

REPORT OF THE 1995 CAROLINE COUNTY
GOVERNMENTAL STUDY COMMISSION

HOME RULE GOVERNMENT IN MARYLAND:
CHARTER VERSUS CODE

SUBMITTED TO THE
COMMISSIONERS OF CAROLINE COUNTY
FEBRUARY 20, 1996

To the County Commissioners of Caroline County:

We hereby summarize our report relative to charter and code home rule.

We make no recommendation as to whether a charter board should be appointed (as we were requested to do) because a petition has now been filed which required the appointment of a charter board.

No recommendation can be made as to whether charter or code is wiser until the charter is seen.

We see specific items that could be addressed by charter or by the Commissioners if charter is not adopted, namely:

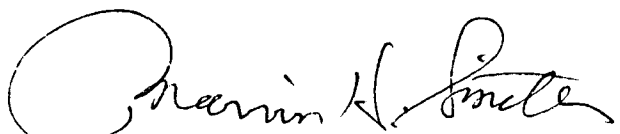
1. A revision of the budgetary process.
2. A revision of financial management.
3. An increase in the membership of the governing body, be it county council or county commissioners.
4. A real property tax cap.
5. No elected county executive.
6. A capital budget over a period of time.

We point out three proposals which the Attorney General advised would be unconstitutional:

1. Recall of elected officers by petition and subsequent election on the issue.
2. A referendum on an increase in the income tax.
3. A charter provision limiting the income tax rate.

For further analysis, see the full report which we now submit.

February 20, 1996


Marvin H. Smith, Chairman
Governmental Study Commission

To the Honorable, the County Commissioners of Caroline County:

By resolution #95-017, of record in Liber 2, page 965, you resolved to appoint a Governmental Study Commission with a charge of, among other things, to "report to the Commissioners by March 1, 1996, on the issue of the structure of County Government and with a specific recommendation concerning the advisability of appointing a charter board." We respectfully submit our report.

We do not make "a specific recommendation concerning the advisability of appointing a charter board" because subsequent events have made such a recommendation unnecessary. You have been presented with a petition for a charter board and the voters of Caroline County will soon determine the membership of that board. For the reason that there is to be a charter written, your commission respectfully reports that it cannot recommend as between charter and code home rule. It is the view of the majority of your commission that until such time as we see the charter upon which the people ultimately will have to vote, we cannot know whether charter or code would be the wiser course for the County. As Judge J. Owen Wise put it to us at one of our early hearings, "You can have a sloppy charter and a beautiful form of government, just like you can have people living in the same kind of houses next door to each other. One of them keeps his or her house up and another lets it go to pot." In our report, however, we shall analyze some of the things that can be accomplished under charter and the respective powers of code and charter government.

We held hearings in Denton, Greensboro, Federalsburg, and Preston. These hearings were well advertised. It is safe to say, however, that, with the exception of the very first meeting held in Denton, our meetings were not well attended. We strived earnestly to obtain views of the citizenry of the county on what they wanted and on what they perceived to be the relative advantages or disadvantages of the two forms of government. We actually received very little comment.

We heard testimony from people in charter and code home rule counties. (We heard from folks in Queen Anne, Talbot, Wicomico, and Worcester.) We had testimony from a lawyer from Cecil County who actively participated in the last, unsuccessful charter drive in that county.

We set forth a bit of history or background relative to home rule in Maryland.

It is believed by many that home rule stemmed in part from a report submitted by Oscar Leser, a distinguished Baltimore lawyer, as chairman of a special subcommittee of the Maryland State Bar Association in 1904 "on the evils of special and local legislation." See 9 Trans. Md. St. Bar Ass'n. 160 (1904).¹ The committee pointed out (see page 163) that in 1904 local acts were 56% of what was considered by the General Assembly.

The General Assembly in 1914 proposed to the people a home rule amendment which was ratified in 1915 and became Article XI-A of the Maryland Constitution, about which we shall have more to say later. It provided for home rule by charter in each of the twenty-three counties of Maryland and Baltimore City. The press of the time and courts since that time have referred to this as an attempt to end what was called "the local bill nuisance."

From the adoption of our present constitution in 1867 until about 1950, the General Assembly only met every two years and its session was limited to ninety days. The Legislative Council was a between session body of high level leadership created about 1939 and existing on up into the late 1960's.

According to a study by the State Planning Commission and Legislative Council in April, 1940, entitled "The Problem of Local Legislation in Maryland," at the 1939 session of the General Assembly "a bill failed passage to compel each county to adopt a charter under the home rule section of the Constitution."

¹ It has not been uncommon for reforms of one kind or another in Maryland to have their origin in committees of the Maryland State Bar Association. E.g., prior to 1907, it was necessary to have an act of the General Assembly to create most corporations in Maryland. State Bar Association action brought a reform in 1907 which is said to have put Maryland at that time on the same basis as Delaware. Workmen's compensation, the present independent Court of Appeals doing nothing but appellate work (prior to 1944 the Court was composed of the chief judge of each circuit which judges sat in the trial of cases as well as on appeals), our present District Court system, our intermediate appellate court known as the Court of Special Appeals, and the Client's Security Trust Fund (the concept that lawyers from their own pocket should reimburse citizens for defalcation of erring lawyers), all came from State Bar Association action.

A research report submitted to the Legislative Council in 1942 indicated that "a strong preponderance of local bills was continued at the 1941 session of the General Assembly, when about 63% of the 938 acts passed were local and special in nature."²

The 1964 report of the Legislative Council Committee on Local Legislation, after referring to the 1915 constitutional amendment providing for charter home rule, said, "This charter form of government was adopted by Montgomery County in 1948, by Baltimore County in 1956, and by Anne Arundel and Wicomico Counties in November, 1964." (Baltimore City had earlier adopted a charter.) It proposed "an amendment to the Constitution by adding a new Article 11F [sic] entitled 'Home Rule for Code Counties'" which, it stated, "would provide an optional system for attaining home rule for counties in the State." It asserted that this amendment "provides for the granting of broader powers of home rule to a county than does Article 11A [sic] of the Constitution." It observed "that a county could achieve home rule without the sometimes lengthy and cumbersome procedure involved in the preparation of a charter."

The result of the 1965 proposals to the General Assembly was the passage by that body of a proposed constitutional amendment, duly ratified by the people in 1966, which became Article XI-F. This was the provision for "code" home rule, about which we shall have more to say. It is obvious that the legislators of the time had a continuing concern about the "local bill nuisance" which the provisions for charter home rule had not ended because so few counties had adopted charter as of 1964. Code home rule was an attempt to address that problem.³

The history of home rule is that Baltimore City adopted its charter in 1918. This was followed by Montgomery County in 1948. (Montgomery County rejected a charter in 1944.) Thereafter, charters were adopted by Baltimore County in 1956, Wicomico in 1964, Anne Arundel County in 1964, Howard County in 1968, Prince George's County in 1970, Harford County in

² It is of interest to note that two of the members of the Legislative Council in that day were Dudley G. Roe from our adjoining county of Queen Anne's and Wilmer Fell Davis from Caroline County.

³ Some critics of code home rule have mentioned the fact that, according to them, it exists in no other state. It is the view of some of our commission that the Legislative Council and the General Assembly should be complimented for conceiving of an innovative approach to solving the "local bill nuisance".

1972, and Talbot County in 1973. No county has adopted charter since that date. Calvert County rejected charter in 1976, Carroll in 1992, Cecil in 1972 and 1991, Charles in 1977, Dorchester in 1972 and 1982, Frederick in 1970 and 1991, Garrett in 1992, St. Mary's in 1972 and 1989, and Washington in 1977 and 1988.

The first county to adopt code home rule was Kent in 1970. One may infer from an opinion given by the Attorney General to Senator Elroy Boyer that he might have had some influence on Kent County's action. Kent was followed by Allegany in 1974, Worcester in 1976, Caroline in 1984, and Queen Anne's in 1990. Code was rejected by Cecil in 1968 and 1992, and by Carroll in 1984.

As we have indicated, Article XI-A is the provision of the Constitution relative to charter. It calls for, in effect, each charter to be unique, in the proper sense of that misused word, in that each county writes its own charter. (Courts have likened a charter for a county to a constitution.) This is done by a board elected by the people, just as we shall elect a board in this county in March. Article XI-A, section 2, requires the General Assembly by "public general law [to] provide a grant of express powers for such County or Counties as may thereafter form a charter under the provisions of [that] Article." This has been done and the provisions are to be found in Md. Code Article 25A, about which we shall have more to say.

Section 3 requires that each charter "provide for an elected legislative body in which shall be vested the law-making power of said City or County." In the counties this body is to be known as the County Council. Section 3 authorizes such charters to "provide for the election [of an] executive officer." This, however, is not required. The executive powers may be lodged in the County Council, as has been done in Wicomico and Talbot Counties, and as was originally done in Montgomery County.

Article XI-A, section 4, forbids the General Assembly, once charter has been adopted, to pass any public local law "on any subject covered by the express powers granted" as provided in Article XI-A.

Article XI-A, section 5, provides that charters may be amended by a resolution proposed by the Baltimore City Council or a County Council "or by a petition signed by not less than 20% of the registered voters of the City

or County, provided, however, that in any case, 10,000 signatures shall be sufficient to complete a petition."

Article XI-F of the Constitution is the article pertaining to code counties. Section 5 authorizes the General Assembly to "classify all code counties by grouping them into not more than four classes based either upon population as determined in the most recent Federal or State census or upon such other criteria as determined by the General Assembly to be appropriate." However, no such classification has been done by the General Assembly at this point in time.

Article XI-F, section 7 for code home rule counties provides that any action of a code county "in the enactment, amendment, or repeal of a public local law is subject to a referendum of the voters in the county" No such provision exists in the article pertaining to charter counties. However, charters usually contain a provision for such referendum.

Article XI-F, section 8, provides that "the General Assembly has exclusive power to enact, amend or repeal any local law for a code county which (1) authorizes or places a maximum limit upon the rate of property taxes which may be imposed by the code counties; or (2) authorizes or regulates the maximum amount of indebtedness which may be incurred by the code county."

In light of some of the expressed concerns, it is relevant to point out that Article XI-F, section 9 provides, "A code county shall not levy any type of tax, license fee, franchise tax, or fee which was not in effect or authorized in the code county at the time it came under the provisions of the [article pertaining to code counties] until an express authorization of the General Assembly has been enacted for this purpose by a *general law* which in its terms and effect applies alike to *all* code counties in one or more of the classes provided for in Section 5 of Article [XI-F]." (Emphasis added.)

Charters provide the structure of government, whether there shall be, e.g., a county executive, the number of members of the county council, whether such members shall be elected by districts or county-wide, whether the collector of taxes shall be the elected treasurer or a finance officer appointed by the county executive or county council, or whether there shall be a department of public works, etc. In this connection, it should be pointed

out that the Sheriff, the Clerk of the Circuit Court, the Register of Wills, the Judges of the Orphan's Court, and the State's Attorney are all state officers, provided for by the Constitution. Accordingly, whether a county has code or charter home rule, the local government cannot abolish those offices. In the case of the Sheriff, however, in a charter or in a code county, there may be created a county police department as has been done in Anne Arundel, Montgomery, Prince George's, Howard, and Baltimore Counties, which in effect takes away from the Sheriff his general police powers, and leaves him as a constitutional officer charged with the serving of summonses and the like.⁴ The county treasurer is not a state officer, but one created by local law. Accordingly, whether it be a charter county or a code county, a local law may be enacted abolishing that office and placing the collection of taxes and the handling of county funds in an officer, usually called a finance officer, designated in such fashion as the charter or a local law passed by a code county may specify. In many, but not all, charter counties the office of county treasurer no longer exists as an elected office.

The zoning power in a charter county is as specified by the county charter. In a code county, as in a county commissioner non-code county, zoning is as prescribed in Article 66B of the Maryland Code. As a practical matter, however, there is little difference in the zoning powers between charter and code counties.

Before home rule could be operative under the charter form of government authorized by the constitutional amendment of 1915, it was necessary, as that article of the Constitution provided, for the General Assembly to enact a grant of powers to these charter counties. This was done by chapter 546 of the Acts of 1918, and that grant of powers, commonly called the Express Powers Act, is found in Article 25A of the Maryland Code. It is a comprehensive grant of powers.

Article 25B, which might be called the counterpart to Article 25A, is applicable to code counties. Section 13 sets forth the powers. It is obvious that there is no essential difference between the powers of a charter county and the powers of a code county because section 13 of Article 25B provides that a code county "may exercise those powers enumerated in section 3 of Article 25 [pertaining to county commissioner counties], in subtitle 'Draining

⁴ County police departments may exist also, and have existed, in county commissioner counties.

Lands' of Article 25, and in section 5 of Article 25A except for subsections (A), (P) and (S) of section 5 of Article 25A as amended: and no county adopting code home rule status shall be exempted. These powers are in addition to any powers any county may now have under any public general or local law applicable to the county." (Emphasis added.) Of these exceptions, subsection (A) makes no difference because subsection (A) of section 5 is what provides for the power to enact local legislation which is provided elsewhere for code counties. The subsection (P) exception likewise is of no moment because it is what provides for the issuance of bonds for charter counties and that provision for code counties is provided elsewhere. Subsection (S) is what provides for the amendment of the county charter in a charter county.

Maryland Local Government Handbook (1986), prepared by the Department of Legislative Reference of the General Assembly, states at page 14, "The major difference between the governmental structure of charter and code counties is not in the character of the structure, but *in the procedure for adopting or changing the structure.*" (Emphasis added.) M. Henry Epps in *Home Rule in Maryland* (1975) states at page 25, "[T]here seems to be no significant difference in the powers available to code or charter counties." (Emphasis added.)

Two matters have been discussed at some length by your commission, the wisdom of having an elected county executive and the wisdom of additional county commissioners or county council members. It is the unanimous view of your commission, and it would be our earnest recommendation to the soon-to-be Charter Board, that we not have an elected county executive. Wicomico and Talbot Counties, although larger than Caroline, are the charter counties closest to our size. Neither of them has an elected executive. We think the county is too small.

There is some sentiment for increasing the number of the elected governing body which, if we have charter, would be called the "county council" and which under code continues to be the county commissioners. That, of course, is something with which the charter board must wrestle. The number of commissioners could be expanded under code home rule by action of the commissioners themselves. As, however, we shall make the point on some other changes that might be made, we have no way of knowing whether a given set of commissioners will see fit to exercise that power. We are

uncertain as to whether a person should be elected within a district or whether a person should be elected on a county-wide basis with the requirement that he or she come from a district.

We deal with some of the suggestions that have been made as to things that could be accomplished under charter which, so the suggestion goes, could not be accomplished under code home rule.

The press reported that one reason suggested for charter was that there could be a provision for recall elections. By "recall elections" is meant that procedure whereby a petition is circulated that a given public official be subject to an election as to whether he or she should be retained in office. Early on, your chairman of the commission requested an opinion of the Attorney General on this subject. He was advised that such a provision would not be permissible because the Maryland Constitution in Article XVII, section 3, specifies that the term of office of elected state and county officers is four years. Such a provision would fly in the face of this constitutional requirement.

In our discussions a question was raised as to whether a charter might place a limit on the amount of what is commonly known as the "piggyback" county income tax. (This question was brought about, of course, by the recent increase in the percentage from 50% to 60% as most recently authorized by the General Assembly.) An opinion of the Attorney General was sought on this as well as the related subject likewise raised as to whether such an increase might be required by charter to be subject to referendum. (In the latter regard the point should be made that the authorizing legislation of the General Assembly requires the county legislative body to act either by ordinance or by resolution, except for one charter county which is specified to be by ordinance. Our county acted by resolution. All ordinances under code home rule are subject to referendum and most charters contain a similar provision.) The Attorney General advised "that suggested provisions in a charter which would limit the county income tax rate set by the Council and/or allow the rate to be petitioned to referendum are contrary to State law."

Criticism has been leveled at our present code form of government concerning the unavailability in printed form of enactments by the County Commissioners with the suggestion that such failure would not occur under a

charter form of government.⁵ The requirements for publication of laws are virtually the same whether one speaks about charter or code counties. Article 25A, section 7 (pertaining to charter counties) states:

“(a) Compilation of laws enacted during calendar or fiscal year - Generally - At the end of each calendar or fiscal year, each charter county shall furnish in a convenient and legible compilation a complete set of all laws enacted during that year under the ‘Express Powers Act’ in Section 5 of this article, whether to enact, amend or repeal a local law. The laws and the compilation shall be in numerical sequence, beginning with No. 1 and in a separate series for each year.”

Article 25B, section 12 (pertaining to code counties) states:

“(a) Compilation to be furnished annually - At the end of each calendar or fiscal year, each code county shall furnish in a convenient and legible compilation a complete set of all local laws enacted, amended or repealed by the code county during that year.”

It will be seen by examination of the text that although the language is not the same, that which is required is the same. In both instances, provision is made for copies to be furnished to the State Archives, the State Law Library, etc. Thus, it is not the structure of government but the personality of government (to both of which Judge Wise alluded) which is at work in this situation. The situation of lack of publication could be the same whether one had code or charter.

⁵ As a matter of fact, a published revision of the county code is now in the process of preparation under a procedure by which it will be supplemented at least annually. An older generation of Caroline County lawyers knows that the last statewide publication of the Code of Public Laws (that two volume work which contained the local laws pertaining to each county) was in 1930. Until the publication of a revised Article 6 (that which pertains to Caroline) in 1965 it was necessary if one wanted to know about laws that pertained to Caroline County, including at that time town charters all of which were originally enacted by the General Assembly, it was necessary to go to the index to each volume of the laws passed by each session of the General Assembly. A printed supplement was issued in 1980. There has been no supplement since then. This edition which is currently coming out will take care of all of that. Of course, it must be remembered that the cost of code supplements is not cheap and the taxpayers have to foot the bill.

Among the people whom we had appear before us was Judge Wise who chaired the last County study committee. One of his fears of charter was the cost of legal expenses, pointing to the litigation which has taken place in Talbot County. Your chairman was cognizant of extensive litigation in Montgomery County. However, when we obtained figures of the actual cost of litigation, we are not sure that such a basis exists for opposing charter.

At our first meeting, a representative of the Caroline County Taxpayer's Association expressed the thought that under charter it could be made mandatory that there be a referendum on each bond issue while no such provision exists under code. Most of the county charters in Maryland do not require referenda on bond issues, but permit such upon proper petition. Under code, Article 25B, section 15, requires that "all bonds of a code county shall be authorized by public local law, enacted by the board of county commissioners," and section 16 provides, "If a valid petition for referendum is filed with the board of supervisors of elections in regard to a public local law enacted by the board of county commissioners of a code county and authorizing the issuance of bonds, the bonds authorized by the public local law shall be issued only if a majority of the registered voters voting on the public local law approve it"

At all of our public hearings we sought earnestly to get input from the citizenry of Caroline County as to what they perceived as critical differences which might call for either adoption of charter or continuance of code home rule. The Chairman of Caroline County Citizens for Charter Government was invited to appear. He spoke, but said he had been instructed to give no reasons for charter, that such would be given at a subsequent meeting sponsored by that organization. Pursuant to that invitation, several members of your commission attended that meeting at Choptank Electric. Reasons given at that meeting were a "tax cap", a mandate of a capital improvement plan based on five or six years⁶, districting of the county for election of county council members, budgeting provisions, election of a Caroline County administrator, provisions for elected and appointed officers, and zoning and planning.

⁶ Mr. Richards, County Administrator, at that meeting advised that he had been advocating such a plan to the county commissioners for a number of years.

A real property "tax cap" would have to be very carefully constructed. The Talbot County tax cap was struck down. The opinion of the Court of Appeals has not yet been issued. By a per curiam order it affirmed, for reasons to be stated later, the judgment of the Circuit Court where Judge Sause in his opinion held that the charter tax cap provision impinged upon the legislative functions assigned to the county council by public general law. In *Board v. Smallwood*, 324 Md. 220, 608 A. 2d 1222 (1992), a divided Court of Appeals gave its blessing to the formula in the Anne Arundel County charter for a tax cap. In connection with that, however, it must not be forgotten that the Court said:

"Nevertheless, we render no opinion as to the validity of the tax caps as they might have been applied in practice. County governments are required by state law to provide many public services such as public education, police and fire protection services, water and sewage services, etc. If it is subsequently demonstrated in a particular case that a local limitation on property tax revenues so hampers a county government that it cannot perform the duties required under state law, a tax limitation charter provision may well be found to be invalid as applied. See E. McQuillin, *The Law of Municipal Corporations*, [(3rd) Ed. 1984], at Section 44.26." *Id.* at 243-44.

Charters come in all shapes and sizes. The Talbot County charter is what might be called a "bare bones" charter in that it does not go into massive detail. On the other hand, the charters for Baltimore County and Anne Arundel County (modeled much on Baltimore County) are very, very detailed. The constitution submitted to the voters in 1968 by the 1967-68 Maryland Constitutional Convention was a "bare bones" constitution in sharp contrast to our present Constitution, that of 1867, which goes into much detail and which at one time went so far as to prescribe the salary of the governor (set at \$4,500 in 1867 and not changed until the 1950's) and the salaries of the members of the General Assembly (set at \$5.00 per day and not changed until the 1950's). Fears were expressed by some members of your commission that a charter might be too detailed, might place the county council and the county generally in a straitjacket. We know not what will be in the charter to be prepared by the soon to be elected charter board.

We recognize that some changes in the present form of government might be wise. For instance, our present requirements relative to budget are sketchy, to put it mildly. Article 6 of the Code of Public Local Laws (that which is applicable to Caroline County) (1965 ed.) section 20, specifies that the County Commissioners are to meet as a Board of Estimates during the month of June. Nothing is said about when county departments should submit their budgetary requests. A feeling exists that budget discussions should be spread over a considerable period of time. A change in that regard could be brought about by the County Commissioners under code home rule. It is entirely conceivable that if this Commission recommended such changes, that our present commissioners would speedily enact such. On the other hand, they might not. Charter could, if the people adopted it, mandate such procedures.

Undoubtedly there are other changes which ought to be brought about and which could be brought about under code home rule. However, the question would be whether a given board of county commissioners would enact such change. Charter would mandate such changes as the charter board deemed requisite.

One very knowledgeable member of our commission addressed a memorandum to the chairman in advance of what was intended for a study session in January which he thought he would not be able to attend (canceled because of the weather). He said:

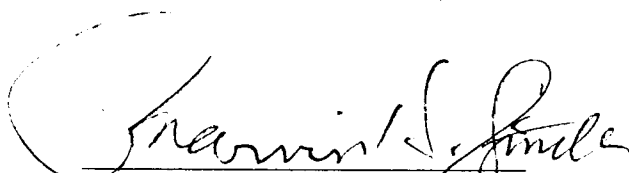

“Comparing code home rule with charter home rule is difficult at this stage because we don’t have a charter to compare with our present government. This is complicated further by not having a codification of our present laws, although this is not considered to be fatal. Trying to compare the two, we are reduced to comparing what is possible under each form of government. When we consider what is possible, we should not limit ourselves to what is legally possible under the state legislature and our constitution, but also what is politically possible as a practical matter.”

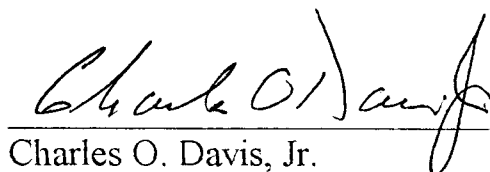
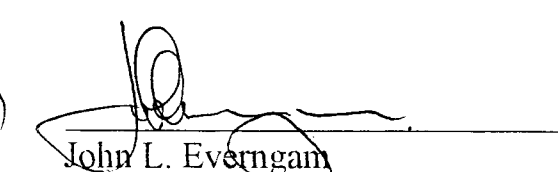
He well sums up the dilemma in which your commission finds itself. There is little that could be accomplished under charter that cannot be accomplished under code. A charter can mandate change. Until, however, we see that



charter we have no adequate basis for making a comparison between charter and code. Thus, despite your mandate, we respectfully decline to make a recommendation.



Caroline County
Governmental Study Commission

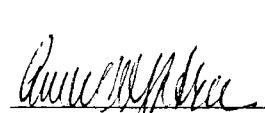
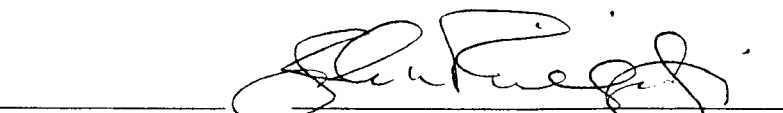
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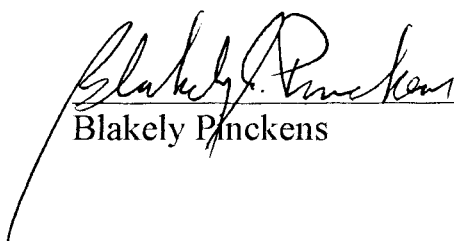
	
Marvin H. Smith, Chairman	Ann B. Collier

	
Charles O. Davis, Jr.	John L. Everngam

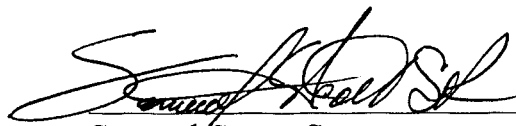
	
Conway Gregory	Roland C. Kent

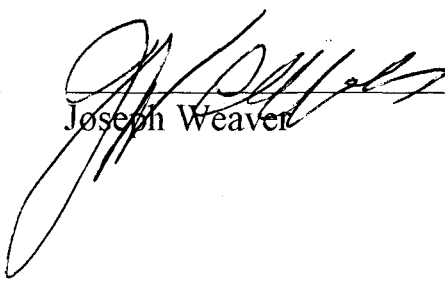
	
Charles Kinnamon	Keith McMahan

	
Anne Ogletree	John Phillips


Blakely Pinckens

Harry Rieck


Samuel Scott, Sr.


Joseph Weaver

APPENDIX

Witnesses

Caroline County Government

County Commissioners of Caroline County
Margaret R. Myers, President
Earl R. Cohee, Vice President
Edwin G. Richards, County Administrator
County Department Heads
Dorsey Wooters, County Treasurer

Dennis Clower, Cecil County Governmental Study Commission
Kenneth Gelletly, Chair, Caroline County Citizens for Charter Government
Emery Hertelendy, President, Talbot County Taxpayers Association
William Morrison, President, Caroline County Taxpayers Association

Queen Anne's County Government

A. A. "Sandy" MacGlashan, former County Commissioner and
and Governmental Study Commission member
Robert Sallitt, County Administrator

Talbot County Government

Clinton Bradley, President, County Council
Daniel Cohee, Talbot County Planner

Talbot County League of Women Voters

Barbara Coit, Vice President; Chair, Fiscal Policy Committee
Lorraine Claggett, Member

Robert Thornton, former member, Maryland House of Delegates, 37th District

Wicomico County Government

Philip Tilghman, President, County Council
Matthew Creamer, Administrative Director

J. Owen Wise, Judge, Caroline County Circuit Court; Chair, 1980 Caroline County
Governmental Study Commission

Worcester County Government

Ed Hammond, County Attorney

Advisors

Victor Tervalo, University of Maryland Institute for Governmental Service