

a denial of power to the legislature to impose other oaths appropriate to the special office, in addition to the general office prescribed by the Constitution.

"But the Constitutional Convention of 1867 sat in reconstruction days, and many of its members had, no doubt, personal experiences of the working of those "Oaths of Loyalty" which, in Maryland as well as elsewhere, had aroused much opposition and were considered productive of great injustice. They wanted to make plain that, so far as qualification for office was concerned, the official oath should never be used to accomplish indirectly what could not be done directly.

"They, therefore, deliberately omitted the authority contained in every previous Declaration of Rights, giving the legislature the power to impose an official oath, and to give emphasis to this design introduced the positive prohibition as we now find it."⁴

CONFLICT WITH OBER LAW

In order to sustain the legality of a statute requiring loyalty oaths, must the provisions of the Maryland Constitution which prescribe an oath of office and prohibit the legislature from prescribing additional oaths be supported by a further constitutional provision which denies the right to hold public office to anyone who advocates the overthrow of the government by force or violence?

The Maryland Subversive Activities Act, commonly referred to as the Ober Law, contains various provisions designed to safeguard against sedition and other subversive activities.⁵ Section 13 of

the Act requires every state employee "to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in this article." The employee who either fails to execute such a statement or admits to being subversive "shall immediately be discharged." Section 15 provides the requirement that candidates for election file affidavits that they are not "subversive persons."

The relative merits of the arguments pro and con, regarding the (federal) constitutionality of the loyalty oath, will not be considered in this memorandum.⁶ The only question at hand is, does the constitutional prohibition against prescribing other oaths render the Ober oaths illegal, or are they saved by virtue of Article XV, Section 11? The latter reads:

"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. (Ratified November 2, 1948.)"

It is apparent that Article 37 of the Declaration of Rights does not preclude the constitutionality of the oath require-

⁶ Issues involving First Amendment freedoms, due process, etc., are dealt with at length elsewhere. See *Shub v. Simpson*, 196 Md. 177, 76 A.2d 332 (1950); Prendergast, *Maryland: The Ober Anti-Communist Law*, in *THE STATES AND SUBVERSION* 140 (Gellhorn, ed. 1952); R. BROWN, JR., *LOYALTY AND SECURITY* (1958); J. BRYSON, *LEGALITY OF LOYALTY OATH AND NON-OATH REQUIREMENTS FOR PUBLIC SCHOOL TEACHERS* (1963).

⁴ A. NILES, *MARYLAND CONSTITUTIONAL LAW* 55-56 (1915).

⁵ MD. CODE ANN. art. 85A (1957, repl. vol. 1964).