Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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Methods of Removal of Public Officers

The Ohio Constitution provides generally for removal of public officers through either complaint and hearing for misconduct in office or through impeachment. The Ohio Constitution, through the Home Rule Amendment, also permits a municipal corporation with a charter to include the option for recall elections of local elected officials in the municipal corporation's charter. Recall of other state or local officers is not authorized in Ohio. Additionally, the Revised Code contains removal procedures specific to various public officers.

Contents

Ohio Constitution 1
Complaint and hearing 2
Impeachment 3
General Assembly authority to expel members 3
Recall for elected municipal officers 4
Specific officers 4

Ohio Constitution

The Ohio Constitution provides for the removal of public officers upon complaint and hearing for any misconduct involving moral turpitude, and by impeachment. The Ohio Constitution specifies that, additionally, an officer can be removed from office through another "method of removal authorized by the Constitution." The only other method of removal authorized by the Ohio Constitution is through the Home Rule Amendment to the Ohio Constitution. The Home Rule Amendment allows for recall elections of elected officials of a municipal corporation if that municipal corporation has a charter authorizing recall elections.[1] Because complaint and hearing is not part of a recall procedure, other state and local officers, such as members of school district boards of education, may not be removed from office via a recall election.

[1] Ohio Constitution, Article II, Section 38. See also *State ex rel. Hoel v. Brown*, 105 Ohio St. 399 (1922).

Complaint and hearing

The Ohio Constitution provides the law for removal of public officers upon complaint and hearing, with Revised Code sections 3.07 to 3.10 prescribing the process. Under these laws, a public officer can be removed from office for "misconduct in office" if the officer "willfully and flagrantly exercises authority or power not authorized by law, refuses or willfully neglects to enforce the law or to perform any official duty imposed upon him by law, or is guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance."[2]

For removal proceedings, a written complaint must be filed in the court of common pleas of the county where the officer resides, unless the complaint is against a judge of the court of common pleas or a state officer, in which case it must be filed in the court of appeals of the district where the judge or officer resides. The complaint must set forth the charge and contain signatures from qualified electors equal to at least 15% of the total vote cast for the Governor in the most recent election in the state or political subdivision.

A removal hearing must be held within 30 days from the date the complaint was filed and the officer must be served with a copy of the complaint at least ten days before the removal hearing. The court of common pleas can subpoena witnesses and compel witness attendance in the same manner as in civil cases. The removal hearing in a court of common pleas must be tried by a judge unless the officer against whom the complaint has been filed makes a jury demand in writing. The proceedings of a removal hearing by a judge are public record and a full detailed statement of the reasons for removal must be filed with the clerk of the court. If the proceedings of removal are by a jury, the findings of the jury are only public record if at least nine of the 12 jurors find the charges of the complaint are true.[3]

An officer who has been removed can appeal the decision of the court of common pleas to the court of appeals or the decision of a court of appeals to the Ohio Supreme Court. The transcript of the removal hearing and notice of appeal must be filed with the relevant court not more than 30 court days after the decision of removal by either court.[4]

While there have been many removal cases in Ohio, one example is the removal of three members of the Madison-Plains Local School District Board of Education. In that case, a complaint was filed on August 2, 2004, against three school board members, which alleged that one member improperly voted in favor of supplemental contracts for her husband and daughter, that another member obstructed a Madison County Children Services Agency investigation, and that all three members violated the Open Meetings Act, improperly voted to give the Board's sole authority to one board member, and unlawfully continued to pay two teachers who were not properly certified. A hearing was held and the Madison County Court of Common Pleas decided to remove all three board members. The three board members filed an appeal on October 21, 2004, and the Ohio Twelfth District Court of Appeals upheld the removal and determined that all

[2] R.C. 3.07.

[3] R.C. 3.08 and 3.10.

[4] R.C. 3.09.

three board members engaged in gross neglect of duty, misfeasance, malfeasance, and nonfeasance.[5]

Timeline of Complaint and Hearing Removal Process			
Written complaint filed in court	Public officer served with a copy of the complaint	Removal hearing	Appeal decision of removal
Can be done anytime	At least ten days before removal hearing	Must be held not more than 30 days after the complaint was filed	Notice of appeal must be filed not more than 30 days after the decision to remove the officer

Impeachment

Additionally, the Ohio Constitution provides for the impeachment of the Governor, judges, and all state officers for any misdemeanor in office. An impeachment can only result in removal from office and the disqualification to hold any office under the authority of the state. The House of Representatives has sole power of impeachment and requires a majority of the members to concur in order to impeach a state officer. Ohio statutory law provides further that anyone may file a complaint requesting an investigation of the official conduct of a state officer to the House of Representatives. A person who seeks to file a complaint may take depositions of witnesses in order to substantiate the complaint, and use those depositions as testimony before the House when determining whether to impeach the officer. Notice of the time and place of the depositions must be given to the officer against whom the complaint is made or about to be made. If an officer is impeached by the House, the Senate has the authority to try the officer impeached. A two-thirds concurrence of the Senators is required for a conviction.[6]

All eight Ohio impeachments were judges, and all in the early 1800s. The judges were impeached for being absent without leave, holding statutes unconstitutional and unenforceable, "judicial arrogance," and judicial incompetence. All of the judges were acquitted, meaning that the Senate did not convict, except for one who was absent without leave.[7]

General Assembly authority to expel members

Additionally, specific to the removal of a General Assembly member, the Ohio Constitution provides that each house of the General Assembly is the judge of the election,

[5] *In re Removal of Kuehnle*, 161 Ohio App.3d 399 (2005).

[6] Ohio Const., art. II, secs. 23 and 24, and R.C. 101.47.

[7] "The Government of Administration of Ohio," Autumn & Walker, p. 65 (1956) and see "Research Study No. 32: Judicial Removal in Ohio," Ohio Constitutional Revision Commission, Volume 8 (PDF), pp. 4135 – 4139, February 5, 1974 (available on the Legislative Service Commission's website, lsc.ohio.gov, under "Publications," "Archived Publications," "Ohio Constitutional Revision Commission Reports (1970-1977))."

return, and qualifications of its own members. Each house may punish its respective members for disorderly conduct, and with a two-thirds concurrence of those members, expel a member.[8]

Recall for elected municipal officers

Municipal corporations (cities and villages) have certain powers granted to them in Article XVIII of the Ohio Constitution.[9] These powers include the power of local self-government.[10]

Matters of local self-government are often categorized as either substantive or procedural concerns. Regardless of whether a municipality has a charter, it can deviate from state law for substantive issues. However, nonchartered municipal corporations are required to follow procedural requirements in state law when they exercise their local self-government powers.[11]

The Revised Code does contain language regarding the recall of elected municipal officers. However, the Ohio Supreme Court has ruled that this law applies only in municipalities whose charters allow for those officers to be recalled. Because the home rule provisions of the Ohio Constitution give municipal corporations the authority to exercise all powers of local self-government, the Court held that a municipal charter may establish a right to recall elected officers and follow the procedures outlined in the Revised Code, even though the Constitution does not allow for the recall of other officers. If a municipal corporation does not have a charter, or its charter does not provide for recall elections, the municipal corporation must follow state law permitting the removal of an officer through complaint and hearing.[12]

Specific officers

The Revised Code also contains removal procedures specific to various public officers.[13] For instance, the county prosecutor can be removed for wanton and willful neglect of duty or gross misconduct in office. Unlike the general process described above, which requires 15% of electors signing the complaint, this process can be initiated by one person. Like the general process, this process includes a complaint and a hearing, and the matter is decided by the court of common pleas.[14]

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[8] Ohio Const., art. II, sec. 6.

[9] Because municipal home rule authority is derived exclusively from the Ohio Constitution and is self-executing, court determinations are the law on home rule, as it is the duty of courts to determine the parameters of constitutional authority. See *Geauga County Bd. of Comm'rs v. Munn Road Sand & Gravel*, 67 Ohio St.3d 579 (1993).

[10] Ohio Const., art. XVIII, sec. 3.

[11] Ohio Const., art. XVIII, sec. 7. See also "Municipal Home Rule," *Members Brief* (PDF), March 8, 2024, for further discussion of a municipal corporation's home rule authority.

[12] R.C. 705.92; *State ex rel. Lockhart v. Boberek*, 45 Ohio St.2d 292 (1976). See also *State ex. rel. Hackley v. Edmonds*, 150 Ohio St. 203 (1948).

[13] This Brief provides examples and does not detail all specific procedures that may apply to the various public officers.

[14] R.C. 309.05.

Another specific process applies to local government fiscal officers (township and municipal fiscal officers, county treasurer, and the county auditor) who purposely, knowingly, or recklessly fail to perform a fiscal duty. Under this process, the initial complaint[15] is filed with the Auditor of State, who forwards it to the Attorney General if the Auditor determines there is clear and convincing evidence. If the Attorney General likewise determines there is clear and convincing evidence, the Attorney General initiates an action to remove the fiscal officer in the court of common pleas, which makes its decision after a hearing.[16]

[15] The person filing the complaint varies. For county auditor, it is the county treasurer or a county commissioner. For county treasurer, it is the county auditor or a county commissioner. For township fiscal officers, it is four residents of the township. For municipal fiscal officers, it is a member of the legislative authority.

[16] R.C. 319.26, 321.37, 507.13, and 733.78.