

**Industrial Accident Board—Officers—Removal—Vacancy—
Term of Office.**

The term of office of the chairman of the industrial accident board is fixed by law and he may not be removed except in the manner provided by law and only for cause after a hearing.

Jerome G. Locke, Esq.
Chairman, Industrial Accident Board,
Helena, Montana.

March 5, 1925.

My dear Mr. Locke:

You have requested my opinion whether there exists a vacancy in the office of chairman of the industrial accident board justifying the appointment of a successor.

By section 2819, R. C. M. 1921, it is provided:

“The term of office of the appointed member of the board (referring to the chairman) shall be for four years and until his successor shall have been appointed and qualified.”

You were appointed on the 1st day of May, 1923, for a period of four years, which time does not expire until May 1st, 1927.

Section 2820, R. C. M. 1921, provides, in part, as follows:

“The appointed member shall not be removed except for cause, and after a hearing had before and a finding made by the remaining members of the board, and both of the remaining members of the board must concur in the removal of the appointed member.”

Section 17 of article V of our constitution provides that certain named officers are subject to impeachment by the legislature, and section 18 provides for the removal of all other officers subject to removal for misconduct or malfeasance in office “in such manner as may be provided by law.”

Section 2820 (supra) confers this authority upon the other two members of the board.

That it was competent for the legislature to thus provide for the removal of an officer is settled in this jurisdiction. In *State ex rel. Payne v. District Court*, 53 Mont. 350, 356, the supreme court of this state said:

"Proceedings for the removal of a public officer do not necessarily partake of the nature of a criminal prosecution. Indeed, the power to remove an unfaithful or negligent public official is not essentially a judicial power. Under our constitution, its exercise is left to the legislature itself or to such other authority as the legislature may designate. This is the plain import of section 18 above, and is the general rule in the absence of any constitutional declaration upon the subject. (29 Cyc. 1370; State vs. Doherty, 25 La. Ann. 119, 13 Am. Rep. 131; Territory v. Cox, 6 Dak. 501.) The power may be conferred upon the governor (Cameron v. Parker, 2 Okl. 277, 38 Pac. 14) or upon a board. (Donahue vs. Will County, 100 Ill. 94.) It may be conferred upon a court of general or limited jurisdiction to be exercised in the mode provided by law."

This principle was reiterated in the later case of State v. District Court, 61 Mont. 558, 560, where the court said:

"In determining this question, we do not consider that it is necessary to go outside of the constitution and statutes of this state and the former decisions of this court. Section 17 of article V of the state constitution provides that the governor and other state and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misconduct and malfeasance in office. Section 18 of the same article provides that all officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law. The constitution provides that impeachment shall be tried by the senate sitting for that purpose, *but the constitution leaves it entirely to the legislature to provide in what manner actions for the removal of other officers shall be brought and tried.*"

In this state there is no authority conferred upon the governor or anyone else to summarily remove the chairman of the industrial accident board from office and he can only be removed by the tribunal provided by law and in the manner provided by law, namely, by the members of the industrial accident board and for cause and after a hearing.

Very truly yours,

L. A. FOOT,
Attorney General.