

Removal from Office¹

The Pennsylvania Constitution provides the exclusive grounds for the removal of an elected official.² Removal requires the elected official's conviction of an infamous crime or the common law crime of misbehavior in office. The relevant provisions of the Pennsylvania Constitution are Article II, Section 7 (relating to ineligibility by criminal conviction of an infamous crime),³ Article VI, Section 6 (relating to officers liable to impeachment for misbehavior in office), and Article VI, Section 7 (relating to removal of civil officers for conviction of an infamous crime, misbehavior in office, or reasonable cause). These provide the exclusive methods for removing elected officials, including elected local officials. In conformity with the Constitution, a court is authorized to remove an elected official upon his or her conviction of an infamous crime.⁴

Infamous Crime. These include crimes such as forgery, perjury, embezzlement of public moneys, bribery, or like offenses. “[A] crime is infamous for purposes of Article II, Section 7, if its underlying facts establish a felony, a *crimen falsi*⁵ offense, or a like *offense involving the charge of falsehood that affects the public administration of justice.*”⁶

Misbehavior in Office. “Misbehavior in office” as an impeachable offense under the Pennsylvania Constitution, Article VI, Section 6, is equivalent to the common-law crime of misconduct in office variously called misbehavior, misfeasance or misdemeanor in office. It occurs when there is the

¹ It should be understood that the question of whether a person has the requisite qualifications to hold office (e.g., with regard to age, residency, not holding an incompatible office, etc.) is distinct from the question of removal from office under the Constitution. See *Andrezjnski v. Borough of Milhale*, 543 Pa. 539, 540, note 2 (1996) (“a challenge to the qualifications of a person to run for or hold an elective office is fundamentally different from an attempt to remove a person from office for misbehavior after a valid election”).

² See, e.g., *South Newton Tp. Electors v. South Newton Tp. Supervisor*, Bouch, 575 Pa. 670 (2003); *In re Petition to Recall Reese*, 542 Pa. 114 (1995). The opinion of the Pennsylvania Supreme Court in *South Newton* alludes to a possible exception to this rule. In *South Newton*, the Court addressed an argument raised by the municipality which relied on a 1926 Pennsylvania Supreme Court decision, *Georges Tp. Sch. Directors*, 286 Pa. 129 (1926). Based on *Georges*, the municipality argued that a contemporary statutory means for removal of an elected public official that differs from the means specified under our current constitution should be upheld if the contemporary statute utilized the same grounds and methods for removal as did a statute that preexisted the 1874 Pennsylvania Constitution and was constitutional under the pre-1874 scheme. See 575 Pa. 677-678. The Court found that the statute being considered utilized different means for removal than those statutes that would have applied prior to 1874, and therefore, was unconstitutional. No appellate court in Pennsylvania has utilized this analysis to uphold any removal provisions currently contained within the various municipal codes applicable to a majority of Pennsylvania municipalities.

³ It could be argued that Article II, Section 7, is not a removal provision in the strict sense of removing a validly elected public official from office. It could be considered a disqualification provision upon which *quo warranto* (challenges of right or title to office) have been based. See, e.g., *Com. ex rel. Baldwin v. Richard*, 561 Pa. 489 (2000).

⁴ See 542 Pa. at 124, citing *Citizens Committee to Recall Rizzo v. Board of Elections*, 470 Pa. 1, 35 (1976) (Nix, J., concurring).

⁵ *Crimen falsi* is defined as perjury or “any other offense that involves some element of dishonesty or false statement.” Bryan A. Garner (ed.), *Black’s Law Dictionary*, 11th ed., West Group, St. Paul, Minn., 2019.

⁶ *Com. ex rel. Baldwin v. Richard*, 561 Pa. 489, 499 (2000) (emphasis added); see also *Bolus v. Fisher*, 785 A.2d 174 (Pa. Cmwlth. 2001), *aff’d*, 568 Pa. 600 (2001).

breach of a positive statutory duty or the performance by a public official of a discretionary act with an improper or corrupt motive.⁷

Reasonable Cause. In addition to the “self-executing” removals upon conviction in court (i.e., sentencing) of an infamous crime or misbehavior in office, as discussed above,⁸ or removal after impeachment pursuant to Article VI, Section 6, of the Pennsylvania Constitution, another means of removing an elected public officer, set forth in Article VI, Section 7, is removal “by the Governor for reasonable cause, after due notice and full hearing, on the address of two thirds of the Senate.” While discretion may reside with the Senate to find what constitutes “reasonable cause,” there is no significant modern case law adjudicating the issue.

Grounds for Removal⁹

		Infamous Crime	Misbehavior in Office	Reasonable Cause
Methods of Removal	Impeachment		Article VI, § 6	
	By Governor upon address of Senate			Article VI, § 7
	Conviction	Article II, § 7 ¹⁰ Article VI, § 7	Article VI, § 7	

⁷ See *Larsen v. Senate of Pennsylvania*, 646 A.2d 694, 702 (Pa. Cmwlth. 1994) (discussing the “Preparatory Committee Report on the Judiciary for the Pennsylvania Constitution Convention, 1967-1968”); see also *Commonwealth v. Bellis*, 508 Pa. 122, 126 (1985), and *Commonwealth v. Peoples*, 345 Pa. 576 (1942).

⁸ See Robert E. Woodside, *Pennsylvania Constitutional Law*, Murrelle Printing Company, Inc., Sayre, Pa., 1985, p. 455.

⁹ This discussion does not specifically explore the removal of elected judicial officers who may be removed from office pursuant to the provisions of Article V of the Pennsylvania Constitution, in addition to the sections discussed herein. See Pa. Const. art. V, § 18.

¹⁰ See *supra*, note 3.