

**OPINION NO. 77-101**

**Syllabus:**

A county officer may not be removed from office by recall election.

**To: David Tobin, Columbiana County Pros. Atty., Lisbon, Ohio**  
**By: William J. Brown, Attorney General, December 22, 1977**

I have before me your request for my opinion which raises the following questions:

Does Article 1, Section 2 of the Constitution of Ohio grant to a citizen of this State the right to petition for

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or request a recall or referendum election to determine whether or not a duly elected member of the Board of County Commissioners shall remain in office for [the] full term for which he or she was elected?

Does there exist in the Constitution of Ohio, in the Revised Code, or in any other source of law which would apply in this state a procedure for the recall of elected county officials, similar to that which is found in Section 705.92 of the Ohio Revised Code, which governs the recall of elected municipal officials?

Article I, §II Ohio Constitution provides in pertinent part as follows:

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they deem it necessary.

While all political power has been conferred upon the people of this state, the people have undertaken to limit this power with respect to the removal of public officers. Article II, §§23 and 24 provide for the impeachment and conviction of the governor, judges and all state officers by the legislature. Also, Article IV, §17, Ohio Constitution permits the removal of judges by concurrent resolution of both houses of the General Assembly. Further Article II, §38 states:

Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude of for other cause provided by law, and this method of removal shall be in addition to impeachment or other method of removal authorized by the constitution.<sup>1</sup> (Emphasis added.)

Therefore, the removal of public officers may be accomplished, absent impeachment and conviction, only upon complaint and hearing. That such a result was intended by both the drafters of the constitution of 1912 and the people of this state, who ratified the constitution, was noted by the Supreme Court in State, ex rel. Hackley v. Edmonds, 150 Ohio St. 203 (1948). The court observed that:

We are aware that in the Constitutional Convention of 1912 there was heated debate upon a proposal to write a recall provision into the Constitution of Ohio, and that proposal was rejected. *id.*, at p. 217.

Because a recall or referendum election to determine whether or not a member of a board of county commissioners shall remain in office does not afford such an officer a complaint and hearing, such a procedure contravenes Article II, §38, Ohio Constitution, and is impermissible.

You note in your letter that R.C. 705.92 provides for the recall of elected municipal officials. The constitutionality of the predecessor of this section, G.C. 3515-71 was questioned by the Fayette County Court of Appeals in State, ex rel. Burnett v. Ducey, 36 Ohio Law. Abs. 467 (1942). The court in that case found that

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<sup>1</sup> The only other provision contained in the Constitution of Ohio which concerns the removal of public officers is Article XV, §5, which states that duelists shall not hold office in this state.

section to be in conflict with Article II, §38. However, the Supreme Court, in State, ex rel. Lockhart v. Boberek, 45 Ohio St.2d 292, (1976) stated in its syllabus that:

The provisions of R.C. 705.92, permitting recall of the elective officers of a municipal corporation, go into effect only to the extent that they have been adopted by the voters as part of a home rule charter.

The Court found that Article XVIII, §7, Ohio Constitution, which confers home rule powers upon chartered municipalities vests in such municipalities a power to establish procedures for the recall of its officers. Such procedures were found not to violate Article II, §38, since they would constitute a valid exercise of the home-rule powers.

A procedure such as that mandated in R.C. 705.92 for the removal of officers does not exist in regards to county commissioners. Moreover, the Ohio Constitution does not confer home-rule powers upon county governments. Therefore, a procedure does not exist for the recall of county officers.

Accordingly, it is my opinion, and you are so advised, that a county officer may not be removed from office by recall election.