

A Comparative Analysis of the Michigan Constitution

Volumes II

Articles IX



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IX IMPEACHMENTS AND REMOVALS FROM OFFICE

A. IMPEACHMENT PROCEDURE

Article IX: Section 1. The house of representatives shall have the sole power of impeaching civil officers for corrupt conduct in office, or for crimes or misdemeanors; but a majority of the members elected shall be necessary to direct an impeachment.

Section 2. When an impeachment is directed, the house of representatives shall elect from its own body 3 members, whose duty it shall be to prosecute such impeachment. No impeachment shall be tried until the final adjournment of the legislature, when the senate shall proceed to try the same.

Section 3. Every impeachment shall be tried by the senate. When the governor or lieutenant governor is tried, the chief justice of the supreme court shall preside. When an impeachment is directed, the senate shall take an oath or affirmation truly and impartially to try and determine the same according to the evidence. No person shall be convicted without the concurrence of 2/3 of the members elected. Judgment in case of impeachment shall not extend further than removal from office, but the person convicted shall be liable to punishment according to law.

Constitution of 1835 and 1850

The 1835 constitution (Article VIII, Sections 1 and 2) had provisions similar to Sections 1 and 3 of the present constitution, except that the concurrence of only two-thirds of those present was required for conviction rather than two-thirds of those elected as in the 1850 and 1908 provisions. The 1835 constitution did not have a provision like that of Section 2 of the present constitution. The provisions in the constitution of 1850 (Article XII, Sections 1, 2 and 3) were the same as in the present constitution (but Sections 2 and 3 were in reverse order).

Constitution of 1908

These provisions for the basic process of impeachment and trial of civil officers including judges were carried over from the 1850 constitution unchanged except for the reversal in sequence of Sections 2 and 3. These sections are related to Article VI, Section 16 which requires the lieutenant governor to succeed to the governorship when the governor is impeached. By Article VI, Section 9 the governor is prohibited from granting reprieves, commutations and pardons in cases of impeachment.

Statutory Implementation

The 1850 provisions were implemented by legislation in 1872. This legislation is still in effect. The trial must be at the state capital; the senate has the power to compel attendance of members; upon the appearance of the officer impeached to answer the charge, he must receive a copy of the articles and be given a reasonable time to answer them; the managers of the prosecution and the officer impeached are entitled to process to compel the appearance of witnesses and records.¹

Other State Constitutions

The constitutions of 22 states do not specify the number of votes necessary for impeachment by the house of representatives; some 17 states require a majority of those elected as in Michigan, or a majority of all members for this purpose. Most of the remainder require a vote of two-thirds of the members, all members, or members elected. Oregon is the only state whose constitution does not provide for an impeachment process. The constitutions of approximately one-half of the states require a two-thirds vote of those elected to the senate to convict. Somewhat fewer state constitutions require a two-thirds vote of those present to convict. The Alaska constitution uniquely requires a two-thirds vote of the senate to impeach and two-thirds vote of the house to convict.² The Model State Constitution (which provides a unicameral legislature) provides that the legislature may impeach officers of the state by a two-thirds vote of all the members and shall provide by law procedures for the trial and removal of officers so impeached, requiring for a conviction a two-thirds vote of the tribunal trying the impeachment.

The chief justice is required by most state constitutions to preside over the senate when the governor is on trial. In several states, the chief justice is the officer who presides over the senate trial of most impeachments. A more common provision among state constitutions is requirement that the lieutenant governor, or other senate presiding officer, preside over such trials. The constitutions of most states including Michigan restrict the judgment of the court of impeachment to removal from office, but provide that an officer convicted is liable to further punishment according to law. The constitutions of most states, not including Michigan, further disqualify an officer convicted in an impeachment trial from holding future state office.³

¹ M.S.A. 2.191 - 2.206, 6.1083. The statute of 1872 was in preparation for the impeachment trial of a commissioner of the state land office in that year. This officer was acquitted; a judge of probate was tried and removed from office in 1943, by the impeachment process.

² Index Digest, pp. 536-539. Missouri and Nebraska provide for the trial of most impeachments by the highest court; in New York the senate and the highest court are combined to form a court of impeachment.

Comment

These provisions on the impeachment process seem to be generally adequate for their purpose. The impeachment process has been used infrequently, but might tend to be a more influential factor, if the term of office for elective executive state officers were lengthened. Unless some change were made in the house of representatives vote required to impeach or in the senate vote required to convict, or unless the trial of impeachments were assigned to the supreme court or to a special court, little or no revision would seem necessary. Consideration might be given to placing the impeachment provisions in the legislative article in the revised constitution.

B. SUSPENSION OF JUDGES AND OTHER OFFICERS
DUE TO IMPEACHMENT

Article IX: Section 4. No judicial officer shall exercise his office after an impeachment is directed until he is acquitted.

Section 5. The governor may make a provisional appointment to fill a vacancy occasioned by the suspension of an officer, until he shall be acquitted or until after the election and qualification of a successor.

Constitution of 1835 and 1850

There were no provisions similar to these in the 1835 constitution. The 1850 constitution (Article XII, Sections 4 and 5) originated these provisions

Constitution of 1908

These provisions were carried over unchanged from the 1850 constitution. Section 4 provides for mandatory suspension of a judicial officer when impeached until acquitted. Section 5 allows the governor to fill a vacancy arising from the impeachment of an officer.

³ Index Digest, pp. 537-539. The provision of Article VI, Section 16 which requires the lieutenant governor to act as governor, for the remainder of the term or until the disability ceases when the governor is impeached, is common to most state constitutions. Ibid., p. 503.

Statutory Implementation

Statutes pursuant to Section 5 have made the governor's suspension of an officer under impeachment discretionary.⁴

Other State Constitutions

Provisions of this type are not unusual among state constitutions.⁵

Comment

Little or no revision would seem to be necessary in regard to Section 4. Some consideration might be given to placing this provision in the judicial article, or in the legislative article with the impeachment provisions if these were also transferred thereto.

Some consideration might be given, in regard to Section 5, to making mandatory the suspension of officers under impeachment. The governor's power to make a provisional appointment to fill a vacancy caused by such suspension could be provided for in the executive article in connection with a comprehensive section dealing with the governor's power of appointment and removal of officials. (See the discussion of Article VI, Section 10.)

C. REMOVAL OF JUDGES

Article IX: Section 6. For reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any judge on a concurrent resolution of two-thirds of the members elected to each house of the legislature; and the cause for which such removal is required shall be stated at length in such resolution.

Constitutions of 1835 and 1850

In the related provision of the 1835 constitution (Article VIII, Section 3), the term "address" was used rather than "concurrent resolution;" and "two-thirds of each branch of the legislature" were necessary rather than "two-thirds of the members

⁴ M.S.A., 2.191-2.206.

⁵ Index Digest, p. 534.

elected to each house” for removal of judges. The 1850 provision (Article XII, Section 6) was identical in meaning with the present provision.

Constitution of 1908

Although some changes in phraseology were made, this provision has the same meaning and effect as the 1850 provision. Mr. Burton’s proposal in the convention of 1907-08 to require removal of a judge by a majority of those elected to each house rather than two-thirds was not accepted by the convention and his subsequent motion to allow removal of judges by the governor for manifest incompetency until the next session of the legislature was also rejected.⁶ Under the current provision, the legislature may require removal of any judge by the governor for reasonable cause (insufficient for impeachment).

Other State Constitutions

Approximately one-half of the states have provisions for removal of a judge other than by impeachment. These vary somewhat widely among state constitutions. Twelve states have a procedure similar to the Michigan provision in their constitutions. The legislative vote required in Michigan is the most common requirement among the states having this procedure. In New Jersey, when the supreme court certifies that a superior court judge is incapacitated, the governor appoints a three-member commission. If this commission recommends it, the governor may retire the judge on pension as provided by law (New Jersey Constitution, Article VI, Section VI 5). Some state constitutions provide for removal of judges by the state supreme court.⁷ The Model State Constitution provides, in addition to impeachment, for removal for cause of judges of the appellate and superior courts by the supreme court.

Comment

It would probably be advisable in revising, the constitution either to retain the present feature for removal of judges or to provide some other procedure for the same purpose. Impeachment is limited to “corrupt conduct in office, or for crimes or misdemeanors.” Occasions would arise that would not fall under those categories, but would be “reasonable cause” for removal—for example, incapacitating mental illness.

A provision such as this is an alternative to the difficult process of impeachment, while at the same time safeguarding the principle of separation of powers by the

⁶ Proceedings and Debates, pp. 288-289, 1335-1336.

⁷ Index Digest, pp. 232-233, 296-297.

requirements of a two-thirds vote, reasonable cause, and the involvement in the process of the governor.

D. REMOVAL OF STATE OFFICERS BY THE GOVERNOR

Article IX: Section 7. See VI EXECUTIVE DEPARTMENT, Part C. This section is discussed in connection with the governor's power of appointment.

E. REMOVAL OF LOCAL OFFICERS

Article IX: Section 8. Any officer elected by a county, city, village, township or school district may be removed from office in such manner and for such cause as shall be prescribed by law.

Constitutions of 1835 and 1850

The 1835 constitution (Article VIII, Section 4) gave the legislature power to provide by law for the removal of justices of the peace and other county and township officers. The 1850 constitution (Article XII, Section 7) made the same provision "for the removal of any officer elected by a county, township or school district."

Constitution of 1908

The 1908 provision kept the 1850 specification of elected officers, but broadened the language to include those of cities and villages.⁸

Statutory Implementation

In addition to provisions for removal of local officers by local authority through laws and charters, statutes pursuant to this section have given the governor general power to remove the following elected local government officers for cause with notice of specific charges and hearing: county officers including auditors and road commissioners; city officers; justices of the peace and township officers; and village officers.⁹ The governor may inquire into charges against such officers himself or he may direct the attorney general or county prosecuting attorney to hold an examination before some circuit court commission or judge of probate.¹⁰

⁸ Proceedings and Debates, pp. 290, 294, 1141.

⁹ M.S.A.. 6.1207, 6.1238, 6.1268, 6.1327, 6.1369, 6.1383.

Other State Constitutions

There is little uniformity among state constitutions on the matter of removal of local government officers. Several state governors are granted power to remove local officers either by constitutional or supplemental statutory authority. Several states provide for removal of local officers by court action.¹¹ The Model State Constitution does not provide for removal of local officers by state authority.

Comment

Removal of elective local officers “in such manner and for such cause as shall be prescribed by law,” as presently provided in Section 8, appears to be reasonably flexible. The legislature by statute has vested power in the governor to remove such officers for cause. Unless removal of local officers by state authority as presently provided for in the constitution (and implemented by statute) were felt to be an inappropriate limitation upon principles of local home rule, there appears to be no need for extensive revision of this section. Consideration might be given to transferring this provision or a revision of it to the local government article of the revised constitution.

¹⁰ M.S.A., 6.697-6.701.

¹¹ Index Digest, pp. 69, 151, 741-742.

