Report Of Subcommittee Of The Commission On Judicial Administration Relating To The Need For Additional Judges

In the preliminary report of the Commission on this subject, adopted on January 15, 1954, the Commission recommended: "(1) That the constitutional amendment proposed by Chapter 607 of the Acts of 1953 be rejected by the people and (2) that before any action be taken to increase the number of judges, the legislature authorize establishment of an office of administrator of the courts." At the coming election on November 2, 1954, the people will vote for the ratification or rejection of the amendment proposed by Chapter 607 of the Acts of 1953. Meanwhile at the 1954 session the General Assembly proposed, by Chapters 65 and 68 of the Acts of 1954, two more alternative constitutional amendments, on which the people will also vote on November 2, 1954. These two amendments would provide an additional judge in each of Montgomery and Baltimore Counties.

1. It was pointed out by the Commission that the amendment proposed by Chapter 607 of the Acts of 1953 must be ratified or rejected *in toto* and cannot be ratified in part and rejected in part. A number of independent reasons were mentioned why the amendment ought to be rejected, notably the basic fact that it would provide at least two utterly unneeded judgeships, one in Garrett County and one each in St. Mary's, Charles and Calvert Counties, where since 1941 there have always been judges from two, but not all, of these three counties. In these respects there has been no material change in the facts mentioned in the Commission's first report. This committee, therefore, renews the recommendation that the amendment proposed by Chapter 607 of the Acts of 1953 be rejected by the people.

2. With respect to the second recommendation made in the Commission's first report there has been material change in material facts. It was deemed unwise to seek at the "short session" of the General Assembly legislation creating an administrator of the courts. However, Governor McKeldin and the Board of Public Works made arrangements for salary and expense of a temporary administrative assistant to the Chief Judge, and Judge Brune appointed as such assistant for one year Mr. Frederick W. Invernizzi, the Reporter of the Court of Appeals Rules Committee. Both the Chief Judge and his assistant have made extensive study of the need for judges in some of the counties, and Mr. Invernizzi has traveled in some of the counties. Meanwhile more extensive use has been made than ever before of the power to assign judges temporarily outside their circuits. We have consulted Judge Brune and he has authorized the Commission to say that he is convinced that there is need for a permanent additional judge in Montgomery County and in Baltimore County. This view is independent of temporary needs due to ill health or to failure of a Harford County judge to render an adequate amount of judicial service in Baltimore County. In view of the studies made by Judge Brune and Mr. Invernizzi and the conclusion of the Chief Judge, the Commission recommends that the General Assembly propose and the people ratify a constitutional amendment or amendments providing an additional judgeship in Montgomery County and one in Baltimore County.

With the exception of Montgomery and Baltimore Counties, the studies of Chief Judge Brune and his assistant, Mr. Invernizzi, have not yet gone far enough for the Chief Judge to reach a conclusion that the needs of business do or do not require an additional judge in any other county or in Baltimore City. If and when adequate judicial statistics shall be established, they will furnish a continuing fund of information as to the state and volume of judicial business and the needs of the business for additional judges in the several jurisdictions. This is as it should be.

3. We cannot, however, recommend adoption of either of the amendments proposed by Chapters 65 and 68 of the Acts of 1954. Both of these proposed amendments would amend Section 21 of Article 4 of the Constitution. Section 21, as now in force, and as proposed by Chapters 65 and 68, provides, *Inter alia*, "The aforesaid number of judges for any of the circuits shall be subject to increase or decrease by (law as provided in Section 5 of this Article) *the* General Assembly." As now in force, Section 21 contains all the unitalicized quoted words (whether bracketed or other). As it would be amended by Chapters 65 or 68, it would contain the italicized words and would not include bracketed words.

There has heretofore been some difference of opinion as to the construction of the quoted words as now in force. How the number of judges may be increased or decreased is nowhere "provided in Section 5 of this Article". As the bill which became the Bond Amendment was introduced, it was provided in Section 5 that (1) no such decrease should shorten the term of any elected judge and (2) the total number of judges (in the counties) should never exceed twenty-one. In Section 21 it was (and is) provided that the number should be subject to increase or decrease "by law as provided in Section 5 of this Article." In making this amendment in Section 21 the fact was evidently overlooked that the prohibitions of shortening the term of any elected judge and the limitation to a maximum total of twenty-one were at the same time removed from Section 5.

It is not for us to construe the Constitution in this respect. The opposite construction is that since nothing as to increase or decrease is "provided in Section 5", the number may be increased or decreased without limit either as to shortening the term of any elected judge or as to the maximum number of judges. The General Assembly has never acted on any such sweeping construction of Section 21 by authorizing an increase or decrease of judges without a constitutional amendment (except under a continuing constitutional amendment giving such power in Baltimore City). At least since 1805 (except in Baltimore City) the number of judges has always been fixed in the Constitution. If Section 21 is susceptible of the broad construction as has been suggested, we think it should be left to the Courts to say so. We recommend that if any change be made in this respect, the change be to omit entirely the sentence now in question.

Now only has the number of judgeships been fixed in the Constitution (except in Baltimore City) at least since 1805, but the experience of the last two years illustrates what unfortunate use could be made of unlimited power to increase the number of judges "by law", *i.e.*, by statute. The same vote required to propose a constitutional amendment would suffice to pass a statute over a Governor's vote. In 1944 the Bond Commission recommended that, although there had been no increase in judges in Baltimore City for more than 20 years, the number be decreased by one, besides adding to the work of the judges all the Juvenile Court work. We, therefore, recommend that the amendments proposed by Chapters 65 and 68 of the Acts of 1954 be rejected.

The Baltimore County amendment (Chapter 68) should be rejected for the additional reason that it provides for election of the additional judge of the Third Circuit by the vote of Baltimore County alone, without the vote of Harford County. This feature was apparently copied from Chapter 607 of the Acts of 1953, but is more incongruous in its new than in its original context. In the Act of 1953 this provision was part of a uniform provision (until elimination of the Eastern Shore circuits) for election by counties instead of by circuits. This Commission pronounced that proposal unsound in principle and unprecedented in practice. The subsequent Baltimore County amendment is wholly incongrous in that it provides for ultimate election of all the thirty-seven judges in the State by the voters of their circuits (or appellate districts), with the single exception of one judge in the Third Circuit who would be elected by vote of Baltimore County only, without participation of the voters of Harford County. In Maryland, as elsewhere, judges may be appointed, elected or assigned, appointed by the Governor for at least one year, elected by the voters of their circuits, and assigned by the Chief Judge on special temporary assignments outside their circuit. Without discussing possible invalidity of such an arrangement, we see no excuse for denying the people of Harford County a vote on one judge in their circuit.

For each of the reasons stated, we recommend that all the amendments proposed by Chapter 607 of the Acts of 1953 and Chapters 65 and 68 of the Acts of 1954 be rejected by the people and that the General Assembly propose a proper amendment or amendments creating one additional judgeship each in Montgomery and in Baltimore County.

Respectfully submitted,

Sub-Committee on Additional Judges of the Commission on Judicial Administration:

CHARLES MARKELL, *Chairman*,
HARRY N. BAETJER,
RICHARD F. CLEVELAND,
CLARENCE W. MILES, *Ex Officio*.

The remaining member of the sub-committee, John F. Lillard, Jr., dissents from the views expressed in this report.

(EDITORS NOTE: A previous report of the Commission was published in THE DAILY RECORD on January 21st, 1954.)

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