

MINUTES

House Select Investigative Committee

March 17, 2010
Room 159-S, Statehouse

Members Present

Representative Clark Shultz, Chair
Representative Carl Holmes, Vice-Chair
Representative Nile Dillmore, Ranking Minority
Representative Bob Grant
Representative Jeff King
Representative Jerry Henry

Members Absent

None

Staff

Raney Gilliland, Kansas Legislative Research Department
Athena Andaya, Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes
Norm Furse, Revisor of Statutes Emeritus
Gary Deeter, Committee Secretary

Conferees

None

Others Attending

See attached sheet

The Chairman called the meeting to order at 1:38 p.m. Members received information from the National Conference of State Legislatures regarding the complaint process (Attachment 1).

The Chair noted the complaint filed with the Clerk of the House of Representative on March 12, 2010, and announced that, in accordance with House Rule 4902b, a motion was in order to dismiss the complaint. When no motion was forthcoming, he announced a tentative schedule for the Committee:

- Hearing from the complainant(s) on Thursday and Friday, March 18-19;
- Hearing from the subject of the complaint on Tuesday and Wednesday, March

23-24;

- Committee deliberations on Monday, March 29; and
- Formally adopting a Committee Report to be presented to the House of Representatives on Tuesday, March 30.

A member noted that, if witnesses other than the principals testify before the Committee, the schedule will need to be adjusted; further, he raised the question of using subpoenas. The Chair acknowledged the fluid nature of the schedule and commented that, if possible, he wanted testimony to be voluntary, not compulsory.

Members discussed aspects of Committee procedure. Items:

- Mason's Legislative Manual will serve as a guide (Attachment 2).
- The optimum expectation is a Committee Report that all members can consent to; however, the Chair will consider allowing a minority report.
- Attorney-client privilege will impinge upon gaining access to certain information. Revisor staff may be a resource for filtering confidential information.

The ranking member announced that Representative Peterson had consented to act as consultant for the minority members.

The meeting was adjourned at 1:13 p.m. The next meeting is scheduled for Tuesday, March 23, 2010.

Prepared by Gary Deeter

Approved by the Committee on:

March 30, 2010

HOUSE SELECT INVESTIGATIVE COMMITTEE

GUEST LIST

DATE: March 17

NAME	REPRESENTING
Gene Meyer	KANSAS REPORTER
Martin Hanna	Hanna's Candy Repair
Ryan Goussard	PR TEAM
David Klepp	KC STAR
JOHN D. HANNA	ASSOCIATED PRESS
Halay Pollock	House D Staff
Milack Taliz	Self
Stephen Koranda	KPR

6. GENERAL LEGISLATIVE PROCESS

Censure, Expulsion and Other Disciplinary Actions

The power to discipline and expel members is inherent to a legislative body. It originated with the English Parliament in the sixteenth century, and it was exercised by colonial legislatures prior to American independence. When responding to member misconduct, legislatures have the flexibility to view censure, expulsion and other disciplinary actions as points on a continuum. The punishments that are usually within a legislature's authority include withdrawal of privileges, fine, imprisonment, reprimand, censure, suspension and expulsion. Formal disciplinary procedures generally are regarded as a drastic step reserved for serious situations. Most often, every effort is made to obtain a satisfactory, but informal, solution to the matter.

Modern court cases establish that a legislator who is subject to disciplinary proceedings has the right to due process. Therefore, any special procedures set by a legislative chamber should be built upon the basic elements of a fair disciplinary process.

Basic Elements of a Fair Disciplinary Process

1. Charges of alleged violations should be filed in writing with the proper authority.
2. A confidential, preliminary investigation should take place promptly to determine whether further action is warranted.
3. The accused member should be notified of the issues under review. This individual also should be informed of his or her right to counsel and the dates, places and times of any hearings.
4. Any hearing should be conducted to preserve decorum, restrict evidence and testimony to the written charges and uphold the right of the accused to question witnesses and to call witnesses.
5. Within a reasonable time, a report of recommendation—either exonerating the accused or preferring specific charges—should be prepared and presented to the member and the proper authority.
6. The full membership of the chamber should make the final determination. It may vote to accept, reject or, in some instances, amend the recommendation.

Although the power to judge members is available to all legislative bodies, many chambers do not specify the procedures to investigate charges of misconduct. Only half of the survey respondents reported having investigation procedures that are set by rule, statute or constitutional provision. These chambers are shown below.

Chambers that Have Investigation Procedures

Alabama Senate	Michigan Senate
Alaska Senate and House	Minnesota Senate and House
Arizona Senate	Missouri House
California Senate	New Hampshire Senate and House
Colorado House	New Jersey Senate and General Assembly
Delaware House	New Mexico Senate and House
Florida Senate and House	New York Senate and Assembly
Georgia House	Ohio Senate and House
Hawaii Senate and House	Oregon Senate
Idaho Senate	Pennsylvania Senate and House
Illinois House	Tennessee Senate and House
Indiana Senate and House	Utah Senate and House
Iowa Senate	Virginia Senate and House
Kansas Senate and House	Washington Senate and House
Kentucky Senate and House	West Virginia House
Louisiana Senate	Wisconsin Assembly
Maryland Senate and House	

In addition, the actual reasons for which a lawmaker may be disciplined often are vague or not specified at all. Table 96-6.1 provides examples of grounds that are set out by constitution, statute or chamber rule. Disorderly behavior or conduct, listed by 37 states, is the most common basis for disciplinary action.

State constitutions provide that each house, with the requisite vote, may expel a member; however, it is a very rare occurrence. Only 17 chambers reported that they had ever taken this very serious action.

Chambers that Have Expelled a Member

Alabama Senate	North Carolina House
Alaska Senate	Pennsylvania Senate and House
Arizona Senate	South Carolina House
Florida House	Virginia Senate
Louisiana Senate	Washington House
Michigan House	West Virginia Senate
Minnesota House	Wisconsin Senate and Assembly

In fact, disciplinary actions in general are fairly uncommon (see table 96-6.2). Only 21 legislative bodies reported censuring a member, and only 17 chambers have taken other disciplinary actions toward members.

Chambers that Have Censured a Member

Alaska Senate	Montana Senate
California Senate	Nebraska Senate
Connecticut House	Nevada Assembly
Florida Senate and House	New Mexico House
Georgia House	Oregon House
Hawaii Senate	Utah House
Idaho House	Virginia Senate
Maine House	Washington House
Minnesota Senate and House	Wisconsin Senate and Assembly

Chambers that Have Taken Other Disciplinary Actions

Alaska Senate	Michigan Senate and House
Arizona House	Minnesota House
Colorado House	Montana Senate
Connecticut House	New Hampshire House
Florida House	North Carolina House
Hawaii Senate	Washington Senate
Idaho Senate	Wisconsin Senate and Assembly
Iowa Senate	

Disciplinary actions are used by legislatures to respond to both official and private misconduct. Typically, however, a chamber will consider private misconduct only when it reflects upon a member's loyalty or integrity and if it tends to diminish public confidence in the member's capacities or the legislative institution. Tables 96-6.3 and 96-6.4 provide examples of disciplinary actions that have been taken by legislative chambers.

Table 96-6.1 Grounds for Censure, Expulsion or Other Disciplinary Actions

State	Description
Alabama	Contempt, disorderly behavior, transgression of the rules in speaking or otherwise, corruption
Alaska	No grounds specified
Arizona	Disorderly behavior, conduct alleged to be unethical including, but not limited to, a violation of the public trust, any improper conduct of a public office, or any improper conduct that adversely reflects upon the Senate
Arkansas	Embezzlement of public monies, bribery, forgery, contempt, disorderly behavior, corruption
California	Conflict of interest violations, acceptance of prohibited honoraria, bribery
Colorado	Contempt; disorderly behavior; corruption; disclosing any words; statements; matters or proceedings occurring during an executive session; bribery; influence in general assembly (vote trading); misconduct involving legislative duties
Connecticut	Disorderly conduct
Delaware	Disorderly behavior
Florida	Contempt, disorderly conduct, violations of law, violations of code of conduct
Georgia	Disorderly behavior, misconduct
Hawaii	Misconduct, disorderly behavior or neglect of duty
Idaho	No grounds specified
Illinois	Disorderly behavior, felony conviction, bribery, perjury or other infamous crime
Indiana	Disorderly behavior
Iowa	Disorderly behavior, violation of the code of ethics, conflict of interest violations
Kansas	Misconduct, failure to vote when not excused, treason, bribery or other high crimes and misdemeanors
Kentucky	Disorderly behavior, dueling, using money or property to secure or influence election, receiving profit on public funds, accepting free passes
Louisiana	Disorderly conduct, contempt
Maine	Disorderly conduct
Maryland	Disorderly or disrespectful behavior
Massachusetts	
Michigan	Conviction of a felony, election law violation leading to election, conflict of interest violations
Minnesota	Disorderly behavior
Mississippi	Bribery, perjury, theft, corruption, disorderly behavior
Missouri	Ethical misconduct, disorderly behavior
Montana	No grounds specified

Table 96-6.1 Grounds for Censure, Expulsion or Other Disciplinary Actions

State	Description
Nebraska	No grounds specified
Nevada	Bribery, disorderly conduct, conflict of interest violations
New Hampshire	Disorderly conduct
New Jersey	Disorderly behavior
New Mexico	Contempt, disorderly behavior
New York	
North Carolina	
North Dakota	Bribery, corruption, perjury or other infamous crimes
Ohio	Bribery, code of ethics violations, conflict of interest violations, diswillfully or flagrantly exercising authority or power not authorized by law, misdemeanor in office, neglect to perform any official duty imposed by law, gross neglect of duty, disorderly conduct, gross immorality, drunkenness, misfeasance, malfeasance or nonfeasance, embezzlement, theft in office
Oklahoma	Corruption, conflict of interest violations, disorderly behavior, drunkenness, use of illegal drugs, abusive language, altering a bill draft or engrossed copy of a bill, bribery, vote trading
Oregon	Disorderly behavior
Pennsylvania	Embezzlement of public moneys; bribery; perjury or other infamous crime; contempt; disorderly behavior; corruption
Rhode Island	Conflict of interest violations, disorderly behavior
South Carolina	Disorderly behavior, incapacity, misconduct, neglect of duty
South Dakota	Inappropriate remarks; criminal conduct; bribery; perjury or other infamous crime; violation of oath of office
Tennessee	Disorderly behavior
Texas	Disorderly conduct, bribery
Utah	Abuse of official position, conflict of interest violations, disorderly conduct
Vermont	
Virginia	Disorderly behavior
Washington	Transgression of chamber rules, contempt, disorderly behavior, violation of ethics laws or rules
West Virginia	Transgressing the House rules, disorderly behavior
Wisconsin	Contempt, disorderly behavior
Wyoming	Contempt, disorderly behavior, corruption

Table 96-6.2 Censure, Expulsion or Other Disciplinary Actions Taken

State (1)	Chamber has censured a member	Chamber has expelled a member	Chamber has taken other disciplinary actions toward member	Member has been convicted of a criminal offense	Member has resigned while under criminal investigation	Member has resigned following criminal conviction	Member has resigned prior to or during expulsion proceedings	Member has taken voluntary absence during criminal conviction	Member has taken voluntary absence during expulsion actions
Alabama		S		S					
Alaska	S	S	S			S			
Arizona		S	H		B				
Arkansas					S				
California	S	S		S		S			
Colorado			H						
Connecticut	H		H						
Delaware				H	H	H			
Florida	B	H	H	H	B	H	H	H	
Georgia	H								
Hawaii	S		S	S				S	
Idaho	H		S						
Illinois									
Indiana					S				
Iowa			S						
Kansas									
Kentucky				B	S	B			
Louisiana		S		H	H	B	H	H	H
Maine	H			H		H	H		
Maryland				B	H	S			
Massachusetts									
Michigan		H	B	B	B	B	S		
Minnesota	B	H	H		H				
Mississippi									
Missouri					S				
Montana	S		S						

Table 96-6.2 Censure, Expulsion or Other Disciplinary Actions Taken, cont'd.

State (1)	Chamber has censured a member	Chamber has expelled a member	Chamber has taken other disciplinary actions toward member	Member has been convicted of a criminal offense	Member has resigned while under criminal investigation	Member has resigned following criminal conviction	Member has resigned prior to or during expulsion proceedings	Member has taken voluntary absence during criminal conviction	Member has taken voluntary absence during expulsion actions
Nebraska	S			S		S	S		
Nevada	H			S					
New Hampshire			H		H				
New Jersey									
New Mexico	H			B	S	S			
New York			H	B	S	S			
North Carolina		H		H		H			
North Dakota									
Ohio									
Oklahoma				S	S	S		S	
Oregon	H			S	S	S			
Pennsylvania		B		B	H	H	H	S	
Rhode Island									
South Carolina		H			H	H	H		
South Dakota									
Tennessee									
Texas					S				
Utah	H						H		
Vermont									
Virginia	S	S		S	S				
Washington	H	H	S	B	S				
West Virginia		S		B	B				
Wisconsin	B	B	B	B	B	B			
Wyoming									

**Table 96-6.2 Censure, Expulsion or Other Disciplinary Actions Taken,
cont'd.**

<p>Key: S=Senate H=House or Assembly B=Both chambers</p> <p>Note: 1. The following chambers did not respond to the survey: Delaware Senate, Georgia Senate, Massachusetts Senate and House, Mississippi Senate, North Carolina Senate, Rhode Island House, South Carolina Senate; nor did any legislatures from the U.S. territories respond.</p>

Table 96-6.3 Examples of Disciplinary Actions—Senate

State	Description
Alabama	Date not given—member convicted of soliciting a bribe and expelled; member was reinstated by federal court for lack of due process; Senate did not pursue issue further Date not given—member convicted of felony mail fraud; any member convicted of a felony is automatically expelled by such conviction.
Alaska	1994—member was sanctioned for (a) use of official position to obtain a private gain by seeking sexual favors; (b) use of his legislative position for nongovernmental purpose; and (c) providing employment in exchange for private gain. The member was stripped of all committee chair positions and Senate appointments to various committees; was required and compelled to attend at his own expense a court-sanctioned male awareness program; was prohibited from traveling out-of-state at state expense during the remainder of legislative term; and was formally censured and placed on probation for the remainder of term. 1982—member was expelled following conviction of bribery and receiving a bribe.
Arizona	1991—member was expelled for unethical conduct that violated the Senate rules, the campaign finance disclosure requirements, and the personal financial disclosure requirements. 1991—member resigned while facing charges for unethical conduct that violated Senate rules.
California	1994, 1991, 1990—each year, a member resigned following criminal conviction for corruption in office.
Florida	1977—member was reprimanded and fined for violating Senate rules relating to standards of conduct at a special session of the Senate. 1971—member was excused from attendance following indictment on income tax evasion charges; member subsequently resigned.
Hawaii	Date not given—member was censured following conviction of soliciting act of prostitution. Date not given—member was censured following conviction of spouse abuse.
Idaho	1990—member was seen counting envelopes of another member's mailing; the member was required to make a formal apology to fellow member for impulsive lack of good judgment with regard to the expected standard of conduct, decorum and protocol of a Senator and the Senate.
Indiana	1979—member was convicted of extorting money, bribery, making false statements and influencing grand jury witnesses; member resigned.

Table 96-6.3 Examples of Disciplinary Actions—Senate, cont'd.

State	Description
Iowa	Date not given—member was reprimanded and removed from committee positions for conflict of interest between private activities promoting local government investments and activities as Senator.
Kentucky	1992—15 legislators (8 senators and 7 representatives) were convicted on corruption charges following a federal investigation; all members still in office resigned, except one representative against whom only state charges had been brought; this member was found to have violated the Legislative Ethics Code and the House will determine his punishment during the 1996 regular session.
Louisiana	1993—member was convicted of a federal felony; resigned from the Senate in 1994 after appeal was unsuccessful. 1979—member was convicted of federal felony, but maintained his seat during the 1980 session while appeals were pending; member was expelled after missing the entire 1981 session due to incarceration.
Minnesota	1996—two members are being investigated on felony and gross misdemeanor charges related to long-distance phone privileges; one member was reprimanded by the Senate. 1996—member was reprimanded for slapping his wife in public; member apologized to the Senate and is not seeking reelection. 1995—member was charged with shoplifting and other crimes; member resigned his seat. 1994—member was reprimanded for misuse of long-distance phone privileges; member apologized to the Senate, resigned from his committee chairmanship, resigned his membership on the Rules Committee and reimbursed the Senate for the cost of the questioned telephone calls.
Missouri	1983—member was accused of stealing from a client's estate; resigned from the Senate.
Nebraska	No dates given—two members have been convicted of criminal offenses; one member resigned prior to his conviction, the other resigned following his conviction.
Nevada	1983—member was convicted of taking a \$5000 payment on a \$150,000 bribe; member resigned.
New Mexico	No date given—member was found guilty of bribing officials; he resigned after the conviction but prior to his expulsion.
Oregon	1988—member was recalled following allegations of sexual abuse of a minor. 1993—member resigned following conviction of fraud in conjunction with fundraising.

Table 96-6.3 Examples of Disciplinary Actions—Senate, cont'd.

State	Description
Texas	1972—member resigned following allegations he violated the law by putting his relatives on the legislative payroll.
Washington	1995—member was reprimanded by Legislative Ethics Board for writing a memo to law partners indicating availability to assist them or their clients during the legislative session. 1990—member was sued for sexual harassment, retaliation and constructive discharge; member resigned.
West Virginia	1989—member resigned from leadership position and the Senate following indictment on federal extortion charges.
Wisconsin	1995—member failed to disclose political contributions and payments and was fined by the State Elections Board. 1990—three members were accused of ethics law violations of various degrees; one member agreed to pay a fine and perform community service in lieu of formal prosecution by the Ethics Board, another paid fines and court costs, and the third resigned from the legislature as part of a plea agreement. 1987—seven senators and representatives were charged with violating ethics laws, each was required by the Ethics Board to acknowledge the violation and pay a fine. 1978—member was charged with felony false testimony about campaign contributions and was removed from office upon felony conviction. 1978—member was charged with misuse of federally-paid CETA workers during a campaign and was removed from office upon felony conviction.

Table 96-6.4 Examples of Disciplinary Actions—House

State	Description
Arizona	1991—"Azscam" violations of campaign finance laws; House began disciplinary actions against one member, who resigned prior to the conclusion of the proceedings; five other members resigned before any proceedings were initiated.
Connecticut	1988—House passed a resolution rededicating the House and its dignity and disassociating itself from the remarks of a member. 1980—member was reprimanded and censured for offensive written communication.
Delaware	1983—one member resigned after some financial irregularities had been alleged in connection with the civil association for which he served as president; another member resigned after he was found guilty of tax evasion and filing false statements.
Florida	1994—member was admonished by the Speaker following House investigation into allegations that he represented another person or entity before a state agency for compensation, which violates Florida constitution and statute. 1992—member was admonished by the Speaker following House investigation into allegations that he personally represented others before a state agency, which violates Florida constitution and statute. 1991—member was admonished by letter from the Speaker and removed from his leadership position after House investigation into violations of several Florida statutes. 1987—member was charged with bribery and grand theft; member was suspended without pay from all privileges of membership of the House pending appellate action; member subsequently resigned his seat. 1986—member was censured by the House after conviction of making misstatements on SBA loan application. 1980—member was reprimanded by the House for violating House rules regarding sexual discrimination, sexual harassment and legislative conduct. 1976—member voluntarily excused himself while charges of intention to commit fraud were being investigated; charges were dropped. 1975—member resigned after pleading guilty to indictment charging perjury, fabricating evidence and witness tampering. 1971—member was granted leave of absence after indictment on federal charges of fraud, conspiracy and securities violations; the member subsequently resigned.

Table 96-6.4 Examples of Disciplinary Actions—House, cont'd.

State	Description
Idaho	1990—member was reprimanded for alleged questionable conduct (giving the impression to someone that he was using his position as a legislator for the benefit of a family member), the member formally apologized to the body.
Kentucky	1992—15 legislators (8 senators and 7 representatives) were convicted on corruption charges following a federal investigation; all members still in office resigned, except one representative against whom only state charges had been brought; this member was found to have violated the Legislative Ethics Code and the House will determine his punishment during the 1996 regular session.
Louisiana	1991 and 1987—a member was convicted of federal racketeering; each time, the member was served with notice of expulsion and resigned prior to the hearing.
Maine	1987—member was convicted of ballot tampering, member resigned during House process to expel.
Minnesota	1986—member was censured for violating ethics law by filing late and incomplete campaign reports and for plea of guilty to a felony theft charge. 1979—member was expelled for campaign and election law violations. Date not given—member convicted of soliciting a prostitute was required to submit letter of apology to the House for publication in the journal. Date not given—member resigned during a criminal investigation for alleged misappropriation of funds while employed as a financial planner. Date not given—member resigned during a criminal investigation for alleged misuse of House long-distance phone privileges.
New Mexico	1992—member was censured for conduct that impugned the integrity of the House (soliciting a bribe); the member was subsequently convicted in criminal court.
North Carolina	1982—member resigned; he had been convicted in connection with an arson case.
Oregon	No date given—the House refused to seat a member on the first day for alleged campaign practices violation; the member was subsequently seated and censured by the House and later recalled by the voters of his district.
South Carolina	1991, 1990—House was part of an FBI undercover investigation into possible “vote buying;” 28 legislators and lobbyists were indicted on drug or bribery charges.
Utah	1993—member was censured for shoplifting; the member resigned during the vote to reconsider for expulsion.

Table 96-6.4 Examples of Disciplinary Actions—House, cont'd.

State	Description
Washington	1985—member was censured for campaign violations. 1980—member was convicted of mail fraud.
West Virginia	No date given—member resigned pending proceedings against him for extortion.
Wisconsin	1995—a letter of reprimand signed by the leaders of both political parties was sent to member (and printed in the journal) after his third arrest for various violations, including marijuana possession and drunk driving. 1987—seven senators and representatives were charged with violating ethics laws, each was required by the Ethics Board to acknowledge the violation and pay a fine. 1986—member was charged with violating ethics laws and was required by the Ethics Board to pay a fine and court costs. 1985—member was charged with violating ethics law and was required to acknowledge violation and pay fine. 1980—member was charged with two criminal misdemeanor election law violations by misuse of campaign funds; he pleaded guilty and served 30 days in jail. 1979—member was charged with felony false swearing to a federal grand jury and was removed from office upon felony conviction.

9. When specifically authorized by statute, courts may take evidence in legislative election contests, but only so far as specifically authorized.

10. A legislative body that is the sole judge of the election of its members, upon a contest respecting election of one of its members, may appoint a committee to take testimony and report the facts and the evidence to the body.

11. A member of a legislature cannot be removed from office under a general law relating to the removal of "any officer." However, a person who holds a seat in the legislature and thereafter accepts an appointment to an incompatible office thereby vacates that person's seat in the legislature.

12. The authority of a house of a legislature to pass upon its membership is a continuing power and the question of the election and qualification of members is never finally decided, in the sense that a decision is conclusive upon the house, until final adjournment. A member at any time may be seated or unseated upon the same facts.

Sec. 560, Par. 9: State of Minnesota v. Nelson (1919), 141 Minn. 499, 169 N.W. 788; State of Minnesota v. Peers (1885), 33 Minn. 81, 21 N.W. 860.

Sec. 560, Par. 10: State of New Jersey v. Haynes (1887), 50 N.J.L. 97, 11 A. 151.

Sec. 560, Par. 11: State of Kansas v. Gilmore (1878), 20 Kan. 551, 27 Am. R. 189; State of New Jersey v. Parkhurst (1802), 9 N.J.L. 427.

Sec. 560, Par. 12: State of Montana v. Porter (1919), 55 Mont. 471, 178 P. 832; State of Kansas v. Gilmore (1878), 20 Kan. 551, 27 Am. R. 189.

13. A member excluded from office by a body may not be precluded from a seat after a subsequent election solely because of a prior violation of an election law, since to do so would create an additional qualification for office.

Sec. 561. Power of Legislatures to Discipline Members

1. Whatever is spoken in the house is subject to the censure of the house, and offenses of this kind have been severely punished by calling the person to the bar to make submission, committing the person to prison, expelling the person from the house or inflicting other punishment.

2. A legislative body has the right to regulate the conduct of its members and may discipline a member as it deems appropriate.

3. A member who is absent without leave of the house is in contempt and may be punished as the house may direct.

4. The right of a house to compel the attendance of absent members is usually guaranteed by the constitution. In order to compel attendance, members may be arrested and, when arrested, they continue in the

Sec. 560, Par. 13: Pavlak v. Growe (1979), 284 N.W. 2d 174; Powell v. McCormick (1969), 395 U.S. 486, 89 S. Ct.

Sec. 561, Par. 1: Jefferson, Sec. III.

Sec. 561, Par. 2: Bryan v. Liburd, 1996 WL 785997, *1 (Terr. V.I.).

Sec. 561, Par. 3: N.Y. Manual, p. 423.

Attachment 2
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custody of the arresting officer until discharged by the house.

See also Sec. 190, Right to Compel Attendance of Members; and Sec. 191, Right of Less Than a Quorum to Compel Attendance.

5. The constitutional power of a house to arrest and compel the attendance of members is not confined to the time when a call is in effect nor to when there is no quorum. To deprive a house of its power to compel the attendance of any or all members would destroy its function as a legislative body. The majority of the members of a house may compel the presence of all members.

See also Sec. 190, Right to Compel Attendance of Members; and Sec. 191, Right of Less Than a Quorum to Compel Attendance.

6. When a member is absent during the session, and a sufficient excuse is not rendered, those present may take steps necessary to secure the member's attendance and may suspend the member from service of the house for a given period. They also may inflict such censure or pecuniary penalty as may be deemed just.

Sec. 562. Right of Legislatures to Expel Members

1. Most state constitutions provide that each house, with the concurrence of two-thirds of all the members elected, may expel a member.

Sec. 561, Par. 4: Hughes, Sec. 655.

Sec. 561, Par. 5: Hughes, Sec. 655.

Sec. 561, Par. 6: N.Y. Manual (1948-49), p. 372.

Sec. 562, Par. 1: State Constitutions: Ala. IV, 53; Alaska II, 12; Ariz. IV, II, 11; Ark. V, 12; Cal. IV, 5; Colo. V, 12; Conn. III, 13; Del. II, 9; Fla. III, 4; Ga. III, Sec. IV, 7; Idaho III, 11; Ill. IV, 14; Ind. IV, 14; Iowa III, 9; Kan. II, 8; Ky. 39; La. III, 7(a); Maine IV, Part III, 4; Md. III, 19; Mass. Part II, Ch. I, Sec. II, 7, Sec. III, 10; Mich. IV, 16; Minn. IV, 7; Miss. IV, 55; Mo. IV, 18; Mont. V, 10; Neb. III, 10; Nev. IV, 6; N.H. II, 22, 35; N.J. IV, Sec. IV, 3; N.M. IV, 11; N.Dak. IV, 9,

2. If these constitutional provisions were omitted and there were no other constitutional limitations, the power to expel would nevertheless exist and could be exercised by a majority. The only effect of the constitutional provisions is to make the concurrence of two-thirds of the members elected necessary to expel a member. In all other respects the power is absolute.

3. A house, in passing upon the question of expelling a member, has the power to adopt any procedure and to change it at any time and without notice.

4. Adequate notice, formal charges and a public hearing with the right to cross-examine witnesses have been held to be necessary components of procedural due process that must be afforded to a member prior to expulsion.

5. The oath of each individual member of a house, and that member's duty under it to act conscientiously for the general good, is the only safeguard to the fellow members against an unjust and causeless expulsion. This is the only practical rule that can be adopted as to those unrestricted governmental powers that are necessary to the exercise of governmental functions and that must be lodged somewhere. Each department of the state is necessarily vested with some power that

12; Ohio II, 6; Okla. V, 30; Ore. IV, 15; Pa. II, 11; R.I. IV, 7; S.C. III, 12; S.Dak. III, 9; Tenn. II, 12; Tex. III, 11; Utah VI, 10; Vt. II, 14, 19; Va. IV, 7; Wash. II, 9; W.Va. VI, 25; Wis. IV, 8; Wyo. III, 12.

Sec. 562, Par. 2: French v. Senate (1905), 146 Cal. 604, 80 P. 1031, 69 L.R.A. 556.

Sec. 562, Par. 3: French v. Senate (1905), 146 Cal. 604, 80 P. 1031, 69 L.R.A. 556.

Sec. 562, Par. 4: McCarley v. Sanders (1970), 309 F. Supp. 8.

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is beyond the supervision of any other department, and in such cases the only protection against abuse is the conscience of the individual in whom the power is vested.

6. Whether federal due process or equal protection considerations are applicable to an expulsion may depend upon whether the member of the body has a liberty or property interest in the office held.

7. A house having expelled members in the mode prescribed by the constitution, its action is not generally considered to be a deprivation of office without due process of law, within the meaning of the Fourteenth Amendment to the Federal Constitution. The sovereign power that created the office can prescribe the terms upon which it is to be held and the conditions under which it can be taken away.

8. The provision for the disfranchisement of a member upon conviction for crime has no effect upon the power to expel members, nor does expulsion operate as a bill of attainder in violation of the state or Federal constitutions.

Sec. 562, Par. 4 5: French v. Senate (1905), 146 Cal. 604, 80 P. 1031, 69 L.R.A. 556.

Sec. 562, Par. 6: Snowden v. Hughes (1944), 321 U.S. 1; Edwards v. Johnston County Health Dept. (4th Cir. 1989), 885 F. 2d 1215, 1220.

Sec. 562, Par. 7: French v. Senate (1905), 146 Cal. 604, 80 P. 1031, 69 L.R.A. 556.

Sec. 562, Par. 8: French v. Senate (1905), 146 Cal. 604, 80 P. 1031, 69 L.R.A. 556.

9. The constitutional provision that relates to expulsion of members deals only with expulsion for misconduct.

10. A member of a state legislature may resign. The member's resignation shall be tendered to the office or body having power to order a new election and to the chief legislative officer of the respective house.

Sec. 563. Courts Have Limited Power Concerning Expulsion of Members

1. The power conferred upon a house of the legislature by the constitution to determine the rule of its proceeding, and with the concurrence of two-thirds of the members elected, to expel a member is exclusive; and the judicial department has no power to revise even the most arbitrary and unfair action of the legislative department taken in pursuance of the power committed exclusively thereto by the constitution.

2. There is no authority for courts to control, direct, supervise or forbid the exercise by either house of the power to expel a member. These powers are functions of the legislative department, and, therefore, in the exercise of the power thus committed to it, the house is supreme. An attempt by a court to direct or control the legislature, or either house thereof, in the exercise of the power, would be an attempt to exercise legislative functions, which it is expressly forbidden to do.

Sec. 562, Par. 9: Sincok v. Gately (Del. 1967), 262 F. Supp. 739.

Sec. 562, Par. 10: State of Indiana *ex rel.* Black v. Burch (1948), 226 Ind. 445, 80 N.E.2d 560, *rehearing denied*, 81 N.E.2d 850 (1948); *In re* Opinion to the Governor (1918), 41 R.I. 79, 102 A. 802.

Sec. 563, Par. 1: French v. Senate (1905), 146 Cal. 604, 80 P. 1031, 69 L.R.A. 556.

Sec. 563, Par. 2: French v. Senate (1905), 146 Cal. 604, 80 P. 1031, 69 L.R.A. 556.

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3. A legislative house, in a proceeding to expel a member, has power to adopt any procedure, and to change it at any time without notice.

4. The courts will not entertain a proceeding to determine the rights of one who has been unseated by a legislative body.

Sec. 564. Investigation of Charges Against Members

See also Sec. 796, Investigations Respecting Members.

1. When a charge of bribery or corruption is made against members of a house, the house has power to investigate the charge and to summon the person making the charge before its bar as a witness, and to commit that person for contempt for refusing to testify without sufficient legal cause. This power does not admit doubt, and a house, in following this course, in no respect exceeds its jurisdiction.

2. When charges of bribery are made by any person against members of either branch of the legislature, without giving their names, and a resolution is adopted by the branch to which the members accused are said to belong, reciting the charge, and resolving to investigate it, and witnesses are summoned before it, an issue is made within the meaning of the statute against perjury.

Sec. 563, Par. 3: French v. Senate (1905), 146 Cal. 604, 80 P. 1031, 69 L.R.A. 556.

Sec. 563, Par. 4: State of Montana v. Cutts (1917), 53 Mont. 500, 163 P. 470.

Sec. 564, Par. 1: Ex parte D.O. McCarthy (1866), 29 Cal. 395.

Sec. 564, Par. 2: Ex parte D.O. McCarthy (1866), 29 Cal. 395.

3. The appointment of a committee by a house, with power to investigate charges of bribery made against members of that body, does not preclude the house from afterwards summoning the witnesses and making the investigation before the bar of the house.

See also Sec. 799, Legislative Investigating Committees.

4. A common understanding or belief concerning improper conduct of a member is a sufficient ground for the house to proceed by inquiry concerning the member and even to make an accusation.

Sec. 564, Par. 3: Ex parte D.O. McCarthy (1866), 29 Cal. 395.

Sec. 564, Par. 4: Jefferson, Sec. XIII; McCauley v. Sanders (1970), 309 F. Supp. 8.

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