

**Opinion No. 40.****Legislative Assembly—Impeachment,  
Powers Regarding.**

**HELD:** The actions of the Legislative Assembly regarding impeachment are not subject to review or reversal by any court.

February 7, 1935.

Hon. W. M. Cusick  
Chairman, Special Investigating  
Committee  
House of Representatives  
The Capitol

Several questions have been submitted by your committee. You have already been advised by your Judiciary Committee that you have full authority to investigate as fully as you deem necessary into the conduct of Tom Carey. With this opinion of your own Judiciary Committee we fully concur.

In this investigation you would not be guilty of a contempt of court as you would be merely fulfilling the duties of your office in the case you deem it proper to conduct such examination.

Relative to the question of a possible impeachment you may also well be guided by your own Judiciary Committee. While acting in impeachment proceedings the legislature exercises the full authority of a court which determines the extent of its own juris-

dition. Your actions in such matter are not subject to review by any court and we are unable to find any authority in a textbook, decision or elsewhere, which remotely suggests that in determining your right to impeach, or who may be impeached, that you are subject to supervision or reversal by any court whatsoever.

The legislature itself, acting as a court, interprets the constitution as to who may be impeached. That authority exists with you. You are the judge of the law, as well as the facts.

A list containing some authorities or references which have been examined is appended hereto.

**List of Authorities.****Who May Be Impeached:**

In the case of William Blount, a United States Senator, impeachment proceedings in 1798. Question involved was whether a United States Senator was subject to impeachment. It was assumed by all parties that the right to determine this question existed in Congress. Trial of William Blount, Wharton's State Trials, 200, 266-317.

1 Story on the Constitution, 577.

12 St. Louis Law Review 16.

Advisory Opinion—Opinion of Justices, 167 Mass. 599.

**Cases which do not purport to limit the powers of a state legislature as to the extent of its powers in impeachment but which interpret constitutional provisions under other conditions.**

State v. Mayor, 43 Mont. 61.

State ex rel. Ayers v. Kipp, 74 N. W. 440.

Roberts v. People, 235 Pac. 1069, 77 Colo. 281.

Maben v. Rosser, 103 Pac. 674.

State v. Smith, 33 Pac. 974.

People v. Shawver, 222 Pac. 11.

**Decision of Legislature in regard to Impeachment not subject to review by the Courts.**

State ex rel. Trapp v. Chambers, 30 A. L. R. 1144.

It has been urged that State ex rel. Cutts v. Hart, 56 Mont. 571, in-

dicates that the Supreme Court will review questions of jurisdiction determined by legislature. That case went no further than to hold that the court will not entertain mandamus to compel payment of fees to an officer improperly seated.