)(1))

### **Position of Challengers and Watchers in Poll Room.**

From the time the polls open until the time they are closed, the challengers shall be assigned a position in the poll room as near to the judges as practicable, so that they can see every person who offers to vote. From the time the polls close until the returns are finally made up and all the work of the election completed, the challengers and watchers have the right to take such position as will enable them to see everything that is done and how it is done. (Sec. 15-3(a) and (c))

### **Penalty for Obstructing or Excluding Challengers.**

To obstruct or refuse to permit the challengers to take the positions described above is an offense punishable by a fine of not less than \$50.00 or more than \$1,000 or by imprisonment for not less than three months or more than one year, or by both. (Sec. 24-17(a)(2))

### **What Challengers Must Not Do.**

No challenger or watcher has any right to inquire or ascertain for whom any voter desires to vote or has voted, or to confer in the polling room with any voter, or to assist a voter in the preparation of the ballot or in the operation of the voting machine. Challengers and watchers may not interfere with or obstruct the judges in the proper performance of their duties. Whenever a challenger or watcher does any of these prohibited acts, the judges shall exclude that challenger or watcher from the polling room. (Sec. 15-3(c)(2))

### **When Citizens May Come Into Poll Room to Challenge.**

Persons other than challengers who desire to challenge the vote of any person inside the polling room are permitted by law to enter the room for such purpose. The majority of the judges, however, may limit the number of persons allowed in the room for such purpose, and any person who enters the room for such purpose must leave it as soon as the right to vote of the person challenged has been decided. (Sec. 15-3(e))

# INSTRUCTIONS

## SECTION IV

### CHALLENGED VOTERS

#### How Challenge Decided.

No person's right to vote shall be challenged at the poll on any ground but identity. The challenger shall be required to state under oath the reasons for challenge. The voter challenged shall be sworn and questioned before he or she enters the voting booth to cast his or her ballot. If a majority of the judges are of the opinion that the voter is the person who was registered, his or her vote shall be received. The judges have nothing to do with the question whether the voter was or was not entitled to be registered. Under the Constitution of the State, the fact that the voter has registered is, so far as the judges of election are concerned, conclusive of his or her right to vote; their business is simply to satisfy themselves that the person offering to vote is the person who registered. (Sec. 16-14)

#### Duties of Judges.

When a voter is challenged the judge must swear and examine the voter as above directed. A failure or refusal to do so is a punishable offense. (Sec. 24-8)

If a judge knows or believes a person offering to vote is not the person registered, the judge must challenge if no one else does. (Sec. 24-8)

#### Voting Authority Cards.

Before being admitted to vote, each registered voter shall identify himself or herself by signing a voting authority card and giving any change of address or name in the presence of the judges.

If the registered voter cannot sign his or her name, he or she shall make an "X" or other mark on the signature line of the voter authority card if able to do so. If the registered voter is not able to make an "X" or other mark on the signature line, the signature line shall be left blank. On the reverse side of the voting authority card, an election judge shall make the following endorsement:

\_\_\_\_\_, who was qualified by me to vote in this election is

Name of Voter  
unable to sign his/her name.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge of Election

Since all the information about the voter is preprinted on the front side of the card (name, precinct number, date of election, etc.), it does not need to be repeated in the endorsement made by the judge on the reverse side of the card.

No person shall be permitted to vote unless a majority of judges are of the opinion that the person offering to vote is the same person whose name ap-

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pears on the registry. Voting authority cards must be issued in numerical order as the applicants appear and offer to vote.

### **Instructions to Voters.**

Before a voter enters the voting machine booth or voting booth, the judges shall, upon request, instruct the voter regarding the operation of the machine or device. This instruction shall be by means of diagrams and by permitting the voter an opportunity to operate a model machine. (Sec. 16-12(a))

Any voter may receive further instructions concerning the manner of voting, after he or she has entered the voting machine booth and before the closing of such booth. In this event two judges of opposite political parties shall give the voter necessary instructions as to the operation of the machine. However, no judge may suggest in any way how the voter should vote any particular ticket, any particular candidate or any particular question. After giving such instructions, and before the voter closes the booth or votes, the judges shall retire. (Sec. 16-12(c)(2))

### **Voters' Use of Sample Ballots.**

Any voter may take into the polling place any written or printed memorandum or paper to assist in marking or preparing the ballot. The judges should take care to remove from the voting booth any sample ballot that a voter leaves behind.

### **Time Allowed for Voting.**

No voter shall take more than four minutes to vote on a voting machine, if others are waiting to vote, except that an additional three minutes shall be allowed if there are referenda or constitutional amendments to be voted on. Enforcement of this requirement should not be unduly rigid but should be reasonably flexible, taking account of the particular circumstances. (Sec. 16-13)

### **Assistance to Voters.**

Voters may not be permitted to receive assistance in voting at any election unless they declare under oath that by reason of blindness, other disability, or inability to read or write the English language they are unable to vote without assistance.

In their affidavits these voters shall state the specific reason which requires them to receive assistance. A voter may not be assisted until a majority of the judges of election shall be satisfied of the truth of the facts stated in the affidavit. The judges shall enter in writing on the record of assisted voters:

- (1) The voter's name, and
- (2) The specific reason which requires the voter to receive assistance.

## INSTRUCTIONS

If a voter makes such affidavit of disability, two judges of opposite political party or any other person the voter may select (except the voter's employer, agent of that employer, or officer or agent of the voter's union) shall retire with the voter to a voting machine or voting booth. The person selected by the voter, or as the case may be, one of the judges in the presence of the other, shall operate the machine or device as such voter shall direct with the voter personally naming one by one the candidates for whom he or she desires to vote. No suggestion shall be made by a judge to indicate how such voter should vote. The only assistance which the judges may lawfully give to such a voter is to move the indicators as the voter shall direct. (Sec. 16-12(b)(c))

Except under these circumstances, a voter may not be accompanied into a voting booth or voting machine by any person over the age of five years. (Sec. 16-12(d))

### **Voters in Line at Closing of Polls Permitted to Vote.**

All qualified voters who are waiting in line to vote when the polls are closed (8 p.m.) shall be permitted to vote. (Sec. 16-15(a))

### **General Write-In Instructions.**

In any general or special election, a voter may write in a name for any office.

Judges are not to volunteer information on write-in voting until asked by the voter. When asked, the judge is to see that the voter is fully informed of the procedure before voting. A voter who cannot write is entitled to assistance upon giving an affidavit described above.

See instructions relating to the specific voting machine or system you are using for further write-in instructions.

## **PART III**

### **Voting Systems**

#### **ELECTRONICALLY TABULATED PUNCHCARD OR OPTICAL SCAN BALLOT VOTING SYSTEMS**

Instructions will be issued by the local board to election judges working in any jurisdiction utilizing any approved punchcard or optical scan ballot system for in-person voting.

The instructions shall encompass State election laws and the regulations of the State Administrative Board of Election Laws.

**PART IV**  
**Voting Machines**

**Automatic Voting Machine (AVM)**

**Shoup Voting Machine**

Instructions will be issued by the local board to election judges working in any jurisdiction utilizing either AVM or Shoup Voting Machines for in-person voting.

It shall be the duty of the supervisors of elections or a person designated by them to instruct election officials in their duties and the use of voting machines. (Sec. 2-7(g))

The instructions will encompass State election laws and any regulations applicable.

## **PART V**

### **Absentee Voting**

#### **Who May Obtain an Absentee Ballot**

The following persons are entitled to vote by absentee ballot:

1. Any employee of the State Board or a board of elections, including any election judge, who, as a condition of employment on any election day, is required to be absent from his or her election district, ward, or precinct. (Sec. 27-1(a)).
2. Any qualified voter who may be absent on election day for any reason from the County or Baltimore City where the voter is registered. (Sec. 27-1(b)).
3. Any full-time student at a college or university located outside the precinct but within the county in which the student is registered to vote and whose academic requirements preclude the student from being present at the polls on election day. (Sec. 27-1(b)).
4. Any qualified voter whose physical disability or confinement in or restriction to an institution prevents or will prevent him from being present and personally voting at the polls. (Sec. 27-2(a)).
5. Any person permitted to register by casting an absentee ballot as listed in Section II (Absentee Ballot) of Part I of these Instructions. (Sec. 3-7).

In addition, the following persons are entitled to vote by emergency absentee ballot:

1. Any employee of the State Board or a board of elections, including any election judge, who, as a condition of employment on any election day, is required to be absent from his or her election district, ward or precinct. (Sec. 27-2(a-1)(i)).
2. Any qualified voter who is unable to be present at the polls as a result of illness or accident occurring after the time for applying for an absentee ballot has passed. (Sec. 27-2(a-1)(1)(ii)).
3. Any qualified voter who is unable to be present at the polls because of a death or serious illness in the person's immediate family, about which the person becomes aware after the time for applying for an absentee ballot has passed. (Sec. 27-2(a-1)(1)(iii)).
4. Any qualified voter who is required to be absent on the day of an election from the County or Baltimore City where the person is registered for any reason of which the person becomes aware after the time for applying for an absentee ballot has passed. (Sec. 27-2(a-1)(1)(iv)).

#### **How Absentee Ballot May Be Obtained.**

The board shall furnish an application for an absentee ballot to any qualified voter. (Sec. 27-5)



## INSTRUCTIONS

Any person who is entitled to register and vote by absentee ballot may apply in writing to the board for an absentee ballot. The postcard application provided by the United States Government shall be a sufficient application for an Absentee Ballot. Except for those voters described in Sections 27-2(a-1) and 3-7(b)(1) and (5), an application for an absentee ballot must be received by the board not later than the Tuesday before the election. (Sec. 27-4).

The name and address of each applicant for an absentee ballot, the date and time such application is received and other relevant information, shall be entered in a book to be kept for that purpose. If the applicant is a registered voter, such application, together with the precinct and ward or district in which the voter is registered, shall be entered in a book marked "Applications of Registered Absentee Residents." If the applicant is not registered or if the board cannot determine whether the applicant is or is not registered, said application, together with the precinct and ward or district of the applicant's residence, shall be entered in a book marked, "Applications of Unregistered Absentee Residents." The date on which the Absentee Ballot is mailed to each absentee resident shall be entered in said books. (Sec. 27-6(c)) No such voter shall vote or be allowed to vote in person at any polling place. (Sec. 27-6(c)(2)).

Not more than one absentee ballot shall be mailed to any one applicant unless the board has reasonable grounds to believe that the absentee ballot previously mailed has been lost, destroyed, or spoiled. (Sec. 27-6(d)).

### **Deadlines for Receipt of Absentee Ballots.**

#### **Primary Election**

Any absentee ballot, whether mailed or hand delivered, is timely if it is received by the close of the polls on election day.

Any absentee ballot received by mail shall be considered timely if it arrives no later than 4 p.m. on the Wednesday following election day and the United States Postal Service or the postal service of any other country has provided verification that it was mailed before election day by affixing a mark on the covering envelope, or the voter affidavit indicates that it was completed and mailed before election day. (Sec. 27-9(c)).

In a primary election in a year in which the President is elected, any absentee ballot received in the mail from a location outside the United States shall be considered timely if it arrives no later than 4 p.m. on the second Friday following the election and the United States Postal Service or the postal service of any other country has provided verification that it was mailed before election day by affixing a mark on the covering envelope, or the voter affidavit indicates that it was completed and mailed before election day.

Any absentee ballot received by mail after these deadlines shall not be counted. (Sec. 27-9(f)(4)).

#### **General Election**

Any absentee ballot, whether mailed or hand delivered, is timely if it is received by the close of the polls on election day.

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Any absentee ballot received in the mail from within the United States shall be considered timely if it arrives no later than 4 p.m. on the Wednesday following election day and the United States Postal Service or the postal service of any other country has provided verification that it was mailed before election day by affixing a mark on the covering envelope, or the voter affidavit indicates that it was completed and mailed before election day.

Any absentee ballot received in the mail from a location outside the United States shall be considered timely if it arrives no later than 4 p.m. on the second Friday following the election and the United States Postal Service or the postal service of any other country has provided verification that it was mailed before election day by affixing a mark on the covering envelope, or the voter affidavit indicates that it was completed and mailed before election day.

Any absentee ballot received after these deadlines shall not be counted. (Sec. 27-9(f)(4)).

### **Basic Counting Procedures For Absentee Ballots.**

If the board determines that the oath on the ballot envelope is in proper form and that the person signing the same is entitled to vote in any district, precinct or ward in their respective county or city, and has not already voted in person, they shall open the ballot envelope and remove the absentee ballot, and without opening or unfolding it, place it in a ballot box prepared for that purpose. (Sec. 27-9(j)). Absentee ballots must not be opened or unfolded at any time prior to being counted. (Sec. 27-9(a)).

At any time after 4 p.m. on the Wednesday following the closing of the polls and not later than the canvass of the votes cast in person at the election, the board shall register all qualified absentee residents not previously registered, and immediately upon completion of such registration, the board shall proceed to count the absentee ballots timely received. (Sec. 3-7(a) and (b); Sec. 27-9(b)).

When a ballot envelope is opened, the board shall enter in the registry the fact that the voter whose name appears thereon has voted, using the initials "A.B." to indicate the vote has been by absentee ballot. (Sec. 27-9(j)(2)).

The canvass shall be conducted by election district or ward and precinct or by congressional, councilmanic or legislative district. However, absentee ballots may not be separately disclosed or reported by precinct. (Sec. 27-9(f)(5) and (6)).

The boards shall take all appropriate and feasible steps to protect the privacy of all absentee ballots and shall keep the ballots safe from tampering until the canvass is completed. (Sec. 27-9(b)).

If an absentee ballot envelope is delivered to the wrong board, such board shall immediately send the ballot envelope unopened, unmarked and unchanged in any way to the proper board. (Sec. 27-9(h)).

All voter's applications, affidavits, certifications, ballot envelopes and ballots shall be kept separate and apart from ballots cast at the regular voting places and retained after the dates of election. (Sec. 27-9(f)(7)).

If the intent of the voter is not clearly demonstrated, only the vote for that office or question shall be rejected. (Sec. 27-9(f)(2)). If the board of canvassers

## INSTRUCTIONS

determines a ballot is intentionally marked with an identifying mark, the entire ballot shall not be counted. (Sec. 27-9(f)(3)). Any absentee ballot voted for a person who is no longer a candidate shall not be counted for that candidate, but the remainder of the ballot shall be counted. (Sec. 27-9(g)).

If the board determines that a person who voted an absentee ballot has died before election day, that absentee ballot of the deceased person shall not be counted. (Sec. 27-9(i)). If there is more than one ballot in the ballot envelope, all shall be rejected except when two elections are held on the same day and the voter is voting in both elections and the voter returns both absentee ballots in the ballot envelope provided. (Sec. 27-9(j)(3)).

If a board receives from the same person prior to the deadline for receipt of absentee ballots more than one absentee ballot, it shall count only the absentee ballot contained in the ballot envelope on which the voter's oath was first executed. If the oath on two or more of the ballot envelopes containing absentee ballots are dated the same or if both are undated, none of the ballots received from such person shall be counted. (Sec. 27-9(k)).

A ballot shall be rejected only by the unanimous vote of the entire board. (Sec. 27-9(f)(1) and Sec. 27-10(b)).

### **Canvassing of Absentee Ballots.**

Section 27-9, as well as the above discussion, sets forth the detailed procedure for canvassing of absentee ballots.

# PART VI

## Primary Elections

### SECTION I

#### GENERAL

The law requires political parties with which 10% or more of the registered voters of the State are affiliated to nominate their candidates for public office and for party central committees by primary election. (Sec. 5-1)

At the same primary elections, the registered voters of certain counties select nominees for their county non-partisan Board of Education from the candidates who have filed for such office. (Sec. 32-2)

#### **Date and Hours of the Primary Election.**

The primary elections by the political parties for candidates for State offices and central committee shall be held throughout this State on the second Tuesday after the first Monday in September. The primary elections by the political parties in each year in which a national convention is held for the nomination of candidates for President and Vice-President shall be held throughout this State on the second Tuesday in March. A special primary election to fill a vacancy in the office of Representative in Congress shall be held on such date as the Governor shall specify pursuant to Sec. 22-1(b). (Sec. 5-2(a))

Unless otherwise provided, primaries shall be conducted in the same manner as general elections insofar as the provisions for general elections are applicable. (Sec. 5-3(a))

The same notice of the time and place of holding a primary election shall be given by the boards of supervisors of elections of the City of Baltimore and of the counties as is required in connection with general elections. (Sec. 2-10)

All political parties subject to the Act shall hold their primaries on the same day. The hours of the primary election are the same as the hours of the general election. See Part II, Section I of these Instructions.

#### **Control.**

The primary elections shall be conducted under the control of the several boards of supervisors of elections in Baltimore City and the counties. Voting places shall be selected as provided in Sec. 2-11 for primary and general elections.

#### **Ballots.**

Where there is only one candidate for a particular nomination (other than nomination for President of the United States), his or her name may not be printed on the ballot. (Sec. 5-3(e))

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Persons registered as affiliated with a given political party shall have the right to vote the official ballot of that party, and of no other, in a primary election. (Sec. 16-11(h))

### **Names of Candidates Alphabetically Arranged Upon the Ballots.**

The names of candidates for nomination shall be arranged alphabetically upon the ballots according to the surnames of the candidate. (Sec. 16-5(a)) As far as possible, all candidates for the same office shall be placed in one column on the ballots; but when the number of names exceeds the space limitations, then additional columns may be used. When more than one column must be used for the same office, the same number of names, as far as possible, shall be printed in each column. (Sec. 16-5(b))

The titles of offices may be arranged horizontally or vertically on the ballots, with the names of candidates for an office arranged longitudinally under or transversely opposite the title of his office. The titles of offices shall be arranged so as to appear in the following order: (1) public offices for which the voters of the entire State or of an entire congressional district may vote as follows: President and Vice President, Governor and Lieutenant Governor, Comptroller, Attorney General, U. S. Senator, Representative; (2) the Senate and House of Delegates of the General Assembly of Maryland; (3) Mayor, President of the City Council, Comptroller and Members of the City Council of Baltimore City or County Executive and County Council or County Commissioners of the respective counties; (4) candidates for judge of the circuit courts for the several counties, and of the Circuit Court for Baltimore City, and questions of continuance in office of an incumbent judge of the Court of Appeals and the Court of Special Appeals; (5) offices for which the voters of the respective counties or Baltimore City may vote, including, but not limited to, the Offices of Treasurer, State's Attorney, Clerk of the Circuit Court for the several counties or Clerk of the Circuit Court for Baltimore City, register of wills, judges of the orphans court, and sheriff; (6) party offices. (Sec. 16-5(c))

### **Voters.**

No person who has declined to affiliate, and who is entered as "Declined" or "Independent," shall be permitted to vote at any primary election. (Sec. 16-11(h)) However, all registered voters, irrespective of party affiliation, may vote for candidates for a non-partisan Board of Education when nominees are selected at a primary election. (Sec. 32-2)

### **Publication of Names of Candidates for Nomination.**

The names of the several candidates for nomination shall be published, in the mode prescribed, at the same time that notice of the election is given. Section 2-10(b) requires that each board in the counties shall give notice during the calendar week immediately preceding any election of the time and

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place of the election by advertisements and that the board in Baltimore City shall give notice five (5) days before the date of the election. (Sec. 2-10(c))

### Expenses of Elections.

All the expenses of elections in Baltimore City shall be paid by the Mayor and City Council of Baltimore; and all the expenses of elections in each county shall be paid by the County Commissioners or County Council, precisely as the expenses of other State, city and county elections are paid. (Sec. 2-4(b))

## SECTION II

### VOTING

Primary elections shall be held and conducted and determined in the manner and form provided by Article 33 for general elections, and are subject to all the regulations, requirements and provisions as prescribed by Article 33 for general elections, insofar as the same are applicable to primary elections. (Sec. 5-3) Write in votes are not permitted in primary elections. (Sec. 5-3(f))

As to canvassing and certifying the results of primary elections, see Sections 17-1 et seq. and 18-1 et seq.

## **PART VII**

### **Election Law Offenses**

#### **Applicability of Fair Election Practices Act.**

Section 26-1, the first section of the Fair Election Practices Act, declares that the provisions of that Act are applicable to all elections in which ballots are cast pursuant to the provisions of Article 33. In addition to the criminal sanctions provided, the Secretary of State is authorized to seek injunctions against violations. (Sec. 26-21) A separate summary of the Fair Election Practices Act is prepared by the State Administrative Board of Election Laws and distributed to all candidates and to all boards of supervisors of elections together with the required reporting forms. (Sec. 26-2)

#### **Judges Have Power to Arrest.**

Each judge of election has authority to keep the peace and to cause any person to be arrested for any breach of the peace, any breach of the election laws, any interference with the progress of an election, or any interference with the canvass of the ballots or the ascertainment and transcription of votes recorded on the voting machines. (Sec. 15-1)

#### **Judges and Members of Political Bodies Liable to Prosecution for Violation of Law.**

If any judge of election, or any officer or official of registration, revision, election or canvass, or any member of any committee or of the governing body of any political party participating in primary elections, or any delegate to a convention or party executive of whom any duty is required under the election laws, shall be guilty of any wilful neglect of such duty or any corrupt or fraudulent conduct or practice in the execution of the same, he or she shall, upon conviction, be fined or imprisoned, or both. (Sec. 24-3)

#### **Judges of Election and Officers of Registration — Attendance.**

Any judge of election who fails or refuses to serve as such, or who, after being notified to appear for examination of his or her qualifications for judge of election, fails or refuses to appear for examination, is subject to a fine absent certain extenuating circumstances. (Sec. 24-4)

Any judge of election or officer of registration who, without urgent necessity, is absent, and any judge of election who, without urgent necessity, is late shall, upon conviction, be guilty of a misdemeanor and subject to fine or imprisonment. (Sec. 24-5)

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### **Keeping False Poll Lists or Making False or Unauthorized Entry or Tally.**

Any election official who wilfully keeps a false registry or poll list or knowingly inserts in any registry or poll list any false statement or any name, statement, or mark other than as provided by the election law, shall be guilty of a felony and, upon conviction, shall be imprisoned in the penitentiary. (Sec. 24-7)

Any judge of election or other person who makes, signs, publishes or delivers any false tally or return of any general, special or primary election, or any false certificate or statement of the result of any such election knowing the same to be false, or who wilfully defaces, destroys or conceals any statement, tally or certificate in his or her care and custody, shall be guilty of a felony and, upon conviction, shall be imprisoned in the penitentiary. (Sec. 24-9)

### **Rejecting Votes Improperly and Other Illegal Conduct.**

Any judge of election who wilfully excludes any vote, knowing the person offering the same is lawfully entitled to vote at that election, or who wilfully receives a vote from any person who has been duly challenged without exacting proof of qualification as required by law, or who wilfully omits to challenge any person offering to vote whom the judge knows or suspects is not entitled to vote, or who distributes any type of listing of persons who have or have not voted at an election, or who wilfully refuses to permit inspection of the public counter of any voting machine, or who permits any barricade or obstruction to be interposed so that the voting machine cannot be constantly seen, shall, upon conviction, be subject to imprisonment. (Sec. 24-8)

### **Concealing or Defacing Records.**

Any judge or other officer or person having custody of any record, registry of voters or copy thereof, oath, return or statement of votes, certificate, poll list, or any papers or documents directed to be made, filed or preserved, who conceals, wilfully destroys, mutilates, defaces, falsifies or fraudulently removes or secretes the whole or any part of that record or who fraudulently makes any entry, erasure or alteration on it except as permitted by law, or permits another to do so, shall, upon conviction, be guilty of a felony and subject to imprisonment. (Sec. 24-11)

### **Disobedience to Lawful Command of Judge of Election.**

Any person who wilfully disobeys any lawful command of any judge of election or of any board of registry given in the execution of the judge's or the board's duty in any registration or at any general, special or primary election shall, upon conviction, be guilty of a misdemeanor and subject to fine or imprisonment, or both. (Sec. 24-15)



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### **Obstructing, Assaulting, Bribing or Soliciting Judges, Challengers, etc.**

Any person, who, knowingly or wilfully, obstructs, hinders or assaults, or by bribery, solicitation or otherwise, interferes with any officer of registration, judge of election, or challenger in the performance of duty; or who, by any of these means or otherwise, unlawfully on any day of registration or revision of registration, or on the day of any general, special or primary election, hinders or prevents any officer of registration, judge of election or challenger or person designated to be present at the reception or canvass of ballots, in his free attendance and presence at the place of registration or revision of registration or of election or in his full and free access and egress to and from such place, or to and from any room where such registration, revision of registration, election, canvass, or making of any return certificates may be had; or who molests, interferes with, removes or ejects from any place of registration, election or canvass, or of the making of the returns or certificates, any such officer of registration, judge of election, challenger, or designated person, shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment or fine, or both. (Sec. 24-17)

### **Alcoholic Beverages.**

Any person who, during the hours of registration, or revision of registration, or during the hours of election or canvass of votes, or of making of the returns brings, takes, or sends into, or attempts to bring, take or send into any place of registration, revision of registration, canvass or election any distilled or spirituous liquors, wine, ale or beer, or at any such time and place drinks or partakes of any of these beverages, shall be guilty of a misdemeanor and, upon conviction, shall be subject to fine. (Sec. 24-24)

### **Electioneering — Unlawful Possession of Ballots.**

Any person who wilfully destroys or defaces any ballot, or removes any ballot outside the enclosure provided for voting before the closing of the polls, or wilfully delays the delivery of any ballot, or who, on or before the day of any general, special or primary election, possesses any official ballot printed for that election, or any imitation of that ballot, except as permitted by law, or who canvasses or electioneers or posts any campaign material in said polling place, or within the proscribed distance from it, shall, upon conviction, be subject to fine or imprisonment, or both. (Sec. 24-23)

### **Enforcement Duties of Boards of Supervisors.**

It is the duty of the boards to aid in the prosecution of all crimes and offenses proscribed by Article 33, and when, in the judgment of the board members, there is probable cause for believing that an offense has been com-

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mitted, it is their duty to report the matter to the appropriate prosecutor. (Sec. 24-30)

## PART VIII

### APPROVED FORM LIST

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| 2-2         | Appointment And Oath Of Substitute Judge                                      |
| 2-3         | Note Of Appointment Of Substitute Judge                                       |
| 3-1         | Oath Of Person Who Asks That A Name Be Removed From Registry                  |
| 3-2         | Authorization For Cancellation Of Voter Registration                          |
| 3-3         | Notice For Failing To Vote Within Five Years                                  |
| 3-4         | Application For Copy Of List Of Registered Voters                             |
| 3-5         | Temporary Certificate Of Registration   |
| 3-6         | Request for Change Of Address — Postcard                                      |
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| 3-12        | Report Of Registration Activity   |
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| 17-1               | Certification Of Voting Machine Counter Inspection                             |
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