



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

April 3, 1975

Opinion No. 75-148

The Honorable Joe Warren
State Senator
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Dear Senator Warren:

Article 4, § 3 of the Kansas Constitution provides for recall of elected officials thus:

"All elected public officials in the state, except judicial officers, shall be subject to recall by voters of the state or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by law." [Emphasis supplied.]

Article 2, § 28 of the constitution provides for impeachment as follows:

"The governor and all other officers under this constitution, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors."

Lastly, section 8 of article 2 provides, concerning members of the legislature, that "[e]ach house shall provide for the expulsion or censure of members in appropriate cases."

You inquire whether impeachment and expulsion, as provided by sections 28 and 8 of article 2, respectively, are exclusive procedures for the removal of state officers to which such

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sections apply and whether, if so, this exclusive procedure precludes the use of recall under section 3, art. 4 for such officers.

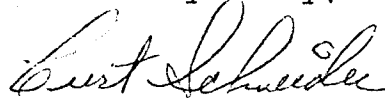
Impeachment, expulsion by members of a legislative body, and recall are not mutually exclusive remedies. The governor and all other officers under the constitution shall be removed upon impeachment for, and conviction of, "treason, bribery, or other high crimes and misdemeanors." Recall requires no such showing. As stated at 63 Am.Jur.2d, Public Officers and Employees, § 238,

"The principle underlying the recall of public officers has been defined as an effective speedy remedy to remove an official who is not giving satisfaction to the public and whom the electors do not want to remain in office, regardless of whether he is discharging his full duty to the best of his ability and as his conscience dictates."

Grounds for expulsion, of course, depend upon those prescribed by the rules of either house of the legislature.

Whether one remedy is exclusive to another depends upon the language of the statutory or constitutional provisions which prescribe them. In this instance, article 4, § 3 is specific that "[a]ll elected public officials" shall be subject to recall. Thus, those officers who are subject to removal upon impeachment and conviction are, in addition, subject to recall. Moreover, no language in article 2, § 28, regarding impeachment, suggests that impeachment is the exclusive method of removal of officers subject thereto. Any argument that impeachment is exclusive is clearly negated by the plain and unambiguous language of the constitutional provision approved by the people at the November, 1975, general election, providing that all elected public officers shall be subject to recall.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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