

File No. 46845 Continued

Constitution, accepts another office, the acceptance of the latter or new office has the effect of vacating the first office. *Truitt vs. Collins*, 122 Md., 530.

It is an indisputable proposition that members of the General Assembly are officers within the meaning of the Constitution. *Truitt vs. Collins*, 122 Md., 109-526. That being so, the remaining question is whether Commissioners for Opening Streets are officers or mere employees. If they are officers and accept another office they forfeit the first office.

The Court of Appeals of this State has adopted the following as the general result of the decisions on the general question of what constitutes an office as distinguished from a position or employment. The quotation is from *Truitt vs. Collins*, *supra*, and see also *State Tax Commission vs. Harrington*, 126 Md., 157:

"It may be stated as a general rule, fairly deducible from the cases discussing the question, that a position is a public office when it is created by law, with duties cast upon the incumbent which involves the exercise of some portion of the sovereign power and in the performance of which the public is concerned, and which also are continuing in their nature, and not occasional or intermittent. The duty to take the oath of office has been considered in many cases as a strong circumstance in determining the character of the position, and this criterion is considered in this State to be of the greatest importance".

Tested by these rules, and considering the nature of the duties of the Commissioners for Opening Streets, there is no doubt in my mind that Commissioners for Opening Streets are under the Constitution and laws officers and not mere employees. The office of Commissioner for Opening Streets is created by the General Assembly of Maryland and the sections are to be found in Article 4, Public Local Laws, Section 172, et seq. There are three Commissioners, who constitute the head of the second sub-department of revenues and assessments of the Mayor and City Council of Baltimore. The Commissioners are appointed by the Mayor, by and with the advice and consent of the Council, and are obliged to take an oath of office before the Mayor, (Section 23, Article 4, Baltimore City Charter) "to faithfully perform the duties of their respective office and that they will support the laws and constitutions of the United