

IMPEACHMENT IN WISCONSIN

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In the 2023–24 biennium, the Legislative Reference Bureau received a number of inquiries regarding impeachment from legislators, government officials, state and national press, and the general public. Questions centered on the constitutional sources of the legislature’s impeachment powers, impeachment proceedings in Wisconsin history, and the current impeachment process. This article gathers the information and research on impeachment in Wisconsin that we provided in response to these inquiries. The article presents a brief overview of impeachment history, law, and processes in Wisconsin.

Article VII, section 1, of the Wisconsin Constitution

Article VII, section 1, of the Wisconsin Constitution provides that “the assembly shall have the power of impeaching all civil officers of this state for corrupt conduct in office, or for crimes and misdemeanors.”¹ The assembly can impeach a civil officer by a majority vote of members elected. If there are no assembly vacancies, the impeachment of a civil officer of the state requires the concurrence of 50 representatives to the assembly. The provision also states that the senate is the court for impeachment trials and that conviction of a civil officer requires the concurrence of two-thirds of the senators present. Hence, the assembly adopts and presents to the senate the articles of impeachment and the senate conducts the impeachment trial. A conviction can result in a civil officer’s “removal from office, or removal from office and disqualification to hold any office of honor, profit or trust under the state.”² The latter result bars a convicted officer from holding any civil office for life. It is entirely a senate decision as to which result follows from a conviction.

The constitutional provision does not define “civil officers” or “corrupt conduct in office” and likewise does not specify which “crimes and misdemeanors” constitute grounds for impeachment. Moreover, Wisconsin courts have not opined on which public officials are subject to impeachment, nor the lawful grounds for impeachment. The only Wisconsin Supreme Court decision that addresses who is a “civil officer” for impeachment purposes is *State ex. rel. Zimmerman v. Dammann*, a case in which the court noted that legislators are not civil officers for purposes of Wis. Const. art. VII, § 1.³

Article VII, section 1, however, does refer specifically to the governor,

lieutenant governor, and judges as impeachable officers; therefore, they are civil officers of the state under this provision. Similarly situated state elected officials would also include the attorney general, state treasurer, secretary of state, and superintendent of public instruction. Although not stated in the constitution or case law, it seems that all executive branch appointed officers, especially those requiring senate confirmation, would be considered “civil officers of the state.” This includes heads of state departments and agencies and members of commissions, boards, and councils. The strongest case for arguing that these nonelected state officers are subject to impeachment is that Wis. Const. art. VII, § 1, does not limit its application solely to elected state officers, but instead to “civil officers of the state.” Other than elected state officials and appointed state officers, the state government positions subject to impeachment are less clear.

In terms of what constitutes “corrupt conduct in office” or which crimes and misdemeanors warrant impeachment, the constitution is silent. However, in 1929, Attorney General John Reynolds advised Assembly Speaker Charles Perry not to begin impeachment proceedings against a state officer because the “so-called charges . . . are too vague to enlighten the accused official as to the nature of the offenses charged so as to enable him to prepare an adequate defense.”⁴ Also, in 1968, Attorney General Bronson La Follette advised Speaker Allen Busby that an impeachment petition submitted to the assembly must allege conduct that would rise to the level of corrupt conduct in office.⁵

Thus, it would appear that grounds for impeachment, especially for “corrupt conduct in office,” must specify offenses that could give rise to corrupt conduct in office and offenses with elements that the accused state officer can present evidence about, rebut, and defend against. Also, there is no guidance in the constitution or statutes on which crimes or misdemeanors constitute impeachable offenses. That determination seems left to the legislature, with the assembly controlling the charging decision as to whether to adopt articles of impeachment and the senate having the power to conduct the impeachment trial and convict.

Impeachment in Wisconsin history

There has been only one assembly impeachment in Wisconsin history, and it did not result in a senate conviction. In 1853, Circuit Judge Levi Hubbell was impeached by the assembly and tried before the senate; he was ultimately acquitted on all charges.

The attempted removal began on January 26, 1853, when William K. Wilson presented a communication to the Speaker of the assembly that was signed by “a citizen and elector of the state” and charged Judge Hubbell with high crimes, misdemeanors, and malfeasances in office.⁶ The communication further demanded

an investigation to determine “whether or not the constitutional power of the assembly ought to be exercised.” Months earlier, Wilson had served as a jury foreman in a high-profile murder trial presided over by Judge Hubbell. When a not guilty verdict was returned in that trial, Judge Hubbell had exclaimed to the jury: “May God have mercy on your consciences!”⁷

The assembly voted to refer the communication to a select committee made up of five representatives.⁸ The committee received permission to send for persons, papers, and records, and the Speaker was authorized to issue subpoenas “as might be required by the committee.”⁹

On February 23, the committee reported that they found Judge Hubbell “guilty of divers[e] acts of corruption and malfeasance in the discharge of duties of his said office” and recommended that he be removed from office through address, as provided under Wis. Const. art. VII, § 13.¹⁰ The assembly met in multiple private sessions to consider the committee’s gathered testimony and evidence. On March 3, in a 48–27 vote, the assembly adopted a resolution to impeach Judge Hubbell for “corruption and malfeasance in office.”¹¹ A committee of five representatives was chosen to prepare the articles of impeachment and to serve as the assembly’s managers to conduct the impeachment trial with the help of outside counsel.¹²

On March 22, the committee filed with the senate 11 general impeachment charges with 70 specifications, all of which had been unanimously agreed to by the assembly.¹³ These charges accused Judge Hubbell of such offenses as accepting bribes, adjudicating cases in which he had a personal interest in the outcome, immoral conduct, making personal use of money deposited with his court, and imposing criminal sentences that were less than allowed by law.¹⁴ Hubbell entered a plea of not guilty.¹⁵

The day after the charges were filed, the senate adopted a resolution establishing a committee to prepare “forms and rules of proceedings to be observed in cases of impeachment.”¹⁶ The resulting rules laid out the process for the impeachment trial, such as to provide that the doors of the senate chamber would remain open, as well as to specify the wording of oaths to be given by various actors, including each senator.

The impeachment trial before the senate began on June 13, 1853, and lasted roughly a month. Judge Hubbell retained counsel, though he spoke in his own defense at times.¹⁷ The newspapers “eagerly followed the high drama” of the trial, which attracted wide attention, not only because it was the first impeachment trial in the state, but also because it was the first time in the United States that a popularly elected judge had been impeached.¹⁸

Ultimately, the senate voted for acquittal on 56 of the specifications presented; 19 of these votes were unanimous, and for the other 37 votes, between 1 and 12

senators out of a total of 24 senators present voted guilty.¹⁹ The prosecution abandoned the remaining 14 specifications of the original 70.

Throughout Wisconsin's history, there have been a few other committees ordered to investigate whether to pursue an impeachment. In 1875, four "citizens and electors of the state of Wisconsin" submitted a petition to the assembly Speaker charging Circuit Judge David W. Small and Court Commissioner Jared Thompson Jr. of high crimes, misdemeanors, and malfeasance.²⁰ The petition was referred to the judiciary committee, and the assembly adopted a resolution providing the committee with the authority to send for relevant "persons and papers" and to "compel the attendance of the persons before the committee."²¹ The committee did not permit Judge Small or Commissioner Thompson or their counsel to participate in the investigation, stating that it was not "in conformity to precedent" to do so.²² The committee also advised the assembly not to employ counsel until the "evidence taken shall show a prima facie case, or one which would make it the duty of the assembly to put the parties accused on trial." The assembly met in "secret session" to consider the committee's final report, which declared that there was no ground for further proceedings.²³ The assembly ultimately adopted the committee's report in a 51–20 vote.²⁴

During the 1929 session, in a 72–7 vote, the assembly adopted a resolution directing the judiciary committee to "investigate the conduct of" Circuit Judge E. B. Belden in response to charges that had been submitted to the assembly by a Kenosha County supervisor.²⁵ The most serious charge related to evidence that Judge Belden had never paid back a loan from the president of a company and then later presided over a lawsuit involving that company.²⁶ The assembly resolution referring the matter to the judiciary committee provided the committee with the authority to compel the attendance of witnesses by subpoena. The committee hearings lasted two months; the judge and his attorneys were present for the committee investigation, and the judge testified on several occasions.²⁷ The committee's majority report found that there was not sufficient ground for impeachment or removal and instead recommended that the judge resign and that the bar commission investigate the case to determine if the judge should continue as a member of the bar.²⁸ The assembly did not take action on the committee report.²⁹

Similarly, in 1945, the assembly judiciary committee considered two different petitions filed against Circuit Judge Gustav Gehrz. The committee held public hearings on the matter and reported findings recommending the dismissal of both petitions. The assembly adopted both committee reports on a voice vote.³⁰

There have been other impeachment petitions filed with the legislature that have not resulted in a committee investigation.³¹ It appears that the most recent of

these petitions was filed with the senate in 1995. In that petition, 648 “residents of the state of Wisconsin” demanded the “resignation or impeachment of Governor Tommy G. Thompson and Secretary of the Department of Administration, James Klausner.”³² The petition was referred to the Senate Committee on State Government Operations and Corrections, which took no further action.

During the 2023–24 legislative session, two different assembly resolutions were introduced that sought to impeach Meagan Wolfe, the administrator of the Wisconsin Elections Commission. Both resolutions were referred to the Assembly Committee on Government Accountability and Oversight and neither advanced.

The impeachment process in the assembly

The constitution does not specify a process in the assembly for impeaching a civil officer other than to require that a majority of members elected concur in the impeachment. Moreover, the Wisconsin Statutes and legislative rules also do not mandate any process in the assembly for commencing or conducting an impeachment investigation or even for requiring an investigation at all. There is the historical example of the 1853 impeachment proceedings against Judge Hubbell, in which a select committee was created to conduct an investigation to determine whether articles of impeachment were warranted. Although the committee recommended removal of Judge Hubbell by address, the assembly nevertheless chose to impeach him and voted on and adopted articles of impeachment. In other instances, standing committees were directed to conduct impeachment investigations.

If the assembly chooses to impeach a civil officer for crimes or misdemeanors for which the officer has already been tried and convicted, an assembly investigation may not be warranted. The articles of impeachment could simply restate the crimes or misdemeanors for which the officer has been convicted, and the assembly could then vote on the articles of impeachment. However, if the charges are for corrupt conduct in office or for possible crimes or misdemeanors for which the officer has not been convicted, an investigation is warranted to identify the grounds for impeachment with such specificity, as the 1929 attorney general opinion noted, “to enlighten the accused official as to the nature of the offenses.”³³ The most likely actor to conduct this investigation is an assembly committee.

The constitution does not limit the ways in which a select committee could be created or a standing committee charged with conducting an impeachment investigation. That is an internal matter of the assembly.³⁴ The assembly could adopt a resolution to create a select committee or direct an existing standing committee to begin impeachment investigations against a civil officer and determine whether articles of impeachment should be adopted. Also, the Speaker, pursuant

to Assembly Rule 10, could create a special committee to conduct an investigation and determine whether articles of impeachment are warranted. Another way is for a majority of assembly members to file a petition requesting, not commanding, that the Speaker create a special committee or that an existing standing committee commence an investigation.³⁵ Finally, a standing committee could commence an impeachment investigation on its own initiative. But it is unclear if any standing committee in the assembly has the authority under assembly rules to conduct an impeachment investigation, absent adoption of a resolution requiring the committee to investigate or a petition requesting an investigation.³⁶

Once a committee is authorized to conduct an impeachment investigation, the committee may use current law powers to ensure the attendance of witnesses before the committee, the production of documents, and access to books, records, and other information in the possession of state agencies.³⁷ This is the committee's general investigatory authority. The committee could adopt procedures relating to subpoenas, depositions, the taking of oaths, and the manner in which hearings will be conducted; whether the officer may be represented by counsel; the process for examining witnesses; and other usual aspects of committee investigations. These matters could also be specified through adoption of an assembly resolution or amendment of assembly rules.

After the committee has completed its investigation, prepared articles of impeachment, and recommended adoption of the articles of impeachment, the articles are presented in the form of an assembly resolution. The resolution consists of the impeachable offenses, accompanied by a brief narrative of the evidence supporting each offense. If a majority of assembly members elected adopts the resolution, the civil officer is impeached and the assembly's action is messaged to the senate.

It should be noted that if the impeached civil officer is a judicial officer, the constitution provides specifically that “[n]o judicial officer shall exercise his office, after he shall have been impeached, until his acquittal.” In other words, if the impeached official is a judge or justice, the official may not participate in judicial proceedings until acquittal.³⁸

The impeachment trial in the senate

The constitution does not provide a process in the senate for conducting an impeachment trial other than to require that two-thirds of senators present concur in the conviction. The two-thirds present standard in the senate is different from the majority of members elected standard in the assembly. In the senate, assuming a quorum is present, conviction requires only two-thirds of senators present that session day. If fewer than 33 senators are present, conviction may require fewer

than 22 senators. Legislative rules are also silent on impeachment trial processes and procedures, though the Wisconsin Statutes do specify a rudimentary roadmap for an impeachment trial. Wis. Stat. § 750.01 authorizes the senate president and the chief clerk to administer oaths and affirmations to members and other persons in the trial proceedings. Section 750.02 of the Wisconsin Statutes authorizes the impeachment court, which is the senate per Wis. Const. art. VII, §1, to

[I]ssue, and enforce obedience to, any summons, subpoena or other process necessary to the exercise of its powers and authority; to provide in what form the same shall be issued, by whom and in what manner it shall be signed and attested, by whom it shall be executed and in what form return thereof shall be made; and make such further provisions and rules as may be necessary or convenient for the discharge of its functions or duties.

Both of these statutes can be traced back to the 1853 legislative session; the legislature created this statutory language just before Judge Hubbell’s impeachment trial was set to begin.³⁹

Although there are no legislative rules governing the conduct of an impeachment trial, the senate could adopt a resolution or amend senate rules to provide for procedures regulating the trial, as happened in the impeachment trial of Judge Hubbell. In this way, the impeached public officer will have notice of how the trial will be conducted and whether counsel will be allowed to participate at trial and represent the officer. The impeached public officer will also be aware of all rights and obligations at trial and will know of the opportunities and manner in which the officer may conduct a defense.

Once the impeachment trial is concluded, the matter is presented to the senate for vote. The senate is required to vote on each article of impeachment, including any specifications under an article. Presumably, each article and specification vote will be presented as a motion. If an impeached officer is convicted, the senate will also need to vote on the consequences of conviction—whether to remove the impeached officer from office or to remove from office and disqualify the officer from holding “any office of honor, profit or trust under the state.”⁴⁰

Conclusion

Impeachment is a constitutional power reserved to the legislature to remove civil officers of this state for corrupt conduct in office and for crimes and misdemeanors. It is a power reserved to the legislature alone, but seldom used. The 1853 impeachment of Judge Hubbell is the sole instance in state history of the legislature impeaching a public officer. Impeachment requires action by the assembly and conviction by the senate. As we have discussed, Wisconsin law

does not provide the details for an impeachment process or procedures for the conduct of an impeachment trial. The constitution requires only that a majority of assembly members elected must concur in the impeachment of a civil officer and that two-thirds of senate members present must vote to convict. For that reason, each house of the legislature may determine its own impeachment processes and procedures. **BB**

NOTES

1. Wis. Const. art. VII, § 1. Also see Wis. Stat. § 17.06, which incorporates this provision into the Wisconsin Statutes.
2. Wis. Const. art. VII, § 1.
3. 201 Wis. 84, 89, 228 N.W. 593 (1930). Legislators are subject to removal from office under Wis. Const. art. IV, § 8, which requires two-thirds concurrence of all members elected.
4. 18 Wis. Op. Att’y Gen. 121.
5. Letter to Speaker Allen Busby from Attorney General Bronson La Follette, May 21, 1968. On file at the Wisconsin Legislative Reference Bureau.
6. Wis. Assembly Journal (1853) 98–99. *Trial of Impeachment of Levi Hubbell, Judge of the Second Judicial Circuit, by the Senate of the State of Wisconsin, June 1853* (Madison, WI: 1853), 3.
7. John Bell Sanborn, “Impeachment of Levi Hubbell,” *Proceedings of the State Historical Society of Wisconsin* (1905), 197–98.
8. Wis. Assembly Journal (1853) 98–99. A motion was initially made to send the charges to the judiciary committee, but that motion failed 13–63.
9. Wis. Assembly Journal (1853) 98, 110, 118.
10. Wis. Assembly Journal (1853) 300–1. At that time, Wis. Const. art. VII, § 13, provided that “Any judge of the supreme or circuit court may be removed from office by address of both houses of the legislature, if two-thirds of the members elected to each house concur therein . . .”
11. Wis. Assembly Journal (1853) 376–77.
12. *Trial of Impeachment of Levi Hubbell*, 4.
13. Wis. Assembly Journal (1853) 566.
14. *Articles of Impeachment against Levi Hubbell and the Rules of the Court for the Trial of Impeachments* (Madison, WI: 1853).
15. *Articles of Impeachment against Levi Hubbell*, 27.
16. Wis. Senate Journal (1853) 576.
17. Marilyn Grant, “Judge Levi Hubbell: A Man Impeached,” *The Wisconsin Magazine of History* 64, no. 1 (Autumn 1980): 37.
18. “Notes,” *Monthly Law Reporter* 16, no. 11 (March 1854): 601. Grant, *Judge Levi Hubbell: A Man Impeached*, 37.
19. *Trial of Impeachment of Levi Hubbell*, 790–819.
20. Wis. Assembly Journal (1875) 166.
21. Wis. Assembly Journal (1875) 193 and 259–60.
22. Wis. Assembly Journal (1875) 290–91.
23. Wis. Assembly Journal (1875) 590.
24. “Wisconsin Legislature” *Mineral Point Tribune*, March 11, 1875.
25. 1929 Wis. AR 30; Wis. Assembly Journal (1929) 782 and 895.
26. “Demand Belden’s Resignation as Circuit Judge,” *Stevens Point Daily Journal*, August 9, 1929.
27. *Id.* See also *Impeachment proceedings in Wisconsin* (Madison, WI: Wisconsin Legislative Reference Library, June 7, 1957), 4.

28. Wis. Assembly Journal (1929) 2381.

29. Wis. Assembly Journal (1931) 274.

30. Wis. Assembly Journal (1945) 1346 and 1622.

31. For example, see Wis. Assembly Journal (1957) 665, showing a petition filed to request impeachment proceedings against Francis X. Swietlik.

32. Wis. Senate Journal (1995) 229.

33. 18 Wis. Op. Att’y Gen. 121.

34. There is no Wisconsin case law on the process that the assembly must use to conduct an impeachment investigation or that the senate must use for an impeachment trial. Interestingly, in the federal context, in *Nixon v. U.S.*, 506 U.S. 224, 234–35 (1993), a case involving a challenge to the impeachment process used in the United States Senate, a unanimous Supreme Court held that the issue was not “justiciable” and that judicial involvement in impeachment proceedings is “inconsistent with the Framers’ insistence that our system be one of checks and balances” and that “[j]udicial involvement in impeachment proceedings, even if only for purposes of judicial review is counterintuitive because it would eviscerate the ‘important constitutional check’ placed on the Judiciary by the Framers.”

35. Assembly Rules 37 and 95 (55).

36. As the leadership committee of the assembly, and the committee responsible for the general operations of the assembly, the Committee on Assembly Organization may have within its jurisdiction the power to authorize or commence an impeachment investigation. The committee has never claimed or exercised this power.

37. Wis. Stat. §§ 13.31 and 13.45 (7).

38. Wis. Const. art. VII, § 1.

39. Ch. 22, Laws of 1853.

40. Wis. Const. art. VII, § 1.