

IMPEACHMENT POWERS OF STATE LEGISLATURES¹

While no authority has been found which precisely deals with the question of whether a state legislature has the power to impeach officials of the state unless granted such power by the constitution, it would appear that impeachment power is conferred rather than inherent. Thus, the power to impeach is not the prerogative of the legislature, but must be conferred upon it by the people through the state constitution.

Legislatures have not been looked upon as the only depository of impeachment power. In several states, including Nebraska and Missouri, impeachment cases are tried before the state supreme court, pursuant to state constitutional provisions. As stated in *Corpus Juris Secundum*, "constitutions or statutes may provide for impeachment by special judicial proceedings had, not before the legislature, but before some court to which jurisdiction has been given."² When the federal Constitution was adopted, some authorities proposed that impeachment power be conferred upon the Supreme Court.

Justice Story in his COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES discusses early proposals which would have entrusted trial of impeachment cases to the Supreme Court, rather than to Congress.³ As Justice Story points out, it was first agreed at the Constitutional Convention that the jur-

isdiction of the national judiciary should extend to impeachments of national officers. Afterwards, power to impeach was given to the House of Representatives with jurisdiction over the trial of impeachments being given to the Supreme Court. Ultimately, of course, the latter jurisdiction was assigned to the Senate. Story speaks of the "vesting of the power of impeachment in the House of Representatives" and of the Senate as being "the most fit depository" of the power to hear impeachment cases.⁴ However, as pointed out by Story, the grant of power to the Senate to hear impeachment cases was vigorously debated "with an abundance of zeal" and even attacked as "incompatible" with the functions of the Senate.⁵ It would thus appear that the framers of the federal Constitution did not view impeachment as an inherent power of Congress but rather as a matter to be conferred upon Congress for the lack of a more appropriate forum.⁶

If impeachment powers are conferred upon the legislature by the people through the constitution, it would therefore seem to follow that unless the people take such action, impeachment power is withheld from a legislature. This proposition has been stated as follows in the case of *In re Investigation of Circuit Judge*, in which it held that a judge could not be disciplined for alleged unprofessional conduct, other than by methods provided for in the state constitution:

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² 67 C. J. S. *Officers* § 68(a) (1950).

³ 3 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 554 (1891).

⁴ *Id.* at 514, 548.

⁵ *Id.* at 547.

⁶ See also 67 C.J.S., *supra* note 2, wherein it is stated that a legislature, in impeachment proceedings, exercises a judicial, not a legislative, power "conferred on it by the constitution".