

Opinion No. 50.

**Constitutional Law—Officers—Boards
Members of—Impeachment—Removal
by Governor.**

HELD: Governor has no authority to remove a state constitutional officer.

The members of the Board of Equalization, being constitutional officers, may be removed only by impeachment.

March 2, 1937.

Hon. H. D. Rolph
Speaker, House of Representatives
The Capitol

Dear Mr. Rolph:

You have submitted the question whether the Governor has the power to remove from office a member of the State Board of Equalization.

The State Board of Equalization is provided for by the Constitution, in Section 15, Article XII:

“The state board of equalization shall be composed of three members who shall be appointed by the governor, by and with the advice and consent of the senate. * * *”

The members of the State Board of Equalization are therefore not only state officers but constitutional officers.

Section 17, Article V of the Constitution, provides what officers shall be liable to impeachment:

"The governor, and other state and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors, or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust, or profit under the laws of the state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law."

Section 18, Article V of the Montana Constitution provides that all officers **not liable to impeachment** shall be subject to removal. This section reads:

"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."

Since members of the State Board of Equalization are liable to impeachment, they are not subject to removal, as said Section 18 provides that only officers not liable for impeachment shall be subject to removal. The Constitution having provided a method of impeachment of state constitutional officers, that method is exclusive. The general rule is stated in 46 C. J. p. 1002, section 195:

"Where the Constitution provides a method for the impeachment of officers, that method is exclusive, and the power which the legislature might otherwise be regarded as possessing, is taken away."

Our Supreme Court, in interpreting these sections of the Constitution above quoted, has held that Section 17, Article V, applies to constitutional officers alone. In *State ex rel. Working v. Mayor et al.*, 43 Mont. 61, 114 Pac. 777, the court said:

"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 misdemeanors, or malfeasance in office. Section 1 of

Article VIII provides that the judicial power of the state shall be vested in the senate sitting as a court of impeachment, in a supreme court, district courts, justices of the peace, and such other inferior courts as the legislative assembly may establish in any incorporated city or town. A police judge is not a constitutional officer. His office is created by the legislative assembly, and not by the Constitution. **Section 17 of Article V, supra, providing what officers shall be liable to impeachment, applies to constitutional officers alone.** Therefore a police judge is not liable to impeachment.

"Section 18 of Article V of the Constitution 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 provisions of the Constitution are both mandatory and prohibitory unless by express words they are declared to be otherwise. (Sec. 29, Art. III.)"

It is therefore my opinion that there is not only no authority in the law permitting the Governor to remove a state constitutional officer but that the legislature is expressly prohibited by the Constitution from granting such authority. He has no more authority to remove a member of the board than he has to remove the State Treasurer, or any other state officer provided for by the Constitution; or, stated otherwise, if he could remove a member of the State Board of Equalization, he could remove any other state constitutional officer. We find no cases to the contrary. In the Stafford cases, the principal question was whether there was a vacancy in the office, which was an entirely different matter.