

## H. IMPEACHMENT (§§ 218-222)

Research References

US Const, Art I § 2, cl 5; § 3, cl 6, 7

ALR Digest: Officers §§ 72-75

ALR Index: Impeachment of Officers; Public Officers and Employees

**§ 218. Generally; proceedings**

As a rule, impeachment is exclusively a matter for action by the legislative branch.<sup>93</sup> In addition, where the constitution confers exclusive jurisdiction over impeachment on the legislature, in the absence of provisions to the contrary, courts have no jurisdiction over, or power to interfere in, impeachment cases.<sup>94</sup>

Under the United States Constitution, the House of Representatives has the sole power of impeachment,<sup>95</sup> and the Senate has the sole power to try all such impeachments.<sup>96</sup> Furthermore, no person will be convicted without the concurrence of two-thirds of the Senate members present.<sup>97</sup>

The fact that the chief justice of a state supreme court presides when an impeachment occurs in no way changes the proceeding from a legislative to a judicial one.<sup>98</sup> And, in this regard, the United States Constitution provides that when the President of the United States is tried, the Chief Justice of the Supreme Court will preside.<sup>99</sup>

An impeachment proceeding, while penal in nature,<sup>1</sup> has been said to be neither exclusively civil nor criminal.<sup>2</sup>

Statutes in some jurisdictions provide that impeachment proceedings against particular officers may be instituted by a specified number of taxpayers upon giving bond, with sufficient sureties, payable to the officer sought to be impeached, conditioned to prosecute the impeachment to effect and, failing therein, to pay all costs that may be incurred, and that when taxpayers institute such proceedings, the costs will be given against the unsuccessful party, to be collected by execution.<sup>3</sup> The bond requirement for such impeachment proceedings was intended by a state legislature to deter disgruntled taxpayers from filing vexatious impeachment proceedings against public officials; to attempt to remove an official from public office without the scrutiny of a grand jury justifi-

93. *Rockefeller v Hogue*, 244 Ark 1029, 429 SW2d 85; *In re Mussman*, 112 NH 99, 289 A2d 403, 53 ALR3d 877, subsequent app 113 NH 54, 302 A2d 822.

94. *State v McCarthy*, 255 Wis 234, 38 NW2d 679.

*Law Reviews*: Catt, *Judicial Review of Congressional Exercise of Impeachment Powers*, 40 U Kan L Rev 833 (Summer, 1992).

95. US Const, Art I § 2, cl 5.

96. US Const, Art I § 3, cl 6.

97. US Const, Art I § 3, cl 6.

*Law Reviews*: Mekon, Jr., *Federal Impeachment and Criminal Procedure: The Framers' Intent*, 52 Md L Rev 437 (1993).

Rehnquist, *The Impeachment Clause: A Wild Card in the Constitution*, 85 *Nw U L Rev* 903 (Summer 1991).

98. *In re Mussman*, 112 NH 99, 289 A2d 403, 53 ALR3d 877, subsequent app 113 NH 54, 302 A2d 822 (impeachment of the governor).

As to the eligibility, election, qualification, and tenure of state governors, generally, see 38 Am Jur 2d, *Governor* § 2.

99. § 220.

1. *State ex rel. Munchus v Conradi* (Ala) 642 So 2d 467.

2. *Lewis v State* (Ala) 587 So 2d 798.

3. *State ex rel. Munchus v Conradi* (Ala) 642 So 2d 467 (city officer).

ties requiring those taxpayers to post a bond for all costs to be incurred if the impeachment proceedings fail. Thus, under such provisions, a circuit clerk does not abuse her discretion in requiring taxpayers to post a bond for the payment of attorney fees in case the impeachment proceedings was unsuccessful.<sup>4</sup>

■■■■ *Practice guide:* Where a state constitution gives the legislature the sole power to conduct impeachment proceedings, statutes granting legal representation to a state employee in any action or suit against him or her do not apply to impeachment proceedings.<sup>5</sup>

#### § 219. Effect on other remedies

The remedy of impeachment is not exclusive of any other public remedy for the same misbehavior.<sup>6</sup> In this regard, under the Federal Constitution, a party convicted for impeachment will nevertheless be liable and subject to indictment, trial, judgment and punishment, according to the law.<sup>7</sup> However, it has been said that where a state constitution fixes the term of a public officer and provides for the officer's removal by impeachment, impeachment is the sole remedy to effect removal from office.<sup>8</sup>

#### § 220. Persons subject to impeachment

In some jurisdictions, a constitutional provision regarding impeachment of state officers relates only to officers provided for in the constitution or elected by the people at large,<sup>9</sup> while in other jurisdictions, a person must be an officer under the state constitution in order to be impeachable.<sup>10</sup>

A state senate has no jurisdiction to impeach a former officeholder who had effectively relinquished his office prior to the commencement impeachment proceedings.<sup>11</sup>

Federal officers<sup>12</sup> including the President,<sup>13</sup> are subject to impeachment.

#### § 221. Grounds; conduct before entry into office or during prior term

The refusal or neglect of an officer to perform his or her official duties, pertaining to his or her office may be a ground for impeachment. In this regard, in an action of impeachment under a statute authorizing impeachment proceedings by a verified accusation presented to a Circuit Court alleging that any officer within the jurisdiction of the court has refused or neglected to perform the official duties pertaining to his or her office, failure to perform just one

4. State ex rel. Munchur v. Conradi (Ala) 642 So 2d 467.

5. Mayo v. State, 158 Va 419, 415 A2d 1061.

6. Shusted v. Coyle, 189 N.J. Super 314, 353 A2d 562 (disapproved on other grounds by In re Application of Burlington County Bd. of Chosen Freeholders, 99 N.J. 90, 491 A2d 631).

7. US Const. Art I § 3 cl 7.

8. Opinion of Justices etc. (Me) 343 A2d 196; Shusted v. Coyle, 189 N.J. Super 314, 353 A2d 562 (disapproved on other grounds by In re

Application of Burlington County Bd. of Chosen Freeholders, 99 N.J. 90, 491 A2d 631).

9. State ex rel. Kallston v. Hiale, 189 Kan 375, 370 P2d 415, 92 ALR2d 1115.

10. Smith v. Brantley (Fla) 400 So 2d 443.

11. Smith v. Brantley (Fla) 400 So 2d 443.

12. See US Const., Art I § 2, cl 5, § 3 cl 6.

13. US Const., Art I § 3, cl 6.

As to the President, generally, see 77 Am Jur 2d, United States 44 42 et seq.

duty required by law would not be sufficient to uphold the action, but there would have to be a general failure to perform official duties.<sup>14</sup>

According to some authorities, a public officer may not be impeached for acts committed before his or her entry into office.<sup>15</sup> Thus, an officer may not be impeached for acts that occurred after his or her election to office, but prior to the actual commencement of his or her term and actual assumption of duties.<sup>16</sup> In addition, where constitutional provisions expressly limit the penalty for misconduct to the term of office during which the misconduct occurs, an officer may not be impeached for an act committed during a prior term.<sup>17</sup>

**Observation:** While the acts of an officer during a previous term may not be grounds for impeachment, they may be considered insofar as they are connected with or bear upon the officer's general course of conduct during his or her present term, for the limited purpose of inquiring into his or her motive and intent as to the acts and omissions charged to the officer during his or her second term.<sup>18</sup>

### § 222. Consequences of impeachment

A judgment on impeachment normally extends only to one's removal from office and disqualification from holding office.<sup>19</sup> Under the United States Constitution, judgment in cases of impeachment may not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.<sup>20</sup>

Where a constitutional provision provides that disqualification from future officeholding is discretionary and not, like removal, an automatic consequence of impeachment, impeachment is not available simply to disqualify a person who has resigned from office from future officeholding.<sup>21</sup>

## 1. SUSPENSION; TEMPORARY LAYOFFS [§§ 223-226]

### Research References

5 USCS § 7532(a); 5 USCA § 7532(a)

ALR Digest: Officers §§ 71-71.7; Public Employees § 11

ALR Index: Impeachment of Officers; Public Officers and Employees

20A Am Jur Pl & Pr Forms (Rev), Public Officers and Employees, Form 99

### § 223. Generally

The suspension of public officers is a matter separate and apart from their removal. In case of a suspension, the officer is not removed, but is merely

14. State ex rel. Ayer v Ewing, 231 Ind 1, 106 NE2d 441.

15. Wysong v Walden, 120 W Va 132, 52 SE2d 392.

16. Parker v State (Ala) 333 So 2d 806, aff'd in part, rev'd in part on other grounds Parker v Jefferson County Com. (Ala) 347 So 2d 1321.

17. Parker v State (Ala) 333 So 2d 806, aff'd in part, rev'd in part on other grounds Parker v Jefferson County Com. (Ala) 347 So 2d 1321.

**Annotations:** Removal of public officer for misconduct during previous term. 42 ALR3d 691 § 10.

18. State ex rel. Turner v Earle (Fla) 295 So 2d 609 (limited on other grounds The Florida Bar v McCain (Fla) 361 So 2d 700).

19. Mayo v State, 138 Vt 419, 415 A2d 1061.

20. US Const, Art I § 3, cl 7.

21. Smith v Brantley (Fla) 400 So 2d 443.