

File No. 46845

Baltimore, December 29, 1926

Hon. Howard W. Jackson
 Mayor of Baltimore
 City Hall
 Baltimore, Maryland

Dear Mr. Mayor:

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Your communication of the 28th instant requests my opinion on the proposition of whether Hon. Francis P. Curtis, now a member of the Commissioners for Opening Streets of Baltimore City, may continue to hold and discharge the duties of Commissioner if he qualified as a member of the House of Delegates of Maryland of 1927, to which he has already been elected, and which will shortly convene.

The question before me is not whether Mr. Curtis is qualified to sit as a member of the General Assembly, notwithstanding his membership on the Board of Commissioners for Opening Streets. That is solely a matter for the House of Delegates of Maryland under the Constitution of this State to decide, inasmuch as the Senate and the House are charged by the Constitution with being the sole judge of the qualifications of its own members. (Article 3, Section 19, Md. Constitution).

The question before me is the reverse; to wit, may Mr. Curtis act as a Commissioner for Opening Streets after accepting his election to the House of Delegates of Maryland. After a very careful examination of the subject, I am brought to the conclusion that he cannot act as Commissioner for Opening Streets if he accepts the office of a member of the House of Delegates. Article 35, Declaration of Rights, provides:

"That no person shall hold at the same time, more than one office of profit, created by the Constitution or laws of this State".

See also Article 1, Section 6, and Article 3, Section 11, of the Constitution. All these sections refer to persons holding office as distinguished from mere employment or position, the latter by decisions of the Court of Appeals not being embraced within the constitutional definition of office. The Court of Appeals of Maryland has definitely decided that if an incumbent of an office, within the meaning of the