

**Dealing With
Judicial Activism**

in

Missouri

(Version 1.0)

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Missouri Impeachment FAQs

What is impeachment?

Impeachment is the constitutional process used by the legislature to ensure that the other two branches of government do not overstep their authority or conduct their business in an otherwise corrupt fashion.

Impeachment is the first of two steps used to remove an official who has subverted his office in some way. Being impeached is not being found guilty; it is not really even a trial, but only an effort to determine if a trial is called for, similar to a grand jury indictment. (More on the trial later.)

Why is it important?

First, understand that government derives its power from the governed. The structure of American government is designed to make sure the people maintain ultimate control. Missouri government, like the federal government, is divided into three branches – the administrative, legislative, and judicial. Each branch is limited by the constitution to specific tasks, and each branch serves as a “*check and balance*” to the other two branches in order to ensure that no branch usurps the liberty of the citizens.

Simply put, impeachment is the constitutional “weapon” the legislature uses to protect the liberty of the citizens and maintain its own share of power among the three branches.

Who can impeach a judge in Missouri?

[Missouri Constitution Article VII](#) Section 2. “The house of representatives shall have the sole power of impeachment.”

In addition to impeachment, the Missouri constitution provides for disciplining judges by the Commission on Retirement, Removal and Discipline of Judges ([Article V, Section 24](#)). The commission's purpose is to maintain the integrity of the courts, but not to maintain the balance of power among the three branches of government, so it is not the proper venue to deal with a judge who usurps the power of the legislature.

Why does the power to impeach rest with the house of representatives alone?

The legislature's power is divided among a much larger number of individuals, so the likelihood of despotic rule from that branch is relatively small – it is the body that is closest to the people. In contrast, the power of the administrative and judicial branches resides with but a few men who are less accessible to the common man.

Our representatives, like judges, have sworn to defend and uphold the constitution. Impeachment is a solemn responsibility neither to be shirked nor abused.

What happens once articles of impeachment have been approved by the house?

In Missouri, after the resolution passes the house, a trial ensues in one of two venues: 1) If a lower court judge is impeached, his trial is held before the state Supreme Court; 2) When the governor or a Supreme Court justice is impeached, the state senate selects a commission of seven jurists to hear the trial. The defendant can only be found guilty upon the concurrence of five sevenths of either the court or commission. ([MO Constitution, Article VII, Section 2](#))

A judge is disqualified from acting as a judicial officer while articles of impeachment are being considered, but still receives his salary. ([MO Constitution, Article V, Section 24.4](#))

What are the possible penalties if found guilty?

[Missouri Constitution, Article VII, Section 3](#): *“Judgment of impeachment shall not extend beyond removal from office, but shall not prevent punishment of such officer by the courts on charges growing out of the same matter.”*

James Wilson, an original justice of the U.S. Supreme court and signer of both the Declaration of independence and the U.S. Constitution said, *“impeachments are confined to **political** characters, to **political** crimes and misdemeanors, and to **political** punishments.”*

Impeachment is neither a criminal procedure nor intended primarily for criminal offenses, so penalties are limited to removal from office.

Judges removed from office also lose certain retirement benefits. ([RSMo 476.480](#)) ([RSMo 476.560](#)) ([Entire Chapter 476](#))

For what reasons can a judge be impeached?

[Missouri Constitution, Article VII, Section 1](#): *“All elective executive officials of the state, and judges of the supreme court, courts of appeals and circuit courts shall be liable to impeachment for crimes, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense involving moral turpitude or oppression in office.”*

A court decision which is clearly in opposition to the plain meaning of the constitution made in favor of personal opinion or in deference to political allies is *“corruption in office”*. A decision like that is in violation of the judge's oath to defend the constitution and strikes at the seminal principles of “separation of powers”.

If a the judge's motives are not malicious, but he simply misunderstands the clear dictates of the constitution, then he is guilty of *“incompetency”*.

Missouri Impeachment History Summary

- 1) **1825** Circuit Judge Richard S. Thomas, Jackson, MO
Accused of bribery in order to secure a clerk position for his son.
Removed
- 2) **1843** Judge John Leland, 2nd Judicial Circuit
Accused of deficiency in legal knowledge, negligence, tardiness, inattentiveness
Outcome unknown
- 3) **1859** Circuit Judge Albert Jackson, Butler County
Accused of oppression in office, (28 articles)
Acquitted
- 4) **1867** Circuit Judge Walter King, Platte County
Accused of finding no bills of indictment against Confederate soldiers, refusing to give or take the loyalty oath required by the constitution, etc.
Removed
- 5) **1867** Circuit Judge James C Moody, St. Louis Curcuit
Accused of uttering false erroneous, and dangerous decisions and opinions, subversive of the valid and binding provisions of the constitution, and for intentionally neglecting to require loyalty oaths by jurors.
Outcome unknown
- 6) **1872** Circuit Judge Philander Lucus, Platte County
Charged with "allowing indictments to create costs" by granting mileage allowances to jurors.
Charge dropped
- 7) **1931** State Treasurer Larry Brunk
Accused of mishandling state money
Aquitted

(Note: The 1945 constitution transferred impeachment trials from the senate to the Supreme Court, except when a SC judge or Governor is impeached.)
- 8) **1962** Circuit Judge Virgil A Poelker, St. Louis County
Accused of mishandling money
Resigned before trial
- 9) **1968** Circuit Judge John D. Hasler, St. Louis County
Accused of personal involvement with a woman seeking a divorce in his court and improperly advising her.
Resigned before trial
- 10) **1994** Secretary of State Judith Moriarty
Accused of back dating her son's filing for an election
Removed

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Constitutional Clauses Relating to Impeachment

Article VII PUBLIC OFFICERS Section 1

August 28, 2002

Impeachment--officers liable--grounds.

Section 1. All elective executive officials of the state, and judges of the supreme court, courts of appeals and circuit courts shall be liable to impeachment for crimes, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense involving moral turpitude or oppression in office.

Source: Const. of 1875, Art. VII, § 1 (as amended Feb. 26, 1924)

Section 2

August 28, 2002

Power of impeachment--trial of impeachments.

Section 2. The house of representatives shall have the sole power of impeachment. All impeachments shall be tried before the supreme court, except that the governor or a member of the supreme court shall be tried by a special commission of seven eminent jurists to be elected by the senate. The supreme court or special commission shall take an oath to try impartially the person impeached, and no person shall be convicted without the concurrence of five-sevenths of the court or special commission.

Source: Const. of 1875, Art. VII, § 2 (as amended Feb. 26, 1924).

Section 3

August 28, 2002

Effect of judgment of impeachment.

Section 3. Judgment of impeachment shall not extend beyond removal from office, but shall not prevent punishment of such officer by the courts on charges growing out of the same matter.

Source: Const. of 1875, Art. VII § 2.

The Bill of Rights of the Constitution of the State of Missouri

Article 1, Section 23 : *“That the right of every citizen to keep and bear arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons.”*

“Justify” means: **1:** to prove or show to be just, right, or reasonable, **2:** to show to have had a legally sufficient reason or cause (FindLaw)

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Article V
JUDICIAL DEPARTMENT
Section 24

August 28, 2002

Retirement, removal and discipline of judges, commission on --composition, terms, duties, procedures, reimbursement of expenses --additional duties prohibited.

Section 24. 1. There shall be a commission on retirement, removal, and discipline, composed of two citizens who are not members of the bar, appointed by the governor, two lawyers appointed by the board of governors of The Missouri Bar, one judge of the court of appeals to be selected by a majority of the judges of the court of appeals, and one judge of the circuit courts to be selected by a majority of the circuit judges of this state. The commission shall receive and investigate all requests and suggestions for retirement for disability, and all complaints concerning misconduct of all judges, members of the judicial commissions, and of this commission. No member of the commission shall participate in any matter in which he has a personal interest. If a member is disqualified to participate in any matter before the commission, the respective selecting authority shall select a substitute to sit during such disqualification. Of the members first appointed, each of the citizen members shall be appointed for a term of two years and each of the lawyer members for a term of four years, and each of the judge members for a term of six years; and thereafter members shall be appointed for a term of six years. 2. Upon recommendation by an affirmative vote of at least four members of the commission, the supreme court en banc shall retire from office any judge or any member of any judicial commission or any member of this commission who is found to be unable to discharge the duties of his office with efficiency because of permanent sickness or physical or mental infirmity. A judge, except a municipal judge so retired shall receive one-half of his regular compensation during the remainder of his term of office. Where a judge subject to retirement under other provisions of law, has been retired under the provisions of this section, the time during which he was retired for disability under this section shall count as time served for purposes of retirement under other provisions of this constitution or of law.

3. Upon recommendation by an affirmative vote of at least four members of the commission, the supreme court en banc, upon concurring with such recommendation, shall remove, suspend, discipline or reprimand any judge of any court or any member of any judicial commission or of this commission, for the commission of a crime, or for misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency or any offense involving moral turpitude, or oppression in office. No action taken under this section shall be a bar to or prevent any other action authorized by law.

4. A judge is disqualified from acting as a judicial officer while there is pending an indictment or information charging him in any court in the United States with a crime punishable as a felony under the laws of Missouri or the United States, or a recommendation to the supreme court by the commission for his removal, or retirement, or after articles of impeachment have been voted by the house of representatives. A judge so disqualified shall continue to receive his salary.

5. On recommendation of the commission, the supreme court shall suspend a judge from office without salary when in any court in the United States he pleads guilty or no contest to, or is found guilty of, an offense punishable as a felony under the laws of Missouri or the United States, or of any other offense that involves moral turpitude. If he is suspended and his conviction becomes final the supreme court shall remove him from office. If his conviction is reversed and he is discharged from that charge by order of court or of the prosecuting officer, whether without further trial or after further trial and a finding of not guilty, his suspension terminates and he shall be paid his salary for the period of suspension.

6. Recommendations to the supreme court by the commission shall be made only after notice

and hearing. Rules for the administration of this section and for the procedures thereunder shall be prescribed by supreme court rule unless otherwise provided by law.

7. Members of the commission shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

8. Additional duties shall not be imposed by law or supreme court rule upon the commission on retirement, removal and discipline.

(Amended August 3, 1976)

Missouri Revised Statutes

Chapter 106 Removal and Impeachment of Public Officers

August 28, 2002

Appointive officers--removal.

106.010. The governor shall have power and he is hereby authorized to remove from office, without assigning any other reason therefor, any appointive state official required by law to be appointed by the governor, whenever in his opinion such removal is necessary for the betterment of the public service, but the governor may, at his discretion, in any order of removal which he may make under authority of this section, assign additional and more specific reasons for such removal.

(RSMo 1939 § 12826)

CROSS REFERENCE: Appointive state officers, removal of, Const. Art. IV § 17

Who is impeachable--reasons for impeachment.

106.020. All elective executive officials of the state, judges of the supreme court, the court of appeals and circuit judges shall be liable to impeachment for crime, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense involving moral turpitude, or oppression in office.

(L. 1945 p. 1319 § 12836, A.L. 1973 S.B. 263)

CROSS REFERENCES: Impeachment of public officers, Const. Art. VII §§ 1 to 3 Removal of officers not subject to impeachment, Const. Art. VII § 4

Power of impeachment--trial.

106.030. The house of representatives shall have the sole power of impeachment. All impeachments shall be tried before the supreme court, except that the governor or a member of the supreme court shall be tried by a special commission as provided for in sections 106.020 to 106.210.

(L. 1945 p. 1319 § 12837)

Articles of impeachment--transmittal.

106.040. When the house of representatives shall be satisfied that there is good cause to impeach any officer, they shall cause articles of impeachment to be made out in due form against such officer and shall transmit the

same to the supreme court, and immediately elect managers to prosecute such impeachment; provided, however, that in the case of impeachment of the governor or a member of the supreme court, they shall transmit such articles of impeachment to the senate who shall, without delay, proceed to the election of a special commission to try such impeachment as provided in section 106.080. In case of death, resignation or failure to serve, of any manager elected by the house as aforesaid, the governor shall, if the house be not in session, fill such vacancy; and the person thus appointed shall have the same power and perform the same duties as if elected by the house.

(RSMo 1939 § 12836, A.L. 1945 p. 1319 § 12838)

Prior revisions: 1929 § 11210; 1919 § 9183; 1909 § 10212

Suspension of impeached officer.

106.050. If any officer shall be impeached, he is hereby suspended from exercising his office, after he shall be notified thereof, until his acquittal.

(RSMo 1939 § 12837, A.L. 1945 p. 1319 § 12839)

Prior revisions: 1929 § 11211; 1919 § 9184; 1909 § 10213

(1995) In attorney general's quo warranto action seeking ouster of secretary of state, court suspended secretary of state from exercising the duties of her office pending trial for impeachment while leaving all other emoluments of office, including salary, in effect. The only method provided in the constitution for removal from office of statewide elective official is impeachment. Legislature is without authority to enact statutes that automatically provide for the removal from office of any elective executive official of the state. State ex inf. Nixon v. Moriarty, 893 S.W.2d 806 (Mo. en banc).

Office vacated by suspension--temporary appointment.

106.060. If the secretary of state, state auditor, state treasurer or attorney general be impeached, and notified thereof, an appointment shall be made by the governor to supply such vacancy until such impeachment shall be determined; and if the president of the senate be impeached, notice thereof shall immediately be given by the house of representatives to the senate, that another president may be elected by the senate.

(RSMo 1939 § 12838, A.L. 1945 p. 1319 § 12840)

Prior revisions: 1929 § 11212; 1919 § 9185; 1909 § 10214

Service of articles of impeachment.

106.070. When articles of impeachment shall be presented to the supreme court, the court shall immediately appoint some day for the appearance of the accused and cause a summons to be issued, signed by the chief justice of the court and countersigned by one of the judges thereof, with a copy of the articles of impeachment annexed, requiring the accused to appear on the day appointed for that purpose, and answer the charges exhibited against him, which shall be served by the marshal of the court, or by special messenger by the court appointed, a reasonable time before the day set for his appearance.

(RSMo 1939 § 12839, A.L. 1945 p. 1319 § 12841)

Prior revisions: 1929 § 11213; 1919 § 9186; 1909 § 10215

Impeachment commission--members--meeting.

106.080. If the governor or a judge of the supreme court shall be impeached, the house of representatives shall immediately transmit such articles of impeachment to the senate who shall, without delay, proceed to the election of a special commission to try the cause, which commission shall be composed of seven eminent jurists, who at the time of their election are judges of the circuit or appellate courts of this state; provided, however, that judges of the supreme court shall not be eligible to serve on such special commission. The commission shall meet in the City of Jefferson within thirty days after their election on a day designated by the senate.

(RSMo 1939 § 12841, A.L. 1945 p. 1319 § 12842)

Prior revisions: 1929 § 11215; 1919 § 9188; 1909 § 10217

Organization of commission--summons to accused--employment of clerical help.

106.090. Immediately upon meeting, the commission shall proceed to organize by electing a president and a secretary and thereupon shall designate some day not less than twenty days nor more than thirty days after the service of the summons for the appearance of the accused and cause a summons to be issued, signed by the president of the commission and countersigned by the secretary thereof, with a copy of the articles of impeachment annexed, requiring the accused to appear on the day designated for that purpose, and answer charges exhibited against him, which shall be served by a messenger appointed by the commission, a reasonable time before the day set for his appearance. The commission shall have power to employ such clerical help and assistants as they may deem necessary to the proper conduct of the trial.

(L. 1945 p. 1319 § 12843)

Serving of summons.

106.100. The notices as required by sections 106.070 and 106.090 shall be served on the accused personally, if he can be found; and if he cannot be found, then by leaving a copy of such summons and articles of impeachment at his dwelling house or usual place of abode, with some member of the family above the age of fifteen years.

(RSMo 1939 § 12840, A.L. 1945 p. 1319 § 12844)

Prior revisions: 1929 § 11214; 1919 § 9187; 1909 § 10216

Compensation to members of commission.

106.110. Each member of the special commission, provided for in section 106.080, shall be allowed an amount not to exceed ten dollars per day for actual and necessary expenses incurred in the performance of his duties, which allowance shall be in lieu of all other compensation for such service.

(L. 1945 p. 1319 § 12845)

Accused to be given time to answer.

106.120. Upon the appearance of the accused, he shall have reasonable time to answer the impeachment; and when the answer shall be filed, the managers may reply thereto; and when issue shall be joined on any such impeachment, the court or commission shall appoint a time for trial thereof.

(RSMo 1939 § 12842, A.L. 1945 p. 1319 § 12846)

Prior revisions: 1929 § 11216; 1919 § 9189; 1909 § 10218

Depositions.

106.130. The president of the commission or the chief justice of the supreme court, as the case may be, on application of the respondent, or any of his counsel, or either of the managers, shall issue subpoenas for witnesses and commissions to take depositions where the witness is unable to attend from sickness or other infirmity, or where the witness is without the state.

(RSMo 1939 § 12843, A.L. 1945 p. 1319 § 12847)

Prior revisions: 1929 § 11217; 1919 § 9190; 1909 § 10219

Manner of taking depositions.

106.140. Such depositions shall be taken in the same manner and the same notice be given as where depositions are taken in circuit court.

(RSMo 1939 § 12844, A.L. 1945 p. 1319 § 12848)

Prior revisions: 1929 § 11218; 1919 § 9191; 1909 § 10220

Proceedings ex parte.

106.150. If the accused shall not appear after being notified, or, after appearing shall fail to answer, the court or commission may proceed ex parte.

(RSMo 1939 § 12845, A.L. 1945 p. 1319 § 12849)

Prior revisions: 1929 § 11219; 1919 § 9192; 1909 § 10221

Impeachment proceedings--oath.

106.160. At the time and place appointed for trial, and before proceeding thereon, some person authorized by law so to do shall administer to the members of the special commission, in cases of impeachment of the governor or a judge of the supreme court, or to the judges of the supreme court, in cases of impeachments of other officers, an oath or affirmation impartially to try and determine the charges and to do justice according to the law and the evidence; and no member shall sit or give his vote until he shall have taken such oath or

affirmation.

(RSMo 1939 § 12846, A.L. 1945 p. 1319 § 12850)

Prior revisions: 1929 § 11220; 1919 § 9193; 1909 § 10222

Impeachment trial proceedings.

106.170. The members being sworn, the supreme court or the special commission, as the case may be, shall proceed to hear, try and determine such impeachment, and may adjourn the trial to any other time; and the court or commission shall determine all questions of law arising during the trial upon the admissibility of evidence, the competency of witnesses, or otherwise, and may punish any person for contempt committed toward it, or for obstructing the administration of justice on such trial, in as full a manner as any court of record could do for like contempt toward such court. Except as otherwise provided in sections 106.020 to 106.210, the rules of evidence and procedure applicable in civil actions before circuit judges in the circuit courts of this state shall be followed in all trials of impeachment whether before the supreme court or the special commission.

(RSMo 1939 § 12847, A.L. 1945 p. 1319 § 12851, A.L. 1978 H.B. 1634)

Prior revisions: 1929 § 11221; 1919 § 9194; 1909 § 10223

Effective 1-2-79

Rights of accused--five-sevenths majority required to convict.

106.180. In all such trials the accused shall have a right to be heard by himself and his counsel, and all matters relating to procedure and the conduct of the trial shall be determined by a majority vote of the judges or commissioners and shall be entered and made a part of the record of the proceeding; but no judgment or sentence of conviction shall be given against any person upon any impeachment without concurrence of five-sevenths of the judges of the supreme court or of the members of the special commission.

(RSMo 1939 § 12848, A.L. 1945 p. 1319 § 12851a)

Prior revisions: 1929 § 11222; 1919 § 9195; 1909 § 10224

Accused party subject to indictment.

106.190. The party convicted or acquitted shall, notwithstanding such conviction or acquittal, be subject to indictment, trial, judgment and punishment, for any indictable offense, according to the law of the land.

(RSMo 1939 § 12849, A.L. 1945 p. 1319 § 12851b)

Prior revisions: 1929 § 11223; 1919 § 9196; 1909 § 10225

CROSS REFERENCE: Impeachment not to prevent prosecution for offenses, Const. Art. VII § 3

Disposition of transcript and judgment.

106.200. The supreme court or special commission, as the case may be, shall cause a transcript of the proceedings had on any impeachment to be made out, and the judgment of the court or commission, whether of conviction or acquittal, which shall be signed by the officer presiding at the trial and attested by the secretary of the commission or a judge of the court hearing the cause and deposited in the office of the secretary of state.

(RSMo 1939 § 12850, A.L. 1945 p. 1319 § 12851c)

Prior revisions: 1929 § 11224; 1919 § 9197; 1909 § 10226

Writ to run in name of state.

106.210. All writs by the court or commission shall run in the name of the state of Missouri, shall be subscribed by the presiding officer and countersigned by a judge of the supreme court or in cases of impeachment of the governor or a judge of the supreme court, by the secretary of the commission and shall be served by the marshal of the court or by a special messenger appointed for that purpose.

(RSMo 1939 § 12851, A.L. 1945 p. 1319 § 12851d)

Prior revisions: 1929 § 11225; 1919 § 9198; 1909 § 10227

Forfeiture of office--reasons for.

106.220. Any person elected or appointed to any county, city, town or township office in this state, except such officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall knowingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office, and may be removed therefrom in the manner provided in sections 106.230 to 106.290.

(RSMo 1939 § 12828)

Prior revisions: 1929 § 11202; 1919 § 9175; 1909 § 10204

(1956) Statutory remedy for removal of officers, adopted under section 4, Article VII of the Constitution, is not exclusive and does not limit the jurisdiction of the supreme court in quo warranto. State inf. Dalton v. Mosley, 365 Mo. 711, 286 S.W.2d 721.

(1956) Sheriff who failed to enforce laws against gambling and against lotteries for charitable or civic purposes and who solicited reward for recovery of stolen property held to have forfeited office and could be ousted by quo warranto. State ex inf. Dalton v. Mosley, 365 Mo. 711, 286 S.W.2d 721.

(1956) Proceeding in quo warranto to declare forfeiture of offices of two judges of county court was civil in nature and burden was upon informant to prove by preponderance of the evidence that by commission of acts alleged respondents had forfeited their respective offices and statutes defining grounds for removal would be given strict construction. State on inf. of Connett v. Madget (Mo.) 297 S.W.2d 417.

(1964) Sheriff who placed or had placed a billfold, which had been taken in a burglary and later recovered, in a suspect's automobile for use in prosecution of the suspect, was guilty of willful and malicious oppression, misconduct and abuse of authority in office and thereby forfeited his office. State v. Elliott (Mo.), 380 S.W.2d 929.

(1971) The Supreme Court has jurisdiction to hear quo warranto proceedings to remove county officer. State v. Orton (Mo.), 465 S.W.2d 618.

(1979) Sheriff who represented to the county court that the cost for food preparation was greater than the actual cost and retained the difference for personal use was guilty of willful and fraudulent violation of an official duty. State ex inf. Ashcroft v. Riley (Mo.), 590 S.W.2d 903.

Complaint against officer--duty of prosecuting attorney.

106.230. When any person has knowledge that any official mentioned in section 106.220 has failed, personally, to devote his time to the performance of the duties of such office, or has been guilty of any willful, corrupt or fraudulent violations or neglect of any official duty, or has knowingly or willfully failed or refused to perform any official act or duty which by law it was his duty to do or perform with respect to the execution or enforcement of the criminal laws of this state, he may make his affidavit before any person authorized to administer oaths, setting forth the facts constituting such offense and file the same with the clerk of the court having jurisdiction of the offense, for the use of the prosecuting attorney or deposit it with the prosecuting attorney, furnishing also the names of witnesses who have knowledge of the facts constituting such offense; and it shall be the duty of the prosecuting attorney, if, in his opinion, the facts stated in said affidavit justify the prosecution of the official charged, to file a complaint in the circuit court as soon as practicable upon such affidavit, setting forth in plain and concise language the charge against such official, or the prosecuting attorney may file such complaint against such official upon his official oath and upon his own affidavit.

(RSMo 1939 § 12829)

Prior revisions: 1929 § 11203; 1919 § 9176; 1909 § 10205

Appointment of special prosecutor.

106.240. Upon the filing of the affidavit as provided in section 106.230, against any prosecuting attorney, the judge of the circuit court of said county may appoint a special prosecutor, who shall have power and authority to file a complaint, as provided in section 106.230, against said prosecuting attorney.

(RSMo 1939 § 12830)

Prior revisions: 1929 § 11204; 1919 § 9177; 1909 § 10206

Action by attorney general.

106.250. When an affidavit has been filed with the clerk of the circuit court of any county in this state, as provided in sections 106.230 and 106.240, the governor may, in his discretion, direct the attorney general to assist in the prosecution against said officer; and in case of the refusal of the prosecuting attorney or special prosecutor, after the filing of the affidavit provided for in sections 106.230 and 106.240, to file a complaint, the attorney general shall have authority to file a complaint against the official complained of.

(RSMo 1939 § 12831)

Prior revisions: 1929 § 11205; 1919 § 9178; 1909 § 10207

Appointment of special sheriff.

106.260. In any proceedings instituted under the provisions of sections 106.220 to 106.290, the attorney general, prosecuting attorney or special prosecutor appointed by the court may file with the clerk of the circuit court an affidavit that he believes the sheriff of said county is disqualified from summoning a fair and impartial jury for the trial of said cause, by reason of the fact that he is related to the defendant, or is interested or

prejudiced in his favor to such an extent that he will not, in the opinion of said attorney general, prosecuting attorney or special prosecutor, summon a fair and impartial jury, and the judge may, in his discretion, thereupon make an order disqualifying said sheriff from summoning the jury in said cause, and appoint an elisor, who shall have the same power as the sheriff in the summoning of the jury, and perform the duties of the sheriff in the trial of said cause; provided, that in case the said proceeding shall be against the sheriff of any county, the judge shall make an order disqualifying him, and appoint an elisor for the summoning of the jury and performing the duties of the office of the sheriff for the trial of said cause.

(RSMo 1939 § 12832)

Prior revisions: 1929 § 11206; 1919 § 9179; 1909 § 10208

Removal of officer--vacancy, how filled.

106.270. If any official against whom a proceeding has been filed, as provided for in sections 106.220 to 106.290, shall be found guilty of failing personally to devote his time to the performance of the duties of such office, or of any willful, corrupt or fraudulent violation or neglect of official duty, or of knowingly or willfully failing or refusing to do or perform any official act or duty which by law it is made his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, the court shall render judgment removing him from such office, and he shall not be elected or appointed to fill the vacancy thereby created, but the same shall be filled as provided by law for filling vacancies in other cases. All actions and proceedings under sections 106.220 to 106.290 shall be in the nature of civil actions, and tried as such.

(RSMo 1939 § 12833)

Prior revisions: 1929 § 11207; 1919 § 9180; 1909 § 10209

Right of appeal.

106.280. In all prosecutions under sections 106.220 to 106.290, the defendant shall, upon conviction, after judgment of removal is entered, be entitled to an appeal to the supreme court of Missouri, and said cause shall have precedence in said court on such appeal, and such supreme court shall hear such appeal as soon as possible. Pending such appeal such officer shall be suspended from office, and the trial court shall appoint a resident of the county, qualified in law, who shall act as such special officer pending the appeal; and if the decision on said appeal in said supreme court shall be in favor of the defendant, he shall be entitled to the pay for the time for which he was removed. The person acting as such officer during such appeal shall be entitled to the same compensation of a duly elected officer. The costs herein provided for shall be taxed against and paid by the county in which said proceedings originated. And the fee of any prosecuting attorney, as provided for in sections 106.220 to 106.290, shall be a reasonable one, fixed by the court, and payable out of the county treasury.

(RSMo 1939 § 12834)

Prior revisions: 1929 § 11208; 1919 § 9181; 1909 § 10210

Payment of costs.

106.290. If, upon the trial of such cause, the defendant be acquitted, the complainant shall be adjudged to pay all costs, and upon motion for that purpose, filed before said cause shall be called for trial, the court may

compel him to give security for payment of the same, and in default thereof may dismiss the complaint, except that in cases where the complaint is filed officially, no security for costs shall be required, and no costs adjudged against the complainant; but the same shall be paid by the county in case of acquittal, and by the defendant in case of conviction.

(RSMo 1939 § 12835)

Prior revisions: 1929 § 11209; 1919 § 9182; 1909 § 10211

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Missouri Revised Statutes

Chapter 476 **Courts--General Provisions** **Section 476.480**

August 28, 2002

Judges convicted, impeached or removed from office ineligible --intentional killing of judge bars survivor benefits, when.

476.480. 1. Sections 476.450 to 476.510 shall not apply to any person who has been convicted of a felony in any court or who has been impeached or removed from office for misconduct for acts involving moral turpitude.

2. The board of trustees of the Missouri state employees' retirement system shall cease paying benefits to any beneficiary of a judge who is charged with the intentional killing of the judge without legal excuse or justification. A beneficiary who is convicted of such charge shall no longer be entitled to receive benefits. If the beneficiary is not convicted of such charge, the board shall resume payment of benefits and shall pay the beneficiary any benefits that were suspended pending resolution of such charge.

(L. 1951 p. 442 § 4, A.L. 1993 S.B. 88, A.L. 1997 H.B. 356)

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Missouri Revised Statutes

Chapter 476 Courts--General Provisions Section 476.560

August 28, 2002

Disqualification by improper behavior.

476.560. Except as provided in section 476.540, the benefits under sections 476.515 to 476.570 shall not apply to any judge who has been convicted of a felony in any court or who has been removed from office by impeachment or for misconduct or disbarred from the practice of law.

(L. 1971 S.B. 132 § 10)

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IMPEACHMENT IN MISSOURI

Although seven circuit judges have been impeached in Missouri, the only impeachment of an executive branch official occurred in 1931. State Treasurer Larry Brunk, a Republican, was accused in six articles of impeachment of mishandling state money. When tried by a Democrat-controlled Senate, he was acquitted. Brunk finished the term of office to which he had been elected in 1928.

The first elected official impeached in Missouri was fourth judicial Circuit Judge Richard S. Thomas of Jackson. In 1825, Judge Thomas was tried under Article III, Section 30 of the 1820 constitution. Five articles of impeachment were brought against him. He was accused not recognizing the authority of John Juden, Jr., as clerk of the circuit court for Cape Girardeau County, intending to place his own son in that position. Judge Thomas subsequently gave Juden a \$4,000 bribe to abandon his position as clerk, which Juden accepted. Judge Thomas was also impeached under Article four, which said that he was improperly swayed by the arguments defense counsel on behalf of a fugitive charged with murder that eventuated in the subsequent discharge of the defendant. The Senate found him guilty of misconduct and removed him from office.

Judge John Leland, of the second Judicial Circuit, was impeached in 1843. The four articles of impeachment brought against him alleged that his deficiency in legal knowledge made him unqualified to discharge duties of office knowledge; that he did not bestow the industry necessary to discharge the duties of his office; that he was negligent, tardy, and inattentive; and that he permitted members of the bar to have an undue influence over him. The outcome of his trial is unknown.

Circuit Judge Albert Jackson of Butler County, of the fifteenth Judicial Circuit, was impeached in 1859 on charges of oppression in office. Twenty-eight articles were brought against him, including failure to grant a change of venue, refusal to allow witnesses to testify, counseling lawyers in private, and inducing the jury to find a defendant not guilty. He was acquitted by the

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Senate.

In 1867 Circuit Judge Walter King of the fifth Judicial Circuit was impeached on six articles. The charges included finding no bills of indictment against Confederate soldiers, instructing a jury to find defendants not guilty, dismissing a grand jury without cause, summoning a jury composed of Conservatives and no Radicals, and refusing to give the loyalty oath set forth by the new constitution. King refused to take the oath. The House impeached him and in a trial before the Senate he was found guilty and was ousted from office.

Five years later (1872), King's successor, Judge Philander Lucas was impeached for "allowing indictments to create costs" by granting daily mileage expenses to jurors. The charge was dropped.

In 1867, St. Louis Circuit Judge James C. Moody was impeached for uttering in court false, erroneous, and dangerous decisions and opinions, subversive of the valid and binding provisions of the constitution, and for intentionally neglecting to require loyalty oaths by jurors. The outcome is unknown.

The 1945 constitution left the power to bring articles of impeachment with the House, but transferred trial proceedings from the Senate to the Supreme Court. Judge Virgil Poelker, elected in 1958 to the twenty-first Judicial Circuit, St. Louis County, was impeached in 1963. There were seventeen articles of impeachment brought against Poelker. As with Brunk, charges against Poelker concerned mishandling money. Poelker was charged with stealing and converting funds, obtaining money by false pretenses, and failing to file a tax return. He resigned from office March 13, 1963, five days before his trial before the Missouri Supreme Court was to begin.

The most recent impeachment in Missouri was that of Judge John D. Hasler of the 21st Judicial Circuit, St. Louis County, in 1968. The House of Representatives constructed four articles of impeachment against Hasler. It was alleged that Hasler became personally involved with Jean Shelby who was obtaining a divorce in his court. He improperly advised this woman through personal meetings and letters, about her testimony in the case without the

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knowledge of the other party. Judge Hasler also made suggestions to Shelby about actions she and her attorney should take in order to get a favorable ruling from him. When the case of Shelby v. Shelby was presented for a ruling, Hasler reopened the proceedings so that he could gather more evidence and make a decision that would be less susceptible to a reversal or an appeal. Hasler resigned before his trial in the Supreme Court, tendering his resignation to Governor Hearnes on August 23, 1968.

Records on Impeachment Proceedings for
Leland, Jackson, King, Moody,
Brunk, Poelker and Hasler
in Holdings of Missouri State Archives

MISSOURI STATE ARCHIVES
1000 EAST WASHINGTON ST. ST. LOUIS, MO 63102
TEL: 314.455.2000 FAX: 314.455.2001

Judge John D. Leland - Impeachment proceedings before the House and Senate in RG 550, Box 2 f 13 (39A/1/1), Box 19 f 12-17 (39A/1/2), Box 20 f 1-10 (39A/1/2). Records incomplete.

RG 3 - Governor's Papers, Box 1 f 67 -1B/1/1 - Correspondence relating to application and recommendations.

Judge Albert Jackson - Impeachment proceedings before the Senate in RG 550, Box 120 - 39A/2/7

Judge Walter King - Impeachment proceedings in the House and Senate in RG 550, Box 78 f 6 - 39A/1/7, Box 85 f 14 - 39A/1/8

Judge James C. Moody - Impeachment proceedings in the Senate in RG 550, Box 85 f 15 39A/1/8

Larry Brunk - Impeachment proceedings before the House and Senate in RG 550, 4 boxes I. D. #'s 13943-13946 - 39B/2/2

Appendix to the House and Senate Journals, 56th G.A., Volume 4, Box 132 - 27A/2/6

Judge Virgil Poelker - Impeachment proceedings before the House in RG 550 - 1 box - I.D. # 14105 - 40A/2/8

Supreme Court Case #49980, Box 64988 - 74B/4/1 - In the Matter of the Impeachment of Virgil A. Poelker

Supreme Court Case #49979, Box 64988 - 74B/4/1 - In re: Virgil A. Poelker

Judge John D. Hasler - Impeachment proceedings before the House in RG 550 - 2 boxes - 49A/3/6

Supreme Court Case #53690 - Box 65236 - 72A/3/6 - In re: In the Matter of the Impeachment of John D. Hasler

Article VII of the Missouri Constitution gives the power of impeachment to the House and the trial before the Supreme Court. Chapter 106 RSMo gives the specifics on how impeachment proceedings are to take place.

Information for the impeachments of 1825, 1859, 1867, and 1872 from an article in the St. Louis Post Dispatch, June 30, 1968.

MISSOURI STATE ARCHIVES

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THE GOVERNMENT OF MISSOURI

14th Edition

ROBERT F. KARSCH

Professor of Political Science
University of Missouri - Columbia

Photographs by Peggy Elzea



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rough floor amendments in both chambers. An initiative proposition is a take-it-or-leave-it affair, with no way to remedy imperfections that are discovered before the final vote is taken.

Briefly, the Missouri Campaign Finance and Disclosure Law applied to all candidates running for any kind of public office, and required three kinds of reporting—money received for campaign purposes, money spent for campaign purposes, and the sources of outside income and investments of the candidate and members of his family. The Act said that if a candidate received or spent no more than \$500, he was exempt from reporting receipts and expenditures; it did not say he was exempt from the economic disclosure provision, however (some who participated in drafting the proposition declared that such exclusion was intended, and that failure to explicitly state it was an oversight). Enforcement of the Act was lodged in two administrative offices: (1) a bipartisan Missouri Elections Commission, consisting of six gubernatorially appointed members with overlapping 6-year terms, and the responsibility of making rulings and regulations interpreting the Act, and investigating alleged violations for prosecution; (2) the office of the Secretary of State was given the responsibility of receiving various routine reports from candidates, and of issuing, with Commission approval, forms for reporting and a manual of procedures.

In the first year of the Commission's operation a number of clarifying rules were issued, a manual and reporting forms were developed, and a few prosecutions were inaugurated. There were also a number of court cases challenging the Commission's actions and interpretations, and even questioning the constitutionality of the Act. For example, were the two subjects matters of the Act—campaign finance and economic disclosure—sufficiently distinct so as to violate the constitutional requirement (Article III, Section 50) that an initiative proposition for a law "shall contain not more than one subject"? In the spring of 1975 the Commission requested the legislature to enact amending legislation clarifying some of the provisions, particularly the one that exempted low finance candidates from reporting receipts and expenditures while not exempting them from the economic disclosure report. Although a number of remedial bills were introduced, none passed in either 1975 or '76. Problems concerning the application and interpretation of the law persisted until 19 December 1977, when the Supreme Court of Missouri declared the statute unconstitutional in its entirety; the court divided 4-3 on the question.

In the ensuing legislative session (1978) the General Assembly enacted two laws bearing on problems in this field. A conflict of interest law established a number of prohibitions on political and office-holding activities, mostly involving dealings with state administrative agencies; the bill in its original form contained disclosure provisions, but these were removed before final passage. Also passed was a new campaign disclosure act setting up new requirements for campaign contributions and expenditures by new candidates who receive or spend more than \$500; unlike the old law, the new one forbids corporations and labor unions to make direct contributions to political campaigns.

In January 1978 Governor Joseph P. Teasdale, not knowing what legislation, if any, on the subject of election campaigns and conflict of interest might be passed by the current legislature, appointed a 25-member Governor's Commission on Campaign Reform and Official Conduct to study the whole gamut of problems connected therewith, including lobbying, and report its recommendations to him as soon as convenient. The report presumably would be used by him in framing a set of recommendations to the General Assembly at its 1979 session. The Commission was still working on the subject when this book went to press.

REMOVAL OF OFFICERS. Once elected to public office in Missouri a person may be removed through death, resignation, or impeachment, or through having appointed a kinsman to a state job.

Impeachment provisions are stated in Article VII, Sections 1-5, of the Constitution. They apply to all elective executive officials of the state, and judges of the supreme court, courts of appeal and

circuit courts." Causes for impeachment are stated to be "crimes, misconduct, habitual drunkenness, wilful neglect of duty, corruption in office, incompetency, or any offense involving moral turpitude, or oppression in office."

Impeachment charges are brought by the House of Representatives, which also acts as prosecutor. The trial is normally conducted before the Supreme Court, but if it is the Governor or a member of the Supreme Court who is being impeached the court will consist of a special commission of seven prominent jurists elected by the Senate. A five-sevenths vote of the Court or commission is needed to convict. The punishment resulting from impeachment cannot extend beyond removal from office. The official thus removed may still be tried in the regular courts, however, if he has done something for which an ordinary person may be prosecuted or sued.

Impeachments are extremely rare. There have been only seven in Missouri history up to mid-1971, six of these being of circuit judges and only two of the seven resulting in conviction. In 1971 legislative steps toward the impeachment of State Treasurer William E. Robinson were begun, but were held in abeyance pending outcome of his trial in circuit court. When the jury found him innocent, the impeachment proceedings were dropped.

1. 1825: Circuit Judge Richard S. Thomas of Jackson, Missouri. Removed.
2. 1859: Circuit Judge Albert Jackson of Butler County. Acquitted.
3. 1867: Circuit Judge Walter King of Platte County. Removed.
4. 1872: Circuit Judge Philander Lucas of Platte County. Charge dropped.
5. 1931: State Treasurer Larry Brunk. Acquitted.
6. 1963: Circuit Judge Virgil A. Poelker of St. Louis County. Resigned before trial.
7. 1968: Circuit Judge John D. Hasler of St. Louis County. Resigned before trial.

In Article VII, Section 6, nepotism is declared to be grounds for automatic removal. When any public officer or employee appoints a kinsman by blood or marriage "within the fourth degree" to a public job, he "shall thereby forfeit his office or employment." A recent case of nepotism ouster occurred when the Missouri Supreme Court in February 1976 unanimously ordered the ouster of a county sheriff who had the previous year appointed his wife's uncle as a process server.

Missouri, along with about three-fourths of the states in the Union, does not use for state officials the device known as the "recall"—a special election to take a man out of office before the end of his term. The nearest to this in Missouri is the election of judges under the nonpartisan court plan (Article V, Section 29), where the voters are asked whether the judge shall be retained after he has had a year or so in office. This is not properly a "recall", since a resulting "NO" vote would not remove him prior to the close of his appointive or previously elective term; the "NO" would merely mean that he would not enter upon a full new term after the close of the current one.

WINNER-PICKING COUNTIES. Are there any "winner-picking" counties in Missouri that may be turned to as indicators of how the state may go in an election? The accompanying maps (Figures 5.2 and 5.3) indicate those counties having the best record to date for elections of President, Governor, and State Auditor.

Buchanan County has had the longest record of picking the presidential winner, having been

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and House Resolution No. 2 was adopted.

Representative Witt offered House Resolution No. 3.

HOUSE RESOLUTION NO. 3

WHEREAS, it has come to the attention of the House of Representatives of the Eighty-seventh General Assembly of the State of Missouri, that Judith K. Moriarty, Secretary of State of the State of Missouri, is alleged to have committed certain acts and omissions which, if true, would constitute grounds for impeachment under the law of Missouri:

NOW, THEREFORE, BE IT RESOLVED that it is the sense of the House that in light of our sworn duty there should be an investigation of these allegations as to their truth, and that if the House shall be satisfied that there be good cause to impeach said secretary of state, that articles of impeachment shall be made out in due form against her in accordance with law; and

BE IT FURTHER RESOLVED that the Speaker of the House appoint a special committee consisting of five members of the House, not more than three members being from the same political party, to investigate the allegations and, if deemed necessary, to draft articles of impeachment against said Judith K. Moriarty and report them back to the House; and

BE IT FURTHER RESOLVED that the House may adopt rules of procedure for the hearings and investigations of the special committee and that the Rules of the House of the Eighty-seventh General Assembly adopted on January 7, 1993, shall apply to the special committee as such rules are appropriate and not in conflict with the rules adopted for the hearings and investigations; and

BE IT FURTHER RESOLVED that the special committee shall have all powers and duties prescribed in the rules of procedure adopted pursuant to this resolution; and

BE IT FURTHER RESOLVED that the special committee shall meet at such times and places as the chair deems necessary to conduct its duties expressed in this resolution; and

BE IT FURTHER RESOLVED that the members of the special committee shall be reimbursed for their actual and necessary expenses connected with the investigation from the contingent fund of the House. Witness fees for any witness subpoenaed to appear as a part of this investigation shall be paid from the contingent fund of the House. The Speaker shall appoint messengers to serve necessary subpoenas and any fees for the service of such subpoenas shall be paid from the contingent fund of the House at the rate prescribed by section 491.290, RSMo; and

BE IT FURTHER RESOLVED that the Committee on Legislative Research staff and the House Research staff shall provide professional staff support to the special committee. The special committee may, if it deems it necessary, hire special counsel, a court reporter, and such other personnel as it deems advisable to assist its investigation. The cost of such personnel shall be paid from the House contingent fund; and

BE IT FURTHER RESOLVED that as a special order of business, the House shall meet in this chamber on a date set by the Speaker, upon completion of the duties of the special five member committee appointed herein, to consider the report of the committee; and

BE IT FURTHER RESOLVED that the Speaker of the House shall designate two members of the special committee, one from the majority party of the House and one from the minority party of the House, who shall, present the results of the investigation of the special committee to the House; and

BE IT FURTHER RESOLVED that if the House is satisfied that there is good cause to impeach Judith K. Moriarty, the articles of impeachment drafted by the special committee be immediately considered and approved, amended or rejected by the House; and

BE IT FURTHER RESOLVED that the articles of impeachment approved by the House be delivered by the Chief Clerk of the House to the Supreme Court. The Speaker shall appoint two managers, one from each of the two major political parties represented in the House, to prosecute the impeachment. The counsel for the special committee shall, under the direction of the managers, present and prosecute the articles voted by the House before the Supreme Court to final conclusion; and

BE IT FURTHER RESOLVED by the House of Representatives that all members of the House of Representatives shall be reimbursed for their per diem expenses as provided by law; and

BE IT FURTHER RESOLVED that the expenses payable under this resolution shall not be paid to any member who qualifies for any other type of reimbursement; and

BE IT FURTHER RESOLVED that, upon approval of the Speaker of the House, the expenses of the House members be paid from the contingent fund of the House.

Representative Childers offered House Amendment No.

House Amendment No. 1

1. Amend House Resolution No. 3, page 1, paragraph 6, line 2, by inserting at the beginning of line 2 the following "upon 48 hours notice".

Which motion was defeated by the following vote:

AYES: 063

Alkin	Alter	Barton	Brosch
Brown	Barton	Childers	Christman
Downan	Edwards	Elliot	Poster
Reckler	Gibbons	Graham	Graves
Grieshaber	Gross	Hale	Hall
Hand	Harcular	Hegeman	Hohulin
Howerton	Jacob	Kasten	Keenan