

Sec. 11. The election for Judges hereinbefore provided, and all elections for Clerks, Registers of Wills and other officers provided in this Constitution, except State's Attorneys, shall be certified, and the returns made by the Clerks of the Circuit Courts of the Counties, and the Clerk of the Superior Court of Baltimore City, respectively, to the Governor, who shall issue commissions to the different persons for the offices to which they shall have been, respectively, elected; and in all such elections the person having the greatest number of votes shall be declared elected.

The attorney-general, although not expressly named, is clearly embraced within the terms of this section. Construing this section in connection with article 5, section 2, 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. See notes to article 5, section 2. *Groome v. Gwinn*, 43 Md. 622. (See also concurring opinion in this case.) *Brooke v. Widdecombe*, 39 Md. 401 (*cf.* dissenting opinion). And see *Wells v. Munroe*, 86 Md. 449.

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 section 12 is required to send the returns to the house of delegates. *Ijams v. Duvall*, 85 Md. 261. And see *Wells v. Munroe*, 86 Md. 448.

This section referred to in deciding that 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. 242.

See notes to sections 12, 25 and 40.

Sec. 12. If in any case of election for Judges, Clerks of the Courts of Law and Register of Wills, the opposing candidates shall have an equal number of votes, it shall be the duty of the Governor to order a new election; and in case of any contested election the Governor shall send the returns to the House of Delegates, which shall judge of the election and qualification of the candidates at such election, and if the judgment shall be against the one who has been returned elected, or the one who has been commissioned by the Governor, the House of Delegates shall order a new election within thirty days.

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. The duties of the Governor are not all found in article 2 of the constitution, as is shown by article 4, sections 11, 12 and 13, 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. The commission to an office is *prima facie* proof of title to the office. See notes to article 4, section 5, and article 9, section 2. *Magruder v. Swann*, 25 Md. 204; *Groome v. Gwinn*, 43 Md. 625; *Brooke v. Widdecombe*, 39 Md. 401 (*cf.* dissenting opinion). And see *Wells v. Munroe*, 86 Md. 449.

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. 262. And see *Wells v. Munroe*, 86 Md. 448.

Contest heard under this section; new election ordered; such order is not self-executing, but requires affirmative legislation. *Munroe v. Wells*, 83 Md. 510; *Warfield v. Vandiver*, 101 Md. 137 (dissenting opinion).