

## IMPEACHMENTS IN VERMONT

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The Vermont Constitution prescribes procedures for impeachment and trial of State officers, both executive and judicial (this apparently includes State officers such as sheriff who serve on the county level, though that interpretation has been challenged\*). Basically, the House of Representatives of the General Assembly "shall have the power to order impeachments" and the Senate "shall have the sole power of trying and deciding upon all impeachments."

In Vermont's early years the Constitution prescribed different procedures. Under the Constitution of 1777, Vermont's first, the General Assembly (then a single House of Representatives) was authorized to impeach and the Governor or Lieutenant Governor and Council "shall hear and determine the same" (Chapter 2, Section XX). A different council, the Council of Censors, which was a body established to periodically review the status of the Constitution and the need, if any, to amend it, was also empowered "to order impeachments" (Chapter 2, Section XLIV). The Council of Censors' power to impeach seems, however, to have been subsidiary to that of the General Assembly, at least according to the example of William Cooley in 1799 (and see below). There the Council of Censors ordered Cooley's impeachment and sent it to the General Assembly for its prosecution before the Governor and Council (though the Constitution did not seem to prescribe this procedure). The Assembly, however, dismissed the Council's order. The writer has not researched this matter and thus is unable to explain further this relationship between the Council of Censors and General Assembly regarding impeachments.

It might also be noted here that as will be seen below, the terms, "impeach" and "impeachment" apparently were sometimes used in the general sense of "charge" or "accusation" and were not limited to a strict Constitutional reference.

In any event, impeachment procedures remained basically in the above form until 1836 when Article of Amendment 7 to the Constitution was approved. That

~~\*In the~~ 1976 impeachment trial of Washington County Sheriff Malcolm M. Mayo (see below), counsel for Mayo sought dismissal of the case on grounds that while a county sheriff is a State officer, he is not an "officer of the State" and as such is not subject to impeachment and trial by the General Assembly. The Senate decided, however, that this "motion to dismiss ... be ruled out of order as untimely filed."

did away with the Council and established the Senate, specifying it as the body to try impeachments. Finally, in 1870 Section 1 of Article of Amendment 25 abolished the Council of Censors by establishing a new procedure for amending the Constitution. That left the House of Representatives as the sole body to bring impeachments (see Article of Amendment 24, Section 3).

The following are brief summaries of impeachments and possible impeachments of State officers known to have occurred in Vermont (unless otherwise noted, all sources listed are available at the State Papers Office). The writer is very, but not totally, confident that this listing is a complete one. As will be seen, several impeachment cases occurred in the late 18th century and then for some 180 years there appear to have been none. In an effort to discover impeachment cases during that long period, the writer checked but found nothing in indexes to the following (the one word "impeachment" was checked): Manuscript Vermont State Papers (Nye and Hagerman indexes); Vermont House Journals, 1778-1799 (republication as State Papers of Vermont, Vol. III, Parts I - VIII) and 1817-present (Journals from 1800 to 1816 did not carry indexes so no check was made of them); various published basic histories of Vermont; card catalog and Brigham index at the Vermont Historical Society (the latter had several entries for "impeachment": but none of these items related directly to Vermont cases); and Vermont History, quarterly publication of the Vermont Historical Society.

Matthew Lyon, Impeachment Requested But Not Acted On, 1779

On October 21, 1779 Reuben Jones (of Chester?) submitted to the General Assembly (then a single House of Representatives) a complaint against Matthew Lyon, then a member of the Assembly representing Arlington. Jones charged that Lyon "did falsify, change and alter the Public Records of this State, specifically an act of the Assembly relating to houses of public entertainment. (An etymological note: Jones' complaint itself is referred to here as an "impeachment".) That same day the Assembly, after brief consideration, resolved that it "not act any more ... at present" on Jones' complaint. But the matter did not receive further consideration.

Sources: Manuscript Vermont State Papers, Vol. 17, p. 24; State Papers of Vermont, Vol. III, Part I, Journals and Proceedings of the General Assembly of the State of Vermont 1778-1781 (hereafter SPV, Vol. III, Part I), p. 83.

Representatives John Abbot and Daniel Martin. Impeached, Tried, Convicted and Punished, 1781

On June 28, 1781 the General Assembly ordered the impeachment of two of its own members, John Abbot, who represented Hoosack, one of the New York towns of the West or Western Union then a part of Vermont, and Daniel Martin, who represented Putney. They were charged with exchanging bills of credit of the State for hard money at discount, apparently an illegal or unauthorized act. A "trial" by the House followed immediately. Both men confessed to the charge and were convicted. Martin was expelled from his House seat and Abbot was reprimanded.

Note that this whole proceeding was conducted by the House, that is, it did not involve the Governor and Council, the body designated by the Constitution to try impeachments. Thus the use of that term, while apparently appropriate at

that time, is somewhat confusing as it does not truly fit the usual Constitutional sense.

Sources: SPV, Vol. III, Part I, pp. 268-69

John Barrett, Impeached, Tried and Convicted, 1783-85

John Barrett of Springfield (also spelled Barret in some records), a justice of the peace for Windsor County, was impeached for "maladministration in said office" by the General Assembly in a resolution adopted October 16, 1783. On June 9, 1785 he was tried by the Governor and Council and on June 11 was found guilty as charged. The Governor and Council subsequently granted Barrett a new hearing but on October 24, 1785 he was again found "guilty of mal-Administration in his office of Justice of the Peace."

Sources: State Papers of Vermont, Volume III, Part II, Journals and Proceedings of the General Assembly of the State of Vermont, October, 1781 through October, 1783 (hereafter SPV, Vol. III, Part II) p. 199 (name is spelled Barret here); State Papers of Vermont, Volume III, Part III, Journals and Proceedings of the General Assembly of the State of Vermont, February, 1784 through February, 1787 (hereafter SPV, Vol. III, Part III), see index "Impeachment, against John Barrett;" Records of the Governor and Council of the State of Vermont, Vol. III, 1782-1791 (hereafter G & C, Vol. III), see index for "Barrett, Col. John;" one or two brief references to Barrett's impeachment appear in documents in the Manuscript Vermont State Papers (see the Nye Index for pre-1800 papers under Barrett's name).

Matthew Lyon, Impeached, Tried and Apparently Convicted, 1785

Col. Matthew Lyon of Fair Haven was impeached by the Council of Censors in a resolution adopted October 15, 1785. He was charged with "refusing to deliver to the order of this board the records of the Court of Confiscation ... in his custody." The Council of Censors requested the House of Representatives to prosecute Lyon's impeachment before the Governor and Council. The Governor and Council found Lyon guilty in its first trial but then, at Lyon's request, granted him a second trial. The final outcome of that is uncertain as there is a lapse in the records of the Governor and Council. But it appears that the conviction held.

Sources: SPV, Vol. III, Part III, pp. 175-76; G & C, Vol. III, pp. 81-84, 92, 93.

Abner Osgood, Impeachment Considered But Dismissed, 1785

On October 27, 1785 the House considered a complaint by Nathaniel Gott of Lunenburg against Abner Osgood of Guildhall for certain of his actions as a justice of the peace for Orange County (Essex County, in which Guildhall now lies, had not yet been established). The House directed its clerk to order Osgood to appear at its next session "and shew cause if any he has why an impeachment should not be prosecuted against him." The order was served on Osgood in 1786 but he asked for a postponement of his hearing and in the end, the complaint against him was apparently dismissed without any hearing.

Sources: SPV, Vol. III, Part III, pp. 196, 206, 245; G & C, Vol. III, p.73 Manuscript Vermont State Papers, Vol. 17, pp. 157, 168, 173 (the last carries a brief note that Gott's complaint was dismissed; but there is no record of this in the Assembly Journal).

Jonathan Fassett, Representative from Pittsford, Expelled From House of Representatives ("Impeached"?), 1787

Jonathan Fassett, representative from Pittsford, on February 28, 1787 was expelled by the House of Representatives from his seat for "aiding and assisting the mob which assembled in Rutland in November last with intentions to stop the County Court from sitting in that Place." The House also charged Fassett the costs of his prosecution and in doing so, referred to its action as an "impeachment." Like the 1781 case of Abbot and Martin, this word may be correct in a general sense. But strictly speaking, at least in hindsight, it is not quite correct since the House dealt with Fassett as one of its own members and its action was wholly its own, that is, Fassett was not tried by the Governor and Council.

Sources: SPV, Vol. III, Part III, pp. 271, 299-300, 302 and 303. For information about the Rutland incident see G & C, Vol. III, p. 366ff.

Lemuel Chipman, Impeachment Sought But Dismissed, 1792

On October 6, 1792 Matthew Lyon of Fair Haven petitioned the Council of Censors for the impeachment of Lemuel Chipman of Pawlet for mal-administration of his office as assistant judge of the Rutland County Court. His specific complaint was that certain of Chipman's procedural practices were contrary to the Vermont Constitution. On October 13 the Council dismissed Lyon's complaint on grounds that "it is expedient that complaints against judicial officers for offences against the Constitution should be made in the first instance of the General Assembly." Lyon apparently did not, however, seek action by the General Assembly.

Sources: Manuscript Vermont State Papers, Vol. 18, p. 385 (Lyon's petition to the Council of Censors); Journal of the Council of Censors, 1792 (entries for Oct. 11 and Oct. 13); State Papers of Vermont, Vol. III, Part V, Journals and Proceedings (of the General Assembly) of the State of Vermont, 1791-1792 and Part VI, ditto, 1793-1794 (these lack reference to any effort to impeach Chipman by Lyon; both men, incidentally, were members of the House of Representatives, Chipman for 1793 and Lyon for both 1793 and 1794).

William Cooley, Impeachment Ordered But Dismissed, 1799

On October 21, 1799 the Council of Censors ordered impeachment of William Cooley of Rupert, sheriff of Bennington County, on grounds that he did "wittingly and willingly, take and receive ... greater fees for his ... services, than allowed by the laws of the state." The Council of Censors sent its order to the House of Representatives (presumably for its prosecution before the Governor and Council) but the House, after first accepting the report, subsequently dismissed it on grounds that the charges "appear to be wholly unsupported."

Sources: SPV, Vol. III, Part VIII, pp. 551-52, 587, and 656-57.

Malcolm M. Mayo, Impeached, Tried and Acquitted, 1976

In March, 1976 the House of Representatives approved three articles of impeachment against Malcolm M. (Mike) Mayo, sheriff of Washington County, for mal-administration of office. They were: Article I - Falsification of Reports and Documents; Article II - Failure to Perform Functions of Office; and Article III - Breach of Duty as a Peace Officer. In May, 1976 the Senate tried Mayo on the three articles and rejected each and all of them.

Sources: House Journal, 1976 (see index under "Impeachment" and "Mayo, Malcolm M."); Senate Journal, 1976 (see both general index entry for "Mayo, Malcolm M." and a separate index for the impeachment trial proceedings recorded on pp. 583-617); records of House Judiciary Committee relating to House Resolution 13 (H.R. 13); records of certain proceedings of the House Judiciary Committee and transcripts of Senate impeachment proceedings plus related materials (depositions, exhibits, etc.) are on file at the Public Records Division (the latter are fully accessible to the public, while for five years at least, access to certain of the former requires permission of William Russell, Chief Legislative Draftsman of the Legislative Council); contemporary news accounts, notably those in the Burlington Free Press and the Times Argus (newspapers are available at the Law and Documents Library of the Vermont Department of Libraries).

Personal Observation: If the writer recalls correctly, the General Assembly was initially uncertain about the grounds on which it could impeach and try Mayo. Again if memory is correct, the final decision was that "mal-administration of office" was the only ground cited by the Constitution, and Mayo's order of impeachment specified that ground. The writer, however, believes this assessment of the Constitutional requirements was a mistake. He feels the Constitution specifies no grounds on which an impeachment may be ordered, which is to say, there appears to be no limitation on what those grounds may be. There is a reference in the Constitution to "mal-administration" of office (Chapter 2, Section 58) but the context is one of simply defining the conditions under which any State officer is liable to be impeached. It is not a definition of the allowable grounds for impeachment. The writer finds it hard to believe the Constitution can be read any other way but has consulted no one on this opinion, feeling it will serve little purpose at this time since no impeachment case is in prospect. The point is, however, worthy of study should another possible impeachment case arise.

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\*In the present Constitution impeachment is referred to in Chapter 2, Section 14, 20, 57 and 58.