Limitations on Even-year Legislative Sessions

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LIMITATIONS ON EVEN-YEAR LEGISLATIVE SESSIONS
By J. Kemp Bartlett, III*

I. THE NEED FOR EVEN-YEAR SESSIONS

The adoption of an amendment to the Constitution of Maryland by the voters of the State at the General Election in November, 1948, brought about a marked change in the legislative procedure of the General Assembly of Maryland. This amendment provided that the General Assembly should convene for an annual session of thirty days duration in each even year, in addition to the traditional ninety-day sessions in odd years. The constitutional amendment contained a series of restrictions upon the type and character of legislation that could properly be enacted during the newly created “short session”.

Despite a determined effort to clarify these restrictions prior to the first meeting of the thirty-day session, there remained considerable confusion in the minds of legislators during the Session of 1950 as to what authority had actually been vested in them by virtue of the amendment. Much of this confusion has been cleared up by court decisions which have construed the constitutional limitations imposed upon the thirty-day sessions. As a result of this judicial interpretation subsequent even year meetings of the General Assembly should be conducted with fewer doubts than in 1950.

Until 1950 the General Assembly of Maryland convened for a session of ninety days every two years. It was, therefore, necessary that the State Budget for the next two fiscal years following the adjournment of the General Assembly be estimated, submitted, and enacted for a period in excess of two years. In reality, since the Governor is required to submit the budget to the General Assembly within twenty days of its convening and since the General Assembly convened only on the first Wednesday of January of the odd numbered years,¹ the State Budget had to be

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¹ Md. Const., Art. 17, Sec. 6.
estimated at least thirty months before the conclusion of the fiscal period which ended on June 30 two years following.

With the trend toward extended governmental activity manifesting itself in the past two decades and because of continually fluctuating economic conditions, the task of accurately estimating the State's budgetary requirements for such a protracted period became increasingly more difficult. Despite an adequate and experienced budget staff, this problem of predicting financial conditions and revenue needs for a period in excess of thirty months did not lend itself to a sound State fiscal policy.

In 1946 this problem was studied at length by the Maryland Commission on the Distribution of Tax Revenues (Sherbow Commission) which had been asked by Governor Herbert R. O'Conor "to determine proper State and local relationships with specific reference to the division of revenues". The Commission report, made on September 30, 1946, stated in part as follows:

"Greatly improved estimating can be attained by putting the State budget on an annual instead of a biennial basis and by moving the time for submitting the budget to the Legislature nearer to the opening of the fiscal year. The increasing necessity of budgeting with the greatest possible accuracy would seem to make annual sessions of the Legislature indispensable. Once a year is certainly not too often in these days for a state government to review its financial plan and to vote its budget. . . . The long range estimates, which are often inaccurate, would be more realistic, and the need for budget amendments, so frequently made would be lessened and perhaps eliminated."3

The Commission concluded its report upon this subject with the following recommendation: "The Commission recommends annual sessions of the General Assembly to consider the State budget on a yearly basis."4

It should be noted that the Commission did not consider nor did it make any recommendation as to any limitation to be placed on legislation to be considered during the proposed annual session other than that there should be a yearly review and enactment of the budget. It would appear that the Commission contemplated placing no restrictions

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3Ibid, 155.
or qualifications upon other legislation to be introduced and enacted and that the legislative session in the even-numbered years would be open to all types of general, local, and special legislation, with the only variance from the regular session in the odd-numbered years being one of duration. In this respect the Commission suggested that the new session should convene at the call of the Governor not later than March 1 and should adjourn not later than May 15.

After being published on September 30, 1946, the report of the Maryland Commission on the Distribution of Tax revenues was submitted to the Legislative Council, in order that its recommendations could be further studied and that bills embodying these recommendations could be drafted and presented to the General Assembly during the 1947 Session which was to convene on the first of January. The Legislative Council prepared a bill incorporating the main recommendations of the Commission regarding an annual session of the General Assembly. This proposed bill provided that:

"(1) The General Assembly shall meet on the first Wednesday in March, nineteen hundred and fifty, and on the same day in every second year thereafter.

"(2) The General Assembly may continue its session . . . for a period not longer than . . . forty-five days in even years.

"(3) . . . On the first Wednesday in March in even numbered years, the Governor shall submit to the General Assembly a Budget for the next ensuing fiscal year."  

As such an enactment required an amendment to Article 3, Sections 14, 15 and 52, of the Constitution of Maryland, the bill contained a section providing that the proposed amendment be submitted to the voters of Maryland for their adoption or rejection at the next General Election which was to be held in November, 1948.  

In drafting this legislation, the Legislative Council leaned heavily upon the report and recommendation of the Maryland Commission on the Distribution of Tax Revenues. As in the Commission's report, the bill contained no restriction nor qualification upon the character of legislation to be considered at the session in the even-numbered years.

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4 Senate Bill #64 (1947).
The only difference between the two sessions was that in the even-numbered years the budget was to be submitted on the first day of the session and the General Assembly was not to be in session longer than forty-five days. Except for these slight deviations, sessions in both even and odd-numbered years would be identical.

The proposal of the Legislative Council was introduced in the General Assembly as Senate Bill #64 sponsored by the President of the Senate, as is the custom with all bills which are presented by the Legislative Council for introduction in the Senate. Senate Bill #64 was introduced on January 3, 1947, and was referred to the Senate Committee on Constitutional Amendments.8

Thus, the question of whether Maryland should have an annual session of the General Assembly for the primary purpose of enacting a yearly budget was put squarely before the State legislators.

II. LIMITATIONS IMPOSED IN PROVIDING FOR EVEN-YEAR SESSIONS

As is the case with any legislative body whose session is limited in length, the General Assembly of Maryland is subject to constant criticism because of the inevitable logjam of legislation that piles up during the closing hours of the session. Bills that have rested in Committee during the early stages are rushed to the floor during the end of the session in order to procure enactment. Legislators are kept busy day and night, and as a result it is impossible that due consideration be given to all measures. Undesirable legislation is sometimes washed through in the virtual flood that engulfs the General Assembly in its closing days.

To avoid a similar development during the proposed short session, it was suggested that, since the primary purpose of holding an annual session of the General Assembly was to place the State budget upon an annual basis, there should be imposed some restrictions upon the type of legislation, other than the budget, which could be considered at the shorter session. It was thought that with such a restriction in effect more time could be given to the consideration of the budget and to matters which concerned the entire State. It was further hoped that the closing hours of the shorter session would be more orderly than those of the ninety-day session with an opportunity for closer surveillance.

*This committee has, since, been dropped as a standing committee of the Senate. See Rules of the Senate of Maryland, #23, 10.
For these reasons when the Committee on Constitutional Amendments reported Senate Bill #64 back to the floor of the Senate on March 11, 1947, the following amendment had been annexed to the Committee’s favorable report:

"The General Assembly may continue its session so long as in its judgment the public interest may require, for a period not longer than . . . thirty days in even years. . . . In any of said thirty day sessions in even years, the General Assembly shall consider no bills other than (1) Bills having to do with budgetary, revenue and financial matters of the State Government, (2) legislation dealing with an acute emergency, and (3) legislation in the general public welfare."9

An amendment was further added to change the date of convening from the first Wednesday in March to the first Wednesday in February.

The Committee’s favorable report as amended was adopted by the Senate and on March 15, 1947, Senate Bill #64 passed its third reading in the Senate by a vote of 27 to 0.10 The bill then went to the House of Delegates where it was passed by a unanimous vote11 without further amendment and on April 16, 1947, the bill was approved by the Governor as Chapter 497 of the Laws of Maryland of 1947.

The question as to whether Article 3, Sections 14, 15 and 52, of the Constitution of Maryland should be amended in order to provide for an annual session of the General Assembly was submitted to the voters of the State at the General Election on Tuesday, November 2, 1948. At this election 197,777 votes were cast in favor of the proposed amendment while 55,997 votes were cast against the adoption of the amendment.12 Thus by a vote of almost four-to-one the voters of Maryland approved the Constitutional amendment providing for an annual session of the General Assembly to enact the budget, with restrictions to be imposed upon the type of legislation to be considered in the thirty-day session in the even-numbered years.

III. CONSTRUCTION BY ATTORNEY GENERAL

After the regular ninety day session adjourned in April, 1949, it became necessary to establish with some degree of certainty "the kind of legislation which should be sub-

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9 Md. Laws, 1947, Ch. 497, p. 888.
mitted by the Legislative Council at the 1950 Session of the General Assembly . . . as well as the kind of legislation which the General Assembly should also consider under Article 3, Section 15 of the Constitution of Maryland as amended . . ." An opinion of the Attorney General was sought by Dr. Horace E. Flack, Secretary and Director of Research for the Legislative Council and the Attorney General’s answer was returned on July 5, 1949.

The Attorney General presumed “that the first classification (bills having to do with budgetary, revenue and financial matters of the State government) presents little difficulty”. The opinion stated that such financial matters must necessarily pertain to the entire State and in order for purely local financial matters to be considered, such matters “must come within the purview of the phrase ‘acute emergency’ to justify their consideration”.

The problem as to what constituted “an acute emergency” was more troublesome. The Attorney General pointed out that there is a conflict in the United States as to whether a legislative declaration that an emergency exists is reviewable by the courts. Concerning this point the Court of Appeals has ruled, in passing, that “. . . the question of whether or not an emergency in fact exists is a question for the Legislature, and its determination is final and not subject to review by the courts”. The Attorney General’s opinion states as follows concerning this holding of the Court of Appeals:

“The language of the 1948 amendment is different — ‘legislation dealing with an acute emergency’ — and we think it has a different meaning. We think the intent is that an acute emergency must exist in fact. But where does the power to determine the fact lie? The people have not vested it in the Courts. Ordinarily, the Legislature determines whether or not facts exist which warrant their action. . . . There is simply no provision in the Constitutional amendment for any other rule here. We think the reasoning of the cases holding that the legislative finding is not subject to judicial review is the sounder. We must rely on the good faith of the Legislature; and if broken, the remedy is at the polls.”

Ibid, 131.
Ibid, 135.
17 Ch. v. Chestertown, 154 Md. 620, 623, 141 A. 410 (1928); cited in Everestine, The Legislative Process in Maryland, 10 Md. L. Rev. 91, 133 (1949).
The opinion, however, went on to state that it was possible that under the wording of the Constitutional amendment, the courts might hold that a legislative declaration of an acute emergency is reviewable, but that such a ruling should be "within the realm of construction, not fact-finding". 19

The Attorney General felt that the third category — legislation in the general public welfare — was subject to considerations similar to those applicable to "an acute emergency", but in this respect the opinion stated that "there is more room for judicial construction than in the determination of the existence of an emergency". 20 The opinion cited two Supreme Court decisions 21 which drew a distinction between "general" welfare and "local" welfare, and argued that these decisions should be the basis of interpreting the Constitutional amendment. However, the opinion declared that "the mere label 'Public General Law', when the patently intended effect is purely local or special, ought not of itself satisfy the constitutional requirement". 22 The court would thus be able to look behind the wording of a statute in order to determine whether the subject of the statute encompassed the entire state (general welfare) or merely was applicable to a local situation (local welfare). In summarizing upon this point the opinion stated:

"The limitations inherent in the phrase 'in the general public welfare' would obviously seem to preclude the consideration under this restriction of local legislation in all save the very rarest cases where such legislation could be held to be for the welfare not of the particular community involved, but of the State as a whole." 23

Thus the Attorney General interpreted the constitutional amendment which created and limited a thirty-day session of the General Assembly in even-numbered years as follows:

(1) Bills having to do with budgetary and financial matters of the State Government must necessarily deal solely with financial matters of the State Government. In order for financial matters of a local subdivision to qualify under

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19 Ibid, 133.
20 Ibid.
22 Ibid, 135.
23 Ibid, 134.
the constitutional amendment, it would have to be under the clause requiring an acute emergency to exist.

(2) Legislation dealing with an acute emergency might possibly be reviewable by the court upon the basis of construction, but the fact-finding interpretation should still be the function of the legislature, and this function should not be encroached upon by the courts.

(3) Legislation in the general public welfare means "Public General Law" (legislation which concerns the State as a whole or a considerable segment thereof) as opposed to "Public Local Law" (legislation whose subject matter deals with only one local subdivision). In this respect the court should have wide power of construction in order to look behind these labels.

The Attorney General felt that the responsibility for conducting the short session of the General Assembly in the spirit of the constitutional amendment should be largely borne by the legislators themselves. In summarizing the broader aspects of the new session the Attorney General's opinion stated:

"Obviously, it is the mandate of the people, whom the Legislature represents, that there shall be restrictions on the legislation which the people's representatives have been given authority to pass. Essentially and primarily it is the obligation of the individual members of the Legislature, and the Legislature as a collective body, to act within the bounds and limits of the authority given them by those they represent."24

IV. CHANGES IN LEGISLATIVE RULES

In order to implement the opinion of the Attorney General in regard to the type of legislation to be considered during the thirty-day session, the Legislative Council drafted an amendment to the Rules both of the Senate and of the House of Delegates. The proposed amendment stated that the Senate and the House of Delegates should consider no bills other than those classified in the constitutional amendment. So that this rule would have a more practical application the Legislative Council's proposal further stated:

"Thirty-day Sessions... Upon introduction, every bill, except the Budget Bill, shall be referred to the Rules Committee. The Rules Committee shall consider..."
each such bill and shall promptly report to the Senate [House] every bill which comes within the terms of this Rule [i.e., the requirements of the constitutional amendment], with the recommendation that it be re-committed to the appropriate standing or special committee; any bill which in subject matter does not come within the terms of this Rule shall be held in the Rules Committee."

This amendment was adopted by both Houses when the General Assembly convened for the first annual session on February 1, 1950.

The Rules Committees thus achieved a high degree of importance in directing the course of the thirty-day session and a great deal of the responsibility for carrying out the provisions of the constitutional amendment fell upon these two committees. In the Senate the Rules Committee consists of three Senators, the President, the majority floor leader, and the minority floor leader, while in the House of Delegates the Rules Committee is made up of five members, the Speaker, the majority floor leader, the minority floor leader, and two others.

Action by the Rules Committee was not absolutely conclusive in that both Houses left loop-holes in their Rules which allowed a bill to be brought out of the Rules Committee by petition if the committee did not report the bill within seven days of its introduction. The Senate required the signatures of five Senators in order to bring out, by petition, a bill from the Rules Committee while it was necessary to obtain the signatures of at least twenty members in the House of Delegates.

It was hoped that the Rules Committee's function would be one of screening, and that bills which did not meet the necessary requirements would be retained in the Committee, thus freeing the other committees from the labor and responsibility of determining whether a bill came within the constitutional qualification. It was further hoped that the function of the Rules Committee would greatly reduce the number of bills that would be brought before the General Assembly and thus effect a more orderly consideration of legislation and a less crowded calendar.

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26 Rules of the Senate #23 (N.), p. 11.
28 Rules of the Senate #45, p. 25.
V. EXPERIENCE IN THE 1950 SESSION

During the 1950 thirty-day session of the General Assembly, 342\textsuperscript{30} bills were introduced, 160 being Senate Bills and 182 being introduced in the House of Delegates. This total includes the Budget Bill which was introduced simultaneously in both Houses and was referred to the appropriate committees without action by the Rules Committee.

The remaining 159 bills in the Senate were introduced, read the first time, and referred to the Rules Committee. Of these 159 bills the Rules Committee felt that 116 came within the constitutional requirement governing the thirty-day session and these bills were reported back to the Senate and recommitted to the various Senate committees. One bill was brought out of the Rules Committee by petition, and the remaining 42 bills died in the Committee.

In the House of Delegates the Rules Committee reported back 105 bills leaving 76 bills in the Committee as not being within the scope of the constitutional amendment. Eight bills were removed from the House Rules Committee by petition.

Thus a total of 231 bills (Budget Bills included) were brought before the consideration of the General Assembly. It was not required that a bill passed by one House be screened by the Rules Committee of the other House although such a further check was suggested. A bill was only required to be approved by the Rules Committee of the House in which the bill was originally introduced.

Of the total of 231 bills before the General Assembly 117 bills did not survive the process of the legislative procedure and died at various points in the ordinary course of the six required readings. This left a total of 114 bills which were passed by both Houses and then submitted to the Governor for his approval. The Governor signed 109 bills and vetoed 5.

Considering the natural restraint that many members of the General Assembly felt in attempting to abide by the requirements for the short session and not flood the hoppers of both Houses with local legislation, the results are rather noteworthy. One hundred eight new laws plus the budget for the next fiscal year were added, this figure being only 31\% of the total bills introduced, and a percentage far smaller than that of the recent biennial sessions.

\textsuperscript{30} All statistics are supplied by the Department of Legislative Reference.
VI. JUDICIAL INTERPRETATION

During the period between June 1, 1950, the date upon which legislation enacted at the 1950 Session took effect and January 3, 1951, when the regular ninety-day session convened, three suits were brought for the purpose of obtaining judicial interpretation of the constitutional limitations imposed upon the thirty-day session. The opinions rendered in these three cases represent the first concrete steps to dispel the confusion and lack of certainty that surrounded the initial short session. These decisions will have a very positive effect and will act as guide posts in marking the course for subsequent sessions.

One of these suits was instituted in the Circuit Court No. 2 of Baltimore City by four corporations engaged in the contracting business who were performing contracts with the State of Maryland. This suit was brought for the purpose of declaring Chapter 30 of the Laws of 1950 unconstitutional as in violation of the constitutional provision requiring legislation in the thirty-day session to be in the general public welfare.

The statute in question stated:

"There is hereby created a commission, to be known as the 'Commission on Prevailing Wages for the State of Maryland', whose duty it shall be to fix and determine, from time to time, the generally prevailing wage rates in the different areas or localities within the State of Maryland."

The statute further set a standard for determining the number of hours constituting a week's work upon contracts to be performed for the State, and also vested in the newly created Commission the power to determine the rate of per diem wages in various areas or localities throughout the State. A provision was provided to enforce the actions of the Commission by the inclusion of a section establishing a penalty to be invoked upon violators of the Commission's orders.

Section 81 of the statute contained one most important provision. This provision stated:

"... Nothing in this section shall be construed to repeal or modify in any respect the provisions of Section 7A of Article 89B of the Annotated Code of Mary-

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31 Md. Laws 1950, Ch. 30, p. 281.
32 Ibid. 283.
The net result of this clause was to exempt Allegany County, Garrett County, and Washington County from the provisions of Chapter 30, Laws of 1950.

Upon this point the plaintiffs based their bill against the defendant newly-created Commission on Prevailing Wages for the State of Maryland, asserting that Chapter 30 was not legislation in the general public welfare despite the fact that it was a public general law. A decree was rendered by the Circuit Court No. 2 of Baltimore City declaring the Act unconstitutional and from this decree the defendant appealed.

After establishing the right of the complainants to bring this bill, the Court of Appeals stated:

"The first contention we are called upon to consider is the authority of the General Assembly to pass such an Act as Chapter 30 at the short session of 1950." 34

The court then briefly reviewed the background and the development of the "short Session" and concluded that the primary purpose of such a session was to enact an annual budget and that the General Assembly "has no authority to pass any legislation at such sessions other than that enumerated [in the constitutional amendment]." 35

The appellants did not contend that Chapter 30 would qualify as a budgetary measure or as legislation dealing with an acute emergency, but it was their claim that this law came within the meaning of legislation in the general public welfare.

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land (1947 Supplement) as said Section 7A applies to contracts by the State Roads Commission for road work. 193

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Section 7A of Article 89B of the Annotated Code of Maryland (1947 Supplement) states:

"In all cases where a contract for work shall be given out to a private contractor by the State Roads Commission, the Commission shall require that not less than the prevailing wage rates of the locality in which the work is to be done, be paid to all skilled and unskilled labor.

"The prevailing wage rates, for the purposes of this section, shall be predetermined wage rates as filed with the United States Department of Labor.

"The provisions of this section shall not apply to work to be done in Anne Arundel County, Baltimore City, Baltimore County, Calvert County, Caroline County, Carroll County, Cecil County, Charles County, Dorchester County, Frederick County, Harford County, Howard County, Kent County, Montgomery County, Prince George's County, Queen Anne's County, St. Mary's County, Somerset County, Talbot County, Wicomico County, and Worcester County."


Ibid, 636, material in brackets supplied.
To this contention the Court stated:

"Every measure passed by a legislature is supposed to be in the public welfare, whether the Act is local, general, or special. It is obvious, therefore, that had the term been merely 'public welfare' instead of 'general public welfare', the doors would have been wide open. Something was meant by the use of the word 'general', and it becomes our duty to interpret that word as used in the constitutional amendment. We think that should be done . . . in the light or well known public conditions existing at the time of its adoption."\(^6\)

By "well known public conditions" the Court meant the vast amount of local legislation that swamps the General Assembly in its closing days and necessitates crowded calendars and lengthy day and night sessions in which legislators are subject to "deals and trades".\(^7\) It was just this sort of evil, the Court thought, that resulted in the restrictions being imposed on the short session. Upon this point the Court stated:

"We conclude, therefore, that by the use of the word 'general', the Legislature meant to restrict itself in these sessions to matters generally affecting the State, rather than affecting parts thereof."\(^9\)

The Court took notice of the fact that the appellant was represented by the Attorney General who had rendered the opinion upon the short session of the General Assembly just a year prior. The Court did not feel that the general public welfare was synonymous with a public general law and in this respect differed sharply with the Attorney General.

The Court next dwelt upon the statute itself and closely examined the authority that was granted to the Commission on Prevailing Wages, and noted that while the statute had application to Baltimore City and twenty counties, three counties were exempt from the authority of the newly created Commission. This exemption amounted to a fatal defect in the constitutionality of Chapter 30, Laws of 1950, even though it was clearly a general public law which the court defined as "any law so drawn as to apply to two or more of the geographical sub-divisions of this state".\(^9\)

\(^6\) Ibid.
\(^7\) Ibid.
\(^8\) Ibid.
\(^9\) Ibid, 637. See also CONSTIT., Art. 11A, Sec. 4.
In concluding upon the question of general public welfare the Court said:

"It was not intended, therefore, that the Legislature could pass only public general laws, nor can it be held that it can pass any sort of law, provided it is a public general law. We think the term 'general', as used in Section 15 of Article 3 of the Constitution, is intended to mean legislation that applies to all of the State without exception. Were it not so intended, it would be an entirely useless provision. A public general law might be passed affecting two or more counties or from which any number of counties, or the City, might be excepted, although the subject might affect them all. . . . Thus, any amount of local legislation might be passed in that form, and the entire purpose of the restriction which we have heretofore discussed would be thwarted."

For these reasons the majority of the Court of Appeals found that Chapter 30 did not come within the constitutional restrictions governing the short sessions and the decree of the lower Court was affirmed.

A dissenting opinion was rendered by Judge Henderson. This dissent argued that, while the three counties were exempt from the authority of the Act in question, these three counties were actually controlled in a similar manner through a Federal agency. This exemption, the dissent stated, was not a sufficient variation in order to destroy the "general" character and application of the Act to the State as a whole. Judge Henderson concluded his opinion as follows:

"To my mind the generality of the legislation is not destroyed by a geographical variation in detail that accomplishes the ultimate purpose in a slightly different way. I think the constitutionality of the Act should be sustained."

Another suit was brought for the purpose of interpreting Chapter 93, Laws of 1950.

This Act applied solely to Montgomery and Prince George's Counties and pertained to the Washington Suburban Sanitary District which had been created by prior legislative authority. The main provision of Chapter 93, stated:

\[\text{Supra. n. 34, 637-638.}\]
\[\text{79 A. 2d 152 (1951).}\]
\[\text{Ibid, 153.}\]
"On and after July 1st, 1950, the Washington Suburban Sanitary Commission shall make all water and sewer house connections from the water main or sewer to the property line of the abutting lot . . . , and no plumber shall after said date make any house connections; except as agent or contractor for the said Commission."43

The Act contained the following emergency clause:

"And be it further enacted, That this Act is hereby declared to be on [sic] acute emergency measure and necessary for the immediate preservation of the public health and safety, . . ."44

The plaintiffs, as citizens, taxpayers, and master plumbers licensed and registered within the Washington Suburban Sanitary Commission brought suit in the Circuit Court for Prince George's County against the Washington Suburban Sanitary Commission, seeking to have Chapter 93 declared unconstitutional as in violation of the provisions governing the short session of the General Assembly.

After having reviewed the provisions of Chapter 93 and the background of the thirty-day Session, Judge Charles C. Marbury of the Circuit Court for Prince George's County, stated:

"Having determined that the constitutional amendment embodies limitations as to the character of the legislative matters that may be considered at the even year sessions, the question then arises as to whether the courts of this State may scrutinize and test the action of the Legislature as limited by the provisions of the amendment itself. The Court's conclusion is that it does have the duty and power under the 1948 amendment . . . To hold otherwise would be to declare that the restrictive clauses are meaningless so that any and all legislation might be passed at the short sessions just as at the regular odd year sessions of the Legislature."45

The opinion pointed out that the defendant admitted by demurrer that an acute emergency in fact did not exist.

43 Md. Laws 1950, Ch. 93, p. 422.
44 Ibid, 423.
Counsel for the defendant later readily conceded that there was no acute emergency despite the legislative declaration, but relied upon the ruling by the Court of Appeals in *Culp v. Chestertown*, which held that a legislative declaration of an emergency was not reviewable by the Court as a fact finder.  

Judge Marbury thought that there was a distinction between an ordinary emergency as contemplated in *Culp v. Chestertown* and an acute emergency as provided in the constitutional amendment. He cited a decision by the Court of Appeals in which the Court had reviewed the facts constituting an emergency where legislative authority had been granted to borrow a sum of money for "any emergency" arising from the necessity of maintaining the police or preserving the health, safety, and sanitary condition of a city. This later situation seemed more analogous to the provisions of the 1948 constitutional amendment, and would thus allow judicial interpretation of a declaration of an acute emergency without disturbing the prior decision which was applicable to ordinary emergencies.

In concluding upon this point, the opinion stated:

"The Court therefore holds that under the pleadings, concessions, and by construction Chapter 93 does not deal with an acute emergency."

The Court then discussed the possibility of Chapter 93 being considered to be legislation in the general public welfare. Upon this point the opinion stated:

"It would . . . seem that the term 'public general' when used in defining 'welfare' was intended to mean legislation affecting the state as a whole or a considerable segment thereof in contrast to legislation affecting a particular county or portions of two counties. It would require a strained construction upon the Constitutional provision in question to hold that an Act changing the law with reference to making water and sewer house connections within the sanitary district comprising portions of two counties could possibly affect the 'general public welfare' of the State."

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*Supra*, n. 17.
• Italics supplied.
*Daily Record*, August 1, 1950.
Thus, because Chapter 93 could satisfy none of the three constitutional provisions, the defendant's demurrer was overruled and the Act was declared unconstitutional. From this decree, the defendants appealed.

After reviewing the provisions of Chapter 93 and the situation that led to the passage of this Act, the Court of Appeals determined that the sole issue involved was the legislative authority to enact such legislation. Thus Chapter 93 would necessarily have to fall within the category of an acute emergency or legislation in the general public welfare.

The Court felt that clearly the "general public welfare" was not involved, saying:

"It cannot be successfully contended that a purely local statute, affecting only two parts of two counties, and having no application, either financial or otherwise, to any other part of the State, can be in the general public welfare."  

Thus the only real question for the Court was whether an acute emergency existed and whether the Court had the power to rule upon this point.

The opinion stated:

"It is, of course, one of the well recognized powers of the courts to determine the constitutionality of legislation, and it is the province and duty of the courts to interpret the Constitution and to construe its provisions in order to ascertain its applicability to a given statute... In this case, we have a declaration by the Legislature that an acute emergency exists, and we have to determine whether this prevents the courts from deciding otherwise."  

The Court noted the decision in *Culp v. Chestertown*, which had held that a legislative declaration of an emergency was conclusive, but drew a distinction between this situation and that pertaining to the thirty-day Session because the legislative power so to declare was drawn from different sections of the Constitution. The Court felt that

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53 *Supra*, n. 51, 641.
54 Article 16, Section 2, was construed in *Culp v. Chestertown*, *supra*, n. 17, while Article 3, Section 15, was before the Court in *Washington Suburban Sanitary Commission v. Buckley*, *supra*, n. 51.
Article 11, section 7, was closer in analogy to Article 3, section 15, than was Article 16, section 2, and that in construing the former on several occasions\(^5\) the Court had held that:

"Primarily a legislative finding is sufficient but, except where the power to determine the question is specifically granted as in Article 16, section 2 . . . , by no means conclusive proof that an emergency exists . . . Such a finding is, however, always entitled to great weight and will not be set aside or annuled unless it clearly and unmistakably appears that it is erroneous." (Emphasis supplied.)\(^56\)

By this the court meant that the decision of *Culp v. Chestertown*, applicable to Article 16, section 2, had no binding effect in an interpretation of Article 11, section 7, or of Article 3, section 15, the latter of which controlled the Short Sessions of the General Assembly.

The Court could find no hint of an emergency and the wording of the very statute itself seemed to clearly show that there was not even an ordinary emergency. The pleadings of the case and the appellant's counsel's admission were held to be conclusive upon this point.

In closing, the opinion stated:

"Section 15 (of Article 3 of the Constitution) unlike the referendum section, (Section 2 of Article 16) does not predicate any result upon the declaration of an emergency, and we think it means . . . that there must be an actual acute emergency to render the legislation valid, and that this emergency is one to be determined by the courts."\(^57\)

For these reasons the Court ruled that Chapter 93 did not satisfy the constitutional provisions governing the short session of the General Assembly and the decree of the Circuit Court for Prince George's County was affirmed.

A third suit was brought in order to determine the constitutionality of Chapter 32, Laws of 1950.\(^58\) This act empowered the Town of North Beach, Calvert County, to borrow a sum of money not to exceed $250,000 "for the purpose of constructing a sewerage system for said town, and a


\(^56\) *Supra*, n. 51, 642, citing Norris v. Baltimore, *ibid*.

\(^57\) *Supra*, n. 51, 642; material in brackets supplied.

water supply and a water distribution system for said town. . .359 The Act also authorized the Town of North Beach to levy a tax upon the assessable property therein in order to pay the principal and interest on the proposed loan. Chapter 32 contained an emergency clause similar to the clause in Chapter 93 declaring an acute emergency to exist.

Suit was brought in the Circuit Court for Calvert County by a group of taxpayers of North Beach in order to restrain the town and its officers from borrowing money in pursuance of the provisions of Chapter 32. The only issue involved was whether the General Assembly possessed the authority to enact such legislation in the Short Session of 1950.

Judge John B. Gray, Jr., in delivering the opinion of the trial court reviewed the factual situation that had led to the passage of the Act in question. He pointed out that the disposal of sewerage and the possibility of pollution of the water supply was not a new problem to the residents of North Beach, and that there had been little new construction. This condition had existed for a number of years, and a proposed bond issue to remedy this very situation had been rejected by the voters in a special election in 1949.

Under these circumstances Judge Gray had difficulty in finding the existence of an acute emergency, despite the legislative declaration that such a situation did exist. The defense having relied upon the decision in *Culp v. Chestertown*60 and *Opinion of the Attorney General*,61 Judge Gray drew the same distinction between *Culp v. Chestertown* as had the Court of Appeals in the opinion previously discussed. He held:

"... that when an act passed at the short session is attacked on the ground that it does not relate to an acute emergency the Court is bound to inquire and to determine whether or not as a matter of fact such an acute emergency does exist, although, of course, the act is entitled to a presumption of validity by reason of its passage by the General Assembly."

In summing up, the Court stated:

"Our conclusion is that there would be considerable doubt as to whether an emergency existed at all in the

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359 *Md. Laws 1950, Ch. 32, p. 296.*

60 *Supra, n. 17.*

61 *Supra, n. 13.*

62 *Supra, n. 58.*
constitutional sense..." but certainly one can not treat this situation as creating an acute emergency as required in the present constitutional provision. If there is an emergency it is chronic rather than acute. The facts set up as a reason for the emergency legislation now under attack do not measure up to the standard required by the constitutional limitation on the power of the General Assembly at its 'short' session. The court is compelled to hold that the presumption to which an act of the General Assembly is entitled is overcome by the actual facts demonstrated in this case. Chapter 32 of the Acts of 1950 is declared to be beyond the scope of the legislation permitted at the short session of the Legislature and accordingly is unconstitutional and void."\textsuperscript{63}

No appeal was taken from this decree.

VII. CONCLUSION

The judicial interpretation rendered after the adjournment of the 1950 Session of the General Assembly will give valuable assistance to subsequent even-year sessions. The 1950 Session had only the Opinion of the Attorney General as a guide in determining the type of legislation that would be acceptable. This opinion has since been almost completely repudiated by the Courts.

The air of confusion that surrounded the 1950 Session should be dispelled and legislation can now fall into clear and distinct patterns which have been established by judicial precedent. In all cases the holdings of the Courts have strengthened and defined the constitutional limitations. Subsequent short sessions should be more orderly, the calendars should be lighter, and deliberation should be less hurried. The volume of legislation should be considerably reduced.

Despite the fact that the Courts have drawn clear lines as to qualifications, the function of the Rules Committees in both Houses should be maintained. These Committees can render very valuable contributions to the success of the thirty-day Sessions and with clearly established limitations, their screening process should be less arduous. However, responsibility cannot be entirely assumed by these committees, as a bill is always subject to amendment after it has been screened through the Rules Committee, and this responsibility must be shared by the General Assembly as a whole.

\textsuperscript{63} Ibid.
Subsequent rulings of the Courts should tend toward a more strict construction of the constitutional provision, and a resulting more close adherence to what appears to be the intent and purpose of creating the even-year meeting of the General Assembly.

In summation, the General Assembly would seem to be safe in enacting, in its thirty-day sessions in even-years the following types of legislation, within the limits prescribed by the Court of Appeals:

“(1) Bills having to do with budgetary, revenue, and financial matters of the State Government.”

This section has not been ruled upon directly by the Courts, but its wording is so clear and distinct as to offer little difficulty. This, of course, means an annual enactment of the State budget. Any other financial matter must deal with the State Government in order to qualify. Financial matters of the government of a local political subdivision are excluded under this section.

“(2) Legislation dealing with an acute emergency.”

The Court of Appeals has ruled that, in order for legislation to qualify under this section, an acute emergency must exist in fact. A legislative declaration of such a condition, while _prima facie_ evidence of an acute emergency, is not conclusive and is subject to review by the Court.

“(3) Legislation in the general public welfare.”

“General public welfare” means the welfare of the entire State. If one of the twenty-three counties or the City of Baltimore is exempted from the operation of an enactment, that statute ceases to come within the general public welfare. The labeling of an act as a “Public General Law” will not satisfy this section if the act itself does not actually pertain to the State as a whole. The Court reserves the right to look behind the title of the act in order to determine whether it has application to the entire State.

It seems likely, however, that borderline situations may from time to time develop in the future which may require additional interpretation.