

IMPEACHMENT IN KENTUCKY

Informational Bulletin No. 176

**LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky**

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IMPEACHMENT IN KENTUCKY

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LEGISLATIVE RESEARCH COMMISSION
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FOREWORD

In 1991, the General Assembly met in one of the longest extraordinary sessions in Kentucky history. Among other issues, the legislature faced a task which had not been necessary for nearly a century — the impeachment of a constitutional officer.

Although the General Assembly had conducted impeachments in the past, few records had been maintained, other than entries in the House and Senate Journals. As a result, staff spent months preparing procedural rules, forms, and other materials to assist the General Assembly in determining how to proceed.

This informational bulletin is designed to assist future legislatures in conducting impeachments, and to provide the public with a look into the process itself.

The procedural rules and many of the documents utilized during the 1991 impeachment have been included as Appendices, as a guide for those who may, in the future, find themselves faced with this responsibility.

Vic Hellard, Jr.
Director

The Capitol
Frankfort, Kentucky
September, 1991

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CHAPTER I

THE NATURE OF IMPEACHMENT

The removal of a public official from office through the process of impeachment is a grave matter, as it represents a repeal of the will of the people who have elected an individual to an office of public trust. Because it is a reversal of the inherent power of the people in a democratic society to choose those who govern, it is a power rarely exercised, and one which has fortunately been required in few instances in Kentucky's history.

Because impeachment has been such a rare occurrence in Kentucky, a shroud of mystery envelopes the process itself. There are many procedural questions for which answers are difficult to ascertain, and many constitutional issues which have been the subject of debate among those in government, academia, and the courts. Two of the major questions involved in impeachment relate to the types of conduct which are to be considered "impeachable" and whether the decisions reached by an impeachment tribunal are subject to judicial review.

Kentucky's 1891 Constitution closely mirrors the federal constitution in terms of its impeachment provisions. According to Section 68, the "Governor and all civil officers" are liable to impeachment by the House of Representatives and trial by the Senate. Although statutory provisions have been enacted to establish a mechanism for removing certain officers (See KRS 61.010 and 61.040) it is generally held that if a specific method of removal of a particular officer is prescribed by the Constitution, such as impeachment, that is the sole method of removal which may be utilized.¹

While it is fairly clear who is subject to impeachment, the question of what is impeachable conduct is more complex. Because impeachment is a power vested solely in the legislature, the general rule is that the definition of impeachable conduct is exclusively a matter to be determined by the legislature. The Kentucky Constitution prescribes impeachment as the remedy when a public officer has committed "misdemeanors in office," but that term does not have the same connotation as in the judicial sense. Rather "misdemeanor" in this context has been defined as any activity involving a breach of the public trust, or any act which can be construed as misfeasance or malfeasance.

Usually an officer is impeached as a result of criminal conduct, generally after an indictment has been lodged against the individual. It can be inferred from the language in Section 68 of Kentucky's Constitution that the framers envisioned that impeachment would be associated with some form of criminal conduct, as it provides that "the party convicted [in an impeachment trial] shall, nevertheless, be subject and liable to indictment, trial and punishment by law." (Ky. Const. §68). Thus, it is not necessary that an official charged with impeachable conduct must previously have been convicted or even indicted on a criminal charge.

The issue of whether decisions adjudicated by an impeachment tribunal are subject to judicial review has been one of great debate. It is clear from a review of various treatises and case law from other jurisdictions that the issue continues to resurface at both the state and federal levels. Some argue that the framers of the federal constitution surely did not envision the delegation of the impeachment power to the legislative branch as an absolute exception to the doctrine of judicial review, especially since any impeachment may involve political undercurrents as well as concern for the public good.

One of the more persuasive arguments for judicial review appears in Raoul Berger's *Impeachment: The Constitutional Problems*. In part, his arguments center around the theory that the grant of the impeachment power to the legislative branch does not authorize the expansion of its powers beyond those explicitly provided in the Constitution. Because of the evolving concept of what might constitute impeachable conduct, he argues that the legislative branch has the potential for expanding what the framers intended by determining what types of acts may fall within the realm of an impeachable offense. He also argues that the interests of the public in preserving the integrity of the separation of powers doctrine are best served by strictly observing the "strong American bias in favor of a judicial determination of constitutional and legal issues."²

However, the greater weight of authority appears to hold that there is no basis for judicial review of impeachment proceedings. In *Ritter v. United States*, the Court held that not only should there be no judicial review of the ultimate judgment of the Senate, but also that no judicial determination should be made as to whether particular offenses were "impeachable offenses."³

This issue was most recently considered in connection with the Arizona case of Governor Edwin Mechem. At the time of his impeachment, Mechem had not been tried in the courts. During the impeachment proceedings, Mechem made clear his intention to seek judicial relief, not only in the Arizona Supreme Court, but also in federal court. In *Mechem v. Gordon*,⁴ the Arizona Supreme Court ruled that the Arizona Senate had the power to determine the rules of procedure it would follow during the proceedings, a power emanating from the separation of powers clause of the Arizona Constitution. However, the court did appear to leave open the possibility that if the Senate had violated some constitutional requirement regarding the impeachment process, such as trying Mechem without Articles having been approved by the House of Representatives, the court would have the power to require the body to follow the provisions of the Constitution.

Another possible obstruction to judicial review of impeachment is the political question doctrine, which could preclude judicial determination of whether the legislature had correctly defined the scope of an impeachable offense due to lack of judicial standards. The political question doctrine basically holds that a question which is purely political in nature is nonjusticiable, or a question which courts will refuse to recognize.⁵ The major authority in the area of the political question doctrine appears to be *The Federalist No. 65*, by Alexander Hamilton.

Lastly, an *Arizona Law Review* article indicates that there has been no reported case in American history in which a court has actually reviewed and reversed either a House impeachment or a Senate conviction. In *Ferguson v. Maddox*, the Texas Supreme Court did review an impeachment decision, but it observed that the judgment of a court of impeachment can only be questioned insofar as it might exceed constitutional authority. The Court held that

[s]o long as the Senate acts within its constitutional jurisdiction, its decisions are final. As to impeachment, it is a court of original, exclusive, and final jurisdiction.⁶

CHAPTER II
IMPEACHMENT IN KENTUCKY

Constitutional Provisions

§66 Power of impeachment vested in House.

The House of Representatives shall have the sole power of impeachment.

§67 Trial of impeachments by Senate.

All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the Senators present.

§68 Civil officers liable to impeachment; judgment; criminal liability.

The Governor and all civil officers shall be liable to impeachment for any misdemeanors in office; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust or profit under this Commonwealth; but the party convicted shall, nevertheless, be subject and liable to indictment, trial and punishment by law.

§77 Power of Governor to remit fines and forfeitures, grant reprieves and pardons; no power to remit fees.

He shall have power to remit fines and forfeitures, commute sentences, grant reprieves and pardons, except in case of impeachment, and he shall file with each application therefor a statement of the reasons for his decision thereon, which application and statement shall always be open to public inspection. In cases of treason, he shall have power to grant reprieves until the end of the next session of the General Assembly, in which the power of pardoning shall be vested; but he shall have no power to remit the fees of the Clerk, Sheriff or Commonwealth's Attorney in penal or criminal cases.

§84 When Lieutenant Governor to act as Governor; not to preside at impeachment of Governor.

Should the Governor be impeached and removed from office, die, refuse to qualify, resign, be absent from the State, or be, from any cause, unable to discharge the duties of his office, the Lieutenant Governor shall exercise all the power and authority appertaining to the office of Governor until another be duly elected and qualified, or the Governor shall return or be able to discharge the duties of his office. On the trial

of the Governor, the Lieutenant Governor shall not act as President of the Senate or take part in the proceedings, but the Chief Justice of the Court of Appeals shall preside during the trial.

The Kentucky Constitution delegates to the General Assembly the authority to remove certain officers from office through impeachment by the House and subsequent conviction by the Senate. According to Section 66, the sole power of impeachment is vested in the House of Representatives, while the power to try impeachments is given to the Senate by Section 67. When sitting as triers of fact in an impeachment case, the Senators are to be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the Senators present (Ky. Const. §67).

Section 68 provides that the Governor and all civil officers shall be liable to impeachment for any misdemeanor in office. However, a judgment in an impeachment extends only to removal from office and disqualification from holding any office of honor, trust or profit under the Commonwealth. An individual removed from office through impeachment may still be subject to indictment, trial, and punishment in a court of law as a result of the conduct resulting in his impeachment. Section 77 of the Constitution prohibits the Governor from issuing a pardon to an impeached officer.

While the authority for the General Assembly to remove public officers from office by means of impeachment is found in the Kentucky Constitution, the more specific guidelines to govern the impeachment process are statutory. As previously discussed, impeachment is a two-part process, and the role of each chamber of the legislature is spelled out in Chapter 63 of the Kentucky Revised Statutes. The following is a procedural guide for conducting impeachments in Kentucky according to current provisions of the Kentucky Revised Statutes.

House of Representatives

KRS 63.020 Impeachment and removal by address.

Proceedings for impeachment or removal by address may be instituted by the House of Representatives without a petition from any person.

KRS 63.030 Petition for impeachment.

(1) Any person may, by written petition to the House of Representatives, signed by himself, verified by his own affidavit and the affidavits of such others as he deems necessary, and setting forth the facts, pray the impeachment of any officer.

(2) The House shall refer the petition to a committee, with power to send for persons and papers, to report thereon.

The House of Representatives has the responsibility for initiating the impeachment process, which may be done either upon receipt of a petition or on its own initiative (KRS 63.020). Any person may, by written petition, request the impeachment of any officer. The petition must be signed by the petitioner, verified by his own affidavit and the affidavits of others if he deems it necessary, and must set out the facts alleging that an impeachable offense has been committed by a public officer (KRS 63.030(1)). If such a petition is received by the House, it is then referred to a committee, which is then considered to have subpoena power, and which is to investigate the matter and report back to the full House (KRS 63.030(2)).

The House Impeachment Committee

The impeachment committee is to review the evidence to determine whether there is sufficient cause to institute formal impeachment proceedings. There are no statutory or constitutional requirements relative to number of members, political party affiliation, or other requirements. In the 1916 impeachment of McCreary County Judge J.E. Williams, a seven-member panel was appointed, and that arrangement was followed in the 1991 proceedings against Agriculture Commissioner Ward "Butch" Burnette.

There are no statutory or constitutional requirements that the proceedings of an impeachment committee be open to the public. While meetings of standing committees of the General Assembly and most other public bodies are required to be held in open session, under the provisions of the Open Meetings Law, there is an express exception allowed for committees of the General Assembly other than standing committees, which permits them to conduct their business in private (KRS 61.810(9)). During the Burnette impeachment, the role of the House Impeachment Committee was viewed as comparable to the function of a grand jury in the court system, and the meetings of that committee were not open to the public. However, the rules of procedure adopted by that committee did allow for the proceedings of the committee to be opened upon a majority vote of the members (See Appendix D). As provided in KRS 63.030(2), the impeachment committee is to have the power to compel witnesses and the production of papers.

The question as to whether the accused is to be allowed to appear before the impeachment committee turns on the case involved and the course the committee determines to follow. There is no statutory or constitutional provision governing this issue, although the statutes governing the Senate trial of an impeachment case require that the accused be summoned to appear by precept, so that he might have the opportunity to confront his accusers. During the 1916 Williams impeachment, the impeachment committee spent several sessions hearing testimony from some 33 witnesses, including the accused. However, in the Burnette case, the impeachment committee did not take testimony from any witnesses, relying instead upon the complete record of Burnette's trial in Franklin Circuit Court. It is important to note that in the Williams case, the impeachment had been initiated by a petition from residents in McCreary County, and he had not been indicted on criminal charges in the courts, so the needs of the impeachment committees in the two situations were somewhat different.

Report of Committee

Once the impeachment committee has completed its investigation, it then issues a report to the full House of Representatives, including a recommendation as to whether Articles of Impeachment should be returned and voted upon by the House. Approval of the report requires a majority vote of committee members, although majority and minority reports may be issued under House Rule 47. The report in the Williams case included a summary of the evidence, and also was in the form of a Majority and Minority Report. Each report was voted on separately by the House, with the majority report recommending impeachment ultimately being approved by the House. Approval of the report requires a majority vote of the House membership.

Preparation of the Articles of Impeachment

KRS 63.035 Articles of impeachment.

(1) If an impeachment is recommended by the committee of the House of Representatives to which it is referred, the committee shall draw up the articles of impeachment in accusation of the officer and submit the articles to the House with the recommendation for impeachment.

(2) The articles of impeachment shall state with reasonable certainty the misdemeanor in office for which impeachment is sought; and if there be more than one (1) misdemeanor, each shall be stated separately and distinctly.

KRS 63.035 governs the preparation of Articles of Impeachment. If the full House votes to adopt a committee report which recommends impeachment, Articles must be drafted. The Burnette impeachment committee offered with its final report House Resolution 40, which contained an Article of Impeachment as an attachment. However, in the Williams case, the Articles were prepared subsequent to the House vote on the committee report, by a group of five. It is interesting to note that in that case, the drafting committee included only two of the seven members of the original impeachment committee.

As required by KRS 63.030(2), the Articles must state with reasonable certainty the misdemeanor for which impeachment is sought, and if there are multiple misdemeanors, each is to be stated separately and distinctly.

Committee to Prosecute

KRS 63.040 Prosecution — Witnesses.

(1) If an impeachment is ordered by the House of Representatives a committee shall be appointed to prosecute it, and the committee chairman shall, within five (5) days, lay the impeachment before the Senate.

(2) The Senate shall appoint a day for hearing the impeachment. The accused shall be summoned by precept, issued by the clerk of the Senate, to appear on that day. The precept shall be served in person, or a copy left at his residence with a member of his family over the age of sixteen (16) years, together with a copy of the impeachment.

(3) The clerk of the Senate shall, at the instance of the chairman of the committee, or of the accused, issue process for the summoning of witnesses, and the production of books, papers, documents or tangible things. Process so issued shall be executed by peace officers or officers specially appointed by the Senate for that purpose in the same manner as similar process of courts. Upon disobedience to the process, the Senate may order the clerk to issue process for arresting the witnesses and seizing the books, papers, documents or tangible things. Disobedience may be punished in the manner provided for other witnesses before the General Assembly.

(4) A witness so summoned shall receive the same compensation, and have the same privilege in going, remaining and returning, as a witness in Circuit Court.

Once the House of Representatives has adopted Articles of Impeachment, the accused stands "impeached." However, that action alone does not remove the person from office, since the vote by the House is merely tantamount to an indictment. While the proceedings move to the Senate for trial, the role of the House is not over. KRS 63.040(1) requires that a committee of Representatives be appointed to go before the Senate to prosecute the Articles on behalf of the House. There is no statutory requirement that the prosecutors be the same individuals who served on the original impeachment committee appointed to conduct the initial investigation. Within five days of appointment of this new committee, the Chairman of the committee is required to lay the Articles of Impeachment before the Senate (KRS 63.040(1)).

The Senate

After the Articles of Impeachment have been laid before the Senate, that body adopts Rules of Procedure to govern the impeachment proceedings. The rules are adopted in the form of a resolution (SR 41 in the Burnette case), requiring approval by a majority of Senators voting. KRS 63.055 requires that the rules specify the amount of time a Senator may be absent before being disqualified from casting a final vote on guilt or innocence of the accused. Also, the Senate sets a date certain for beginning the proceedings, and sends a message to the House to that effect.

KRS 63.040 requires that the accused be summoned by precept, issued by the Clerk of the Senate, to appear on the day designated for the trial to begin. While similar to a summons, a precept is

an order of direction, emanating from authority, to an officer or body of officers, commanding him or them to do some act within the scope of their powers.⁷

The precept is to be served in person, or a copy left at the residence of the accused with a member of his family over the age of 16, along with a copy of the impeachment (KRS 63.040(2)).

Issuance and Service of Process

The Senate Clerk is charged with the duty to issue summons on direction of the chairman of the prosecuting committee or upon request of the accused. Process is to be served by peace officers specially appointed by the Senate for that purpose, in a manner similar to that used by the courts. Upon disobedience of the process, the Senate may order the Clerk to issue process for the arrest of the witness or seizure of the books or papers requested in the subpoena. Disobedience is punishable in the manner provided for other witnesses before the General Assembly (KRS 63.040(3)).

According to KRS 63.030(4), a witness summoned to appear before the Senate shall receive the same compensation, and have the same privileges in going, remaining, and returning as a witness in Circuit Court.

Senate Trial

When the Senate convenes to begin its deliberations, the presiding officer and every Senator present is required by KRS 63.050 to take the following oath or affirmation:

I do solemnly swear (or affirm) that I will faithfully and impartially try the impeachment against _____ and give my decision according to the law and evidence.

The President of the Senate sits as the presiding officer. According to Section 84 of the Kentucky Constitution, the Chief Justice of the Supreme Court presides if the Governor is being impeached.

Upon convening and administration of the oath, the accused is given the opportunity to enter his plea to the Articles of Impeachment, and the parties announce ready for trial. The witnesses for the Commonwealth are sworn, either individually or collectively. The House presents its case by examining each witness, who is then subject to cross-examination by the defense. The defense then presents its case, followed by closing arguments. The details as to time allowed for each phase of the proceedings, as well as other procedural matters may be spelled out in the Rules adopted to govern the impeachment trial.

At the conclusion of the trial, the Senate votes on each Article of Impeachment

separately in a roll call vote. No person shall be convicted absent the concurrence of two-thirds of the Senators present (Ky. *Const.* §67).

Judgment

If the accused is found guilty on any or all Articles, a judgment is entered to that effect. The judgment declares that the officer is removed from office, and may include a declaration that he also be disqualified from holding any office of honor, trust, or profit under the Commonwealth of Kentucky. Costs of the proceedings may be charged to the parties, as provided in KRS 63.070 and 63.075.

CHAPTER III

HISTORICAL OVERVIEW OF KENTUCKY IMPEACHMENTS

1803 — Thomas Jones, Surveyor of Bourbon County

While most historical accounts cite only two impeachments in Kentucky prior to 1991, research has unearthed another impeachment of which little is known. In 1803, Thomas Jones, Surveyor of Bourbon County, was impeached for overcharging the state for work done, for failure to perform his duties, and for surveying the wrong tracts of land.

Although Jones resigned during the Senate trial, the members of the tribunal determined that his resignation did not terminate their authority, and continued the case. Jones was eventually found guilty of five of twenty-two charges and was ordered perpetually excluded from office. He was also ordered to pay the costs of the proceedings. Probably the most significant thing about the Jones impeachment was that the Senate actually empaneled a jury to determine the facts for the Senate. This is the only state impeachment case in which such a jury was summoned.⁸

1888 — "Honest Dick" Tate, State Treasurer

Probably one of the most infamous characters in Kentucky's history is "Honest Dick" Tate, a man who was elected to nine terms as Kentucky's State Treasurer before absconding with most of the funds in the State Treasury in March, 1888. Although he and the money were never found, he was impeached and tried in absentia in 1888 for his actions.

Among other offenses, Tate was charged with leaving and abandoning his office without providing for its administration, refusing to perform his duties, and the theft of more than \$197,964.66 of the state's money. In all, six Articles of Impeachment were returned against him, although two were eventually dropped. Tate was found guilty.

1916 — Judge J.E. Williams

Kentucky's third impeachment, in 1916, was conducted against McCreary County Judge J. E. Williams. The impeachment was instituted against Williams on the basis of a petition from several residents of McCreary County, who charged that he had committed numerous acts of misfeasance and malfeasance as county judge. Some twenty Articles of Impeachment were placed before the Senate, although several were eventually dismissed. Williams was tried on the remaining Articles, but was not removed from office, because the Senate failed to achieve the two-thirds vote required to convict on a single article.

1991 — Commissioner of Agriculture Ward “Butch” Burnette

During the 1991 Extraordinary Session, the House of Representatives initiated impeachment proceedings against Commissioner of Agriculture Ward “Butch” Burnette. While serving as Commissioner, Burnette had been convicted by a Franklin Circuit Court jury of complicity to theft by deception, a felony offense. The charge resulted from Burnette’s having signed time sheets for a department employee reflecting that she had worked for the entire month of June, 1988, when, in the opinion of the jurors, she had not worked during that period. He was sentenced to a one-year prison term and fined \$1,500.

A single Article of Impeachment was adopted by the House of Representatives, charging that

the conduct reflected by his conviction resulted in a theft of funds belonging to the Commonwealth of Kentucky and thereby constituted a willful disregard of his oath of office; and pursuant to Section 68 of the Constitution of Kentucky, such conduct is a misdemeanor in office and constitutes an impeachable offense under the Constitution of the Commonwealth of Kentucky.

Just hours before the Senate trial was to begin, Burnette resigned, and the Senate, sitting as a Court of Impeachment, voted to terminate the impeachment proceedings. The Senate subsequently ratified that action with the passage of SR 55. However, the charges against Burnette were not dismissed. The following day, the House passed a resolution (HR 87) concurring in the termination, bringing the fourth impeachment in Kentucky’s history to a close.

FOOTNOTES

1. *Commonwealth ex rel. Attorney General v. Howard*, 297 Ky. 488, 180 S.W.2d 415 (1944); *Lowe v. Commonwealth*, 60 Ky. 237 (1860).
2. Raoul Berger, *Impeachment: The Constitutional Problems* (Cambridge: Harvard U. Press, 1973) p. 121, quoting Louis L. Jaffe, "Standing to Secure Judicial Review: Public Actions," 74 *Harvard Law Review* 1265, (1961), p. 1302.
3. *Ritter v. United States*, 84 Ct.Cl. 293-300 (1936).
4. *Mecham v. Gordon*, 156 Ariz. 297, 751 P.2d 957 (1988).
5. Henry Campbell Black, *Black's Law Dictionary* (5th Edition, St. Paul: West Publishing Co., 1979), p. 1043.
6. *Ferguson v. Maddox*, 114 Tex. 85, 263 S.W. 888 (1924).
7. Black, p. 1059.
8. Professor John Rogers of the U.K. College of Law, who acted as Special Advisor to the House Impeachment Committee in the Burnette case, uncovered the account of the Jones Impeachment in P. Hoffer and N. Hull's *Impeachment in America, 1635-1805*, 72 (1984). Hoffer and Hull supported their account of the case by citing the Kentucky Senate Journal 23, 52-53, 58, 59, 60, 62 (Nov. 22, Dec. 5, 6, 7, 1803) and the [Frankfort] *Palladium*, Dec. 10, 1803: Hoffer and Hull, at 304.

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Ritter v. United States, 84 Ct.Cl. 293 (1936).

APPENDICES*

- Appendix I. House Impeachment Committee Rules.
- Appendix II. House Committee on Impeachment - Final Report.
- Appendix III. House Resolution 40 With Article of Impeachment.
- Appendix IV. House Message to Senate.
- Appendix V. Transmittal of Impeachment Committee Records.
- Appendix VI. Receipt for Impeachment Committee Records.
- Appendix VII. Senate Message to House.
- Appendix VIII. Senate Resolution 41 - Rules.
- Appendix IX. Precept.
- Appendix X. Senate Resolution 55 - Termination.
- Appendix XI. House Resolution 87 - Concurrence in Termination.

*All materials included herein are taken from the record of the Burnette Impeachment.

Appendix I

IMPEACHMENT COMMITTEE RULES

1. MEETINGS

All meetings of the committee shall be held in executive session unless the committee determines to proceed upon particular matters in open session.

2. MEDIA COVERAGE

Any portion of the hearings open to the public may be covered by television broadcast, radio broadcast, still photography, or by any of such methods of coverage allowed by the Rules of the House.

3. COUNSEL

The Impeachment Committee may retain special counsel to advise it in all matters pertaining to the performance of its duties.

4. CLERK OF THE IMPEACHMENT COMMITTEE

The Impeachment Committee may appoint a Clerk who shall be the official custodian of all records, evidence, and other materials pertaining to the work of the committee. The Clerk shall maintain one complete set of original documents which shall constitute the record of the committee. The Clerk shall perform such other duties as the committee may direct.

5. SUBPOENAS

The Chair shall direct the issuance of subpoenas upon his own initiative or upon motion of a majority of the committee members.

6. QUORUM

For purposes of hearings held by the committee, a quorum shall consist of four (4) members of the committee.

7. RULES OF CHAIR

The Chair shall, when he deems appropriate, make rulings necessary for the fair and efficient conduct of committee proceedings. Such rulings shall control, unless overruled by a vote of a majority of the members present.

8. OATH OF WITNESSES

Witnesses called to testify before the committee shall, before giving their testimony, swear the following oath or affirmation:

"Do you solemnly swear (or affirm) that the testimony you are about to give in the matter of the impeachment of Ward "Butch" Burnette, shall be the truth, the whole truth, and nothing but the truth."

9. QUESTIONING OF WITNESSES

The Chair or his designee shall commence the questioning of each witness and may question a witness at any point during the appearance of the witness. Any member of the committee may also question a witness at any point during the appearance of the witness.

10. ANNOUNCEMENT OF OPEN MEETINGS

The Chair shall make public announcement of the date, time, place, and subject matter of any committee meeting open to the public as soon as practicable. Announcement on the floor of the House while in session shall constitute sufficient notice.

11. COMMUNICATIONS WITH COMMITTEE

There shall be no contact by the accused or his counsel with the committee members except through written communication directed to the Chair. Any such written communication shall become part of the record. This shall not preclude answers by the accused or his counsel to inquiries of the committee, which shall also be in writing.

12. PROCEDURES FOR HANDLING IMPEACHMENT INQUIRY MATERIALS

a. The Clerk of the committee shall at all times have access to and be responsible for all papers and things received from any source by subpoena or otherwise. Other members of the committee and committee counsel shall have access in accordance with the procedures hereafter set forth.

b. Certified copies of all records of judicial proceedings before the courts of the Commonwealth in the matter of Commonwealth v. Ward "Butch" Burnette, 89 CR 0126-2 and Burnette v. Commonwealth, 90 SC 204, including, but not limited to, pleadings, depositions, orders, video tapes, items of evidence deemed relevant, and documentation of evidence and

transcripts, appeals, orders, motions, and other evidence appropriate for consideration by the committee shall become subject to committee review upon being filed with the committee.

c. All items of evidence requested by the committee or submitted and accepted for review by the committee and any public records may be reviewed at any time by individual members of the committee when not meeting in session, unless the committee has, by majority vote, ruled otherwise with regard to a particular item.

d. All items of evidence shall be directed to the Clerk of the Impeachment Committee or its counsel.

e. Before the committee is called upon to make any disposition with respect to the testimony or papers and things presented to it, the committee members shall have a reasonable opportunity to examine all testimony, papers, and things that have been obtained by the committee staff.

f. Only testimony, papers, or things that are included in the record will be reported to the House.


Representative Gregory D. Stumbo, Chair


Representative Billie Ark


Representative Tom Jensen


Representative Albert Jones


Representative Sam McElroy


Representative Anne Northup


Representative Ernesto Scorsone

January 17, 1991

Appendix II

HOUSE COMMITTEE ON IMPEACHMENT

FINAL REPORT

On January 15, 1991, the Speaker of the House of Representatives of the General Assembly of the Commonwealth of Kentucky, in Extraordinary Session, appointed a committee of seven to investigate the matter of Commissioner of Agriculture, Ward "Butch" Burnette, and upon completion of its investigation to report its findings and recommendations to the House. The members included: the Gentleman from Larue 26, the Gentleman from McCracken 3, the Gentleman from Laurel 85, the Gentleman from Union 7, the Lady from Jefferson 32, the Gentleman from Fayette 75, and the Gentleman from Floyd 95 who served as Chairman. Upon their appointment, the members stood before the House of Representatives to take the oath of office, swearing to fulfill their duties as charged.

The committee has met from time to time in executive session. The committee adopted Rules of Procedure to govern its proceedings, appointed Professor John M. Rogers, University of Kentucky College of Law, Special Legal Advisor, W. Stephen Wilborn, Counsel, and Anita Taylor, Clerk of the Impeachment Committee, with responsibility of maintaining a record of the committee's actions, the security of evidence received and assisting counsel.

The committee issued subpoenas to Secretary of State Bremer Ehrler and George Russell, Executive Director of the State Board of Elections; John C. Scott, Clerk of the Supreme Court of Kentucky; and Janice Marshall, Franklin Circuit Clerk requesting the following documents:

A copy of the Certificate of Election of Ward "Butch" Burnette to the office of Commissioner of Agriculture and any other relevant information concerning his current status in that office;

A copy of all proceedings before any court of the Commonwealth, including, but not limited to, pleadings, depositions, orders, videotapes, items of evidence, and briefs as would relate to the case of Commonwealth of Kentucky v. Ward Burnette, 90 CR 0126-2 and Burnette v. Commonwealth, 90 SC 204.

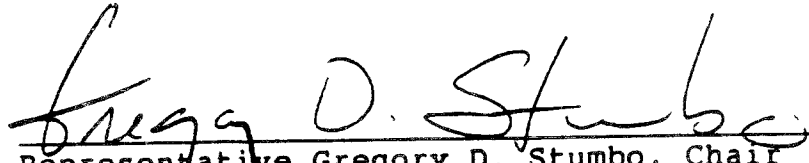
The subpoenas were continuing in nature, applicable to all items becoming available subsequent thereto.

The Committee chose to accept the judicial proceedings and resulting conviction as a valid basis upon which to believe that the conduct alleged did take place and the Committee found that such conduct is a sufficient basis on which to recommend that he be impeached.


Two complete records of the Impeachment Committee's actions, including copies of all evidence received are lodged in the office of the Committee Chairman, Room 304, State Capitol, for review by any member of the House.

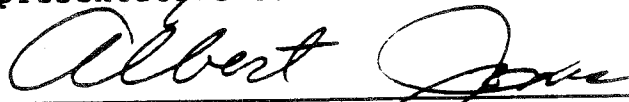
The committee hereby recommends that the House of Representatives of the General Assembly of the Commonwealth of Kentucky, in Extraordinary Session, accept this Final Report of the House Committee on Impeachment, that the Resolution and

Article of Impeachment attached hereto be adopted, and that the Article of Impeachment, accompanied with the original record of the Committee's actions, including the certified copies of all documents received by the Committee be laid before the Senate of the General Assembly of the Commonwealth of Kentucky as provided by law.

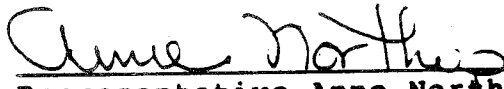

Representative Gregory D. Stumbo, Chair



Representative Billie Ark


Representative Tom Jensen


Representative Albert Jones


Representative Sam McElroy


Representative Anne Northrup


Representative Ernesto Scorsone

January 23rd, 1991

Appendix III

IN HOUSE

SPECIAL SESSION 1991

HOUSE RESOLUTION NO. 40

WEDNESDAY, JANUARY 23, 1991

Representatives Gregory D. Stumbo, Tom Jensen, Billie D. Ark, Albert Jones, Sam M. McElroy, Anne Meagher Northup, and Ernesto Scorsone introduced the following resolution which was ordered to be printed.

A RESOLUTION laying before the House of Representatives an Article of Impeachment against Agriculture Commissioner Ward "Butch" Burnette.

WHEREAS, Commissioner Ward "Butch" Burnette was tried and convicted by the Franklin Circuit Court for a crime committed during his term as Commissioner, to wit:

Complicity to Theft by Deception over \$100, a felony in contravention of KRS 514.040 and KRS 502.020, in that he in the County of Franklin, Commonwealth of Kentucky, on or about June 20, 1988, and on or about July 16, 1988, with the intention of promoting or facilitating the commission of theft by deception, aided one Linda Campbell in committing the offense of theft by deception when he signed and approved time sheets submitted by Linda Campbell reflecting she had worked with the Department of Agriculture full time for the entire month of June, 1988, when he knew she had not been so employed and the time sheets reflecting such employment were false;

WHEREAS, Commissioner Burnette's conviction has been upheld by the Supreme Court of Kentucky, thereby exhausting his appeals in the Courts of the Commonwealth; and

WHEREAS, Commissioner Burnette's Motion for New Trial has not been granted and he has now begun serving his one-year sentence; and

WHEREAS, the House of Representatives chose not to

institute this impeachment inquiry until after
Commissioner Burnette had exhausted his appeals in the
Courts of the Commonwealth; and

WHEREAS, the duty of the House Impeachment Committee
is to conduct an investigation to determine whether there
is reason to believe Commissioner Burnette committed,
during his term of office as Commissioner, an act that
would warrant recommending that he be impeached; and

WHEREAS, the Committee believes commission of the
crime of Complicity to Theft by Deception Over \$100, in
contravention of KRS 514.040 and KRS 502.020 during
Commissioner Burnette's term of office, is a reasonable
basis upon which to recommend that Commissioner Burnette
be impeached; and

WHEREAS, the Committee chose to accept the judicial
proceedings and the resulting conviction of Commissioner
Burnette as a valid basis upon which to believe the
conduct alleged did take place;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the
General Assembly of the Commonwealth of Kentucky:

1 Section 1. The Article of Impeachment attached
2 hereto is approved as adopted.

3 Section 2. A committee, with appropriate staff,

1 shall be appointed by the Speaker of the House to
2 prosecute this Article before the Senate.

3 Section 3. The Chairman of the committee appointed
4 to prosecute the Article shall lay it before the Senate
5 within five (5) days as required by law, and shall
6 transmit a complete record of the Impeachment Committee
7 proceedings, including the original certified copies of
8 all documents received by the Committee pursuant to the
9 subpoenas issued.

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ARTICLE OF IMPEACHMENT

The Commonwealth of Kentucky, by the House of Representatives of the General Assembly, by virtue of the authority vested in it by Section 66 of the Kentucky Constitution and the laws of the Commonwealth, hereby charges Agriculture Commissioner Ward "Butch" Burnette through the following Article of Impeachment, to wit:

ARTICLE I

Ward "Butch" Burnette, was duly elected and qualified as Commissioner of Agriculture for the Commonwealth of Kentucky and continues to serve in that capacity; during his term of office, he engaged in conduct which resulted in his being charged with and convicted by a Franklin Circuit Court jury of Complicity to Theft by Deception over \$100, a felony in contravention of KRS 514.040 and KRS 502.020, in that he in the County of Franklin, Commonwealth of Kentucky, on or about June 20, 1988, and on or about July 16, 1988, with the intention of promoting or facilitating the commission of theft by deception, aided one Linda Campbell in committing the offense of theft by deception when he signed and approved time sheets submitted by Linda Campbell reflecting she had worked with the Department of Agriculture full time for the entire month of June, 1988, when he knew she had not been so employed and the time sheets reflecting such employment were false; thereafter, his conviction was

1 affirmed by the Supreme Court of Kentucky; the conduct
2 reflected by his conviction resulted in a theft of funds
3 belonging to the Commonwealth of Kentucky and thereby
4 constituted a wilful disregard of his oath of office; and
5 pursuant to Section 68 of the Constitution of Kentucky,
6 such conduct is a misdemeanor in office and constitutes an
7 impeachable offense under the Constitution of the
8 Commonwealth of Kentucky.

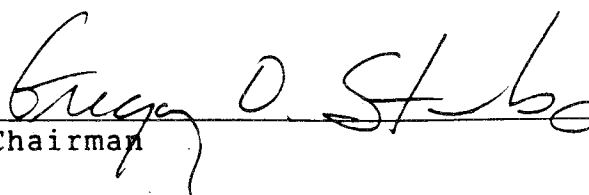
Appendix IV

HOUSE MESSAGE TO SENATE

January 28, 1991

To the Senate of Kentucky, Mister President:

In obedience to House Resolution 40, adopted by the House of Representatives on January 25, 1991, by a vote of 97/0, I appear before you, and in the name of the House of Representatives, and in the name of the Commonwealth of Kentucky, do impeach Ward "Butch" Burnette, Commissioner of Agriculture, of a misdemeanor in office, pursuant to Section 68 of the Kentucky Constitution, and do now present the Article of Impeachment, as approved by the House of Representatives, and in their name we demand that the Senate take order for the appearance of the said Commissioner of Agriculture, Ward "Butch" Burnette to answer said impeachment, and fix a day for the trial thereof. A complete record of the House Impeachment Committee proceedings, including the original certified copies of all documents received by the Committee pursuant to the subpoenas issued, is hereby transmitted to the Clerk of the Senate. The following members of the House of Representatives have been appointed to prosecute this Article before the Senate: Representatives Gregory D. Stumbo, Tom Jensen, Billie D. Ark, Albert Jones, Sam M. McElroy, Anne Meagher Northup, and Ernesto Scorsone.


Chairman

The said Article of Impeachment, as adopted by the House of Representatives, reported and presented on this date to the Senate is in words and figures as follows:

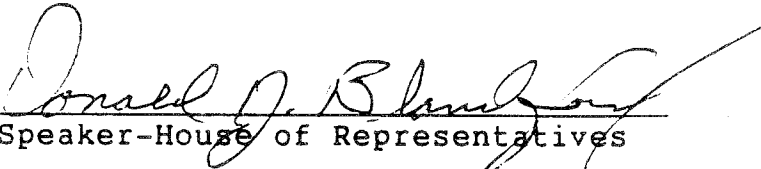
ARTICLE OF IMPEACHMENT


The Commonwealth of Kentucky, by the House of Representatives of the General Assembly, by virtue of the authority vested in it by Section 66 of the Kentucky Constitution and the laws of the Commonwealth, hereby charges Agriculture Commissioner Ward "Butch" Burnette through the following Article of Impeachment, to wit:

ARTICLE I

Ward "Butch" Burnette, was duly elected and qualified as Commissioner of Agriculture for the Commonwealth of Kentucky and continues to serve in that capacity; during his term of office, he engaged in conduct which resulted in his being charged with and convicted by a Franklin Circuit Court jury of Complicity to Theft by Deception over \$100, a felony in contravention of KRS 514.040 and KRS 502.020, in that he in the County of Franklin, Commonwealth of Kentucky, on or about June 20, 1988, and on or about July 16, 1988, with the intention of promoting or facilitating the commission of theft by deception, aided one Linda Campbell in committing the offense of theft by deception when he signed and approved time sheets submitted by Linda Campbell reflecting she had worked with the Department of Agriculture full time for the entire month of June, 1988, when he knew she had not been so employed and the time sheets reflecting such employment were false; thereafter, his

conviction was affirmed by the Supreme Court of Kentucky; the conduct reflected by his conviction resulted in a theft of funds belonging to the Commonwealth of Kentucky and thereby constituted a wilful disregard of his oath of office; and pursuant to Section 68 of the Constitution of Kentucky, such conduct is a misdemeanor in office and constitutes an impeachable offense under the Constitution of the Commonwealth of Kentucky.


Speaker-House of Representatives

Attest: 
Chief Clerk
House of Representatives

Appendix V

I, Anita Taylor, Clerk of the House Impeachment Committee, have, on this the 28th day of January, 1991, transmitted to the Clerk of the Senate a complete record of proceedings of the Impeachment Committee, including the original certified copies of all documents received pursuant to subpoenas issued by the Committee. These items include: Impeachment Outline; House Impeachment Committee Rules; Appointment of Impeachment Committee Clerk; Subpoena to Secretary of State Bremer Ehrler and George Russell, Executive Director of the State Board of Elections; Subpoena to John C. Scott, Clerk of the Kentucky Supreme Court; Subpoena to Janice Marshall, Franklin Circuit Court Clerk; original certified copies of the Supreme Court records in the matter of Commonwealth v. Burnette, 90 CR 0126-2 with videotapes, and Burnette v. Commonwealth, 90 SC 204; original certified copies of the Franklin Circuit Court records in the matter of Commonwealth of Kentucky v. Burnette, 89 CR 0126-2; original certified copies of documents relating to Ward "Butch" Burnette's election to and current status in the office of Commissioner of Agriculture; correspondence between the Honorable Gail Robinson and the Impeachment Committee; House Impeachment Committee Minutes; Final Report of Committee; materials distributed to the House of Representatives; House Resolution 40 ("B" Copy), with Article of Impeachment attached; and copy of roll call vote on HR 40.


Anita Taylor, Clerk
House Impeachment Committee

Appendix VI

I, Julie Haviland, Clerk of the Senate, have received on this the 28th day of January, 1991, a complete record of proceedings of the Impeachment Committee, including the original certified copies of all documents received pursuant to subpoenas issued by the Committee. These items include: Impeachment Outline; House Impeachment Committee Rules; Appointment of Impeachment Committee Clerk; Subpoena to Secretary of State Bremer Ehrler and George Russell, Executive Director of the State Board of Elections; Subpoena to John C. Scott, Clerk of the Kentucky Supreme Court; Subpoena to Janice Marshall, Franklin Circuit Court Clerk; original certified copies of the Supreme Court records in the matter of Commonwealth v. Burnette, 90 CR 0126-2 with videotapes, and Burnette v. Commonwealth, 90 SC 204; original certified copies of the Franklin Circuit Court records in the matter of Commonwealth of Kentucky v. Burnette, 89 CR 0126-2; original certified copies of documents relating to Ward "Butch" Burnette's election to and current status in the office of Commissioner of Agriculture; correspondence between the Honorable Gail Robinson and the Impeachment Committee; House Impeachment Committee Minutes; Final Report of Committee; materials distributed to the House of Representatives; House Resolution 40 ("B" Copy), with Article of Impeachment attached; and copy of roll call vote on HR 40.


Julie Haviland, Clerk of the Senate



COMMONWEALTH OF KENTUCKY
STATE SENATE

January 29, 1991

The Honorable Donald J. Blandford
Speaker of the House of Representatives
Capitol
Frankfort, Kentucky 40601

Dear Mr. Speaker:

Pursuant to the Rules of the Senate, the Senate has resolved itself into a Court of Impeachment, and I hereby notify this honorable body that Ward "Butch" Burnette has been summoned by precept to appear on Wednesday, February 6, 1991, at 10 a.m. (EST) in the Senate Chamber for a trial of impeachment. I shall, at the instance of the House Committee Chair and at the instance of the Respondent, issue process for the summoning of witnesses and the production of such books, papers, documents, or tangible things as may be desired by the House Committee or the Respondent.

In accordance with the Rules adopted in Senate Resolution 41, floor privileges will be extended to senators, members of the House Committee and its counsel and staff, personnel of the Court of Impeachment, the Presiding Officer and counsel, the Respondent and counsel, and those with proper identification as issued by the Clerk of the Court of Impeachment.

With regards,

A handwritten signature in cursive script that reads "Julie Haviland".

Julie Haviland
Chief Clerk of the Senate
and Clerk of the Court of
Impeachment

cc: Rep. Greg Stumbo
Rep. Billie Ark
Rep. Tom Jensen
Rep. Albert Jones
Rep. Sam McElroy
Rep. Anne Northrup
Rep. Ernesto Scorsone

Appendix VIII

IN SENATE

SPECIAL SESSION 1991

SENATE RESOLUTION NO. 41

TUESDAY, JANUARY 29, 1991

Senators Michael Moloney and Walter A. Baker introduced the following resolution which was ordered to be printed.

A RESOLUTION resolving the Senate as a Court of Impeachment and providing for the adoption of Rules of Procedure therefor.

WHEREAS, the House of Representatives has, during the present Extraordinary Session of the General Assembly of the Commonwealth of Kentucky, issued an Article of Impeachment against Ward "Butch" Burnette, Commissioner of Agriculture, which determined that he engaged in conduct which resulted in his being charged with and convicted of a felony, and appointed a committee to prosecute the Article of Impeachment before the Senate, the chairman of which did, within five days next after the impeachment was ordered, lay the Article before the Senate; and

WHEREAS, the Senate does now designate the day and hour to commence hearing the impeachment, and the Respondent, Ward "Butch" Burnette, shall be summoned by precept issued by the Clerk of the Senate to appear before the Senate on that date;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky:

1 Section 1. The Senate now resolves itself into a
2 Court of Impeachment for the purpose of hearing the
3 impeachment and designates Wednesday, February 6, 1991, at

1 the hour of 10:00 a.m. (EST) as the day and hour for the
2 hearing, and that the President of the Senate and the
3 members of the Senate shall take the oath prescribed by
4 KRS 63.050, and that the Clerk of the Senate shall make
5 proper record in the Journal of the names of all Senators
6 who take the oath.

7 Section 2. The Clerk of the Senate shall inform the
8 House of Representatives and the committee thereof
9 appointed to prosecute the impeachment, that the Senate
10 has resolved itself into a Court of Impeachment, that the
11 Clerk shall summon the Respondent by precept to appear on
12 that day and hour for the hearing, and that the Clerk
13 shall, at the instance of the committee chair and at the
14 instance of the accused, issue process for the summoning
15 of witnesses and the production of such books, papers,
16 documents, or tangible things as may be desired by the
17 committee or the Respondent.

18 Section 3. For the purpose of governing the
19 procedures at the impeachment hearing, there are hereby
20 adopted by the Senate the following rules:

21 RULES GOVERNING THE SENATE OF THE

22 COMMONWEALTH OF KENTUCKY

23 SITTING AS A COURT OF IMPEACHMENT

24 (1) Rules of Procedure

25 Except as otherwise provided, and when not in
26 conflict with these Rules, the Standing Rules of the

1 Senate shall apply, and the presiding officer shall retain
2 the authority to invoke the Rules of the Senate.

3 (2) Rules of Evidence

4 When not in conflict with these Rules or the Rules of
5 the Senate, the rules of evidence used in courts of
6 general jurisdiction in the Commonwealth shall serve as a
7 guide. However, variation from the rules of evidence may
8 be permitted, and reliable evidence admitted, subject to
9 the same being determined relevant, whenever the interests
10 of justice require.

11 (3) Floor Privileges

12 Senators; members of the House Committee and its
13 counsel and staff; personnel of the Court of Impeachment;
14 the Presiding Officer and counsel; and the Respondent and
15 counsel, and those with proper identification as issued by
16 the Clerk of the Court of Impeachment shall be permitted
17 within the Senate Chambers during the trial.

18 (4) Marshal of Court of Impeachment

19 The Court of Impeachment shall appoint a Marshal, who
20 shall be the Sergeant at Arms of the Senate, and an
21 Assistant Marshal.

22 (5) Clerk of Court of Impeachment

23 The Clerk of the Senate shall serve and be referred
24 to as the Clerk of the Court of Impeachment and shall
25 administer the oath to all witnesses, keep the Journal of
26 the Senate sitting as a Court of Impeachment, and perform

1 all other duties usually performed by the clerk of a court
2 of record in this Commonwealth. An Assistant Clerk may
3 also be appointed.

4 (6) Presiding Officer

5 When the Senate sits as a Court of Impeachment, the
6 President of the Senate shall preside, unless another
7 presiding officer is appointed.

8 (7) Eligibility of Senators

9 Each Senator shall, by virtue of his office, be
10 eligible to participate in the impeachment proceedings,
11 and no Senator shall be subject to disqualification except
12 as provided in Rule 8.

13 (8) Attendance

14 No member shall cast a final vote on the Article of
15 Impeachment on which the member has not heard a
16 substantial portion of the testimony and evidence or
17 reviewed the video tapes of those portions of the
18 testimony and evidence which the member did not hear.

19 (9) General Powers

20 The Senate shall have the power to compel the
21 attendance of witnesses; to enforce obedience to its
22 orders, precepts, summons, and judgments; to preserve
23 order; to punish in the manner prescribed by law contempt
24 of or disobedience of its orders, precepts, summons, or
25 judgments; and to make all lawful orders and rules as it
26 may deem necessary for the performance of its duties as a

1 Court of Impeachment.

2 (10) Immunity

3 The parties, which include the House Committee and
4 Respondent, shall not call Senators, members of the House
5 Committee, its counsel and staff, the Presiding Officer,
6 counsel, or staff of the Court of Impeachment or
7 Legislative Research Commission as witnesses, nor subpoena
8 their personal records or work papers.

9 (11) Representation

10 The House of Representatives shall be represented by
11 an appointed Committee and its counsel and staff. The
12 Respondent shall appear in person or by counsel.

13 (12) Pre-Trial Conference

14 Counsel for the parties may meet with the Presiding
15 Officer on his order or on motion by any party, at a time
16 set by him, to rule on preliminary motions, stipulate to
17 facts and exhibits, and address issues that will expedite
18 trial.

19 (13) Communications From Respondent

20 There shall be no communication, either directly or
21 indirectly, from the Respondent to any Senator unless it
22 is submitted, in writing, by counsel for the Respondent,
23 directly to the Clerk of the Court of Impeachment.
24 Communications shall be restricted to information which
25 would be admissible in a court of law. The Presiding
26 Officer shall rule on the admissibility of the

1 communication.

2 (14) Communications From Individuals

3 At the time the Senate resolves itself into a Court
4 of Impeachment, no individual, except another Senator,
5 shall communicate any information relating to the
6 impeachment to a Senator within the Senate Chambers.
7 Senators shall immediately report any communication
8 prohibited by this Rule to the Presiding Officer.
9 Violation of this Rule may be subject to punishment as
10 provided in Rule 9 and Rule 27.

11 (15) Appearance

12 (a) The Senate shall appoint a day for hearing the
13 impeachment. The day for hearing shall not be less than
14 seven days after the impeachment is received in the
15 Senate. The Respondent shall be summoned by precept,
16 issued by the Clerk of the Court of Impeachment, to appear
17 on that day. The precept shall be served in person along
18 with a copy of the impeachment and a copy of the Senate
19 Resolution adopting these Rules by the Marshal of the
20 Court of Impeachment, the Assistant Marshal, or an officer
21 of the Kentucky State Police. Return of service shall be
22 noted on the precept.

23 (b) The precept shall be issued at least seven days
24 before the day appointed for trial.

25 (16) Subpoenas

26 (a) Subpoenas shall be issued by the Clerk of the

1 Court of Impeachment for the summoning of witnesses and
2 the production of books, papers, documents, or tangible
3 things, on written application of the parties or their
4 counsel. The Clerk may issue subpoenas in blank. A Senator
5 may request a subpoena through the Clerk, which shall
6 issue if either party concurs. If neither party concurs
7 with the request, a subpoena shall be issued on a motion
8 by the Senator, a second to the motion, and a vote of a
9 majority of the Senators present. The Senator may explain
10 the reasons for his request and the vote shall be taken
11 without debate. All requests for subpoenas shall be made
12 and issued at least three days before the witness is
13 scheduled to testify or produce books, papers, documents,
14 or tangible things at the hearing.

15 (b) Service of process for subpoenas shall be by
16 personal service executed by officers appointed by the
17 Court of Impeachment or other officers authorized by law
18 to serve process in the Courts of Justice of the
19 Commonwealth. Return of service shall be noted on the
20 subpoena.

21 (c) Upon disobedience to any process, the Senate may
22 order the Clerk of the Court of Impeachment to issue
23 process for arresting the witness and seizing the books,
24 papers, documents, or tangible things which have been
25 subpoenaed. Disobedience may be punished in the manner
26 provided for other witnesses before the General Assembly.

1 (d) A witnesses shall receive the same compensation,
2 and have the same privileges in going, remaining, and
3 returning, as a witness in circuit court.

4 (17) Initial Appearance by Respondent

5 On the day appointed for the trial of the
6 impeachment, the legislative business of the Senate shall
7 be suspended except as otherwise ordered by the Senate. At
8 the time fixed in the precept for the appearance of the
9 Respondent and on proof of service, the Respondent shall
10 be called to appear and answer the Article of Impeachment.
11 If he appears or counsel appears on his behalf, the
12 appearance shall be recorded. If he does not appear either
13 personally or by counsel, the same shall be recorded and
14 the impeachment proceedings conducted as though he were
15 present and had entered a plea of not guilty.

16 (18) Answer

17 The Respondent shall answer, in writing, the Article
18 of Impeachment prior to the opening of the trial of the
19 impeachment. The answer shall be filed with the Clerk of
20 the Court of Impeachment.

21 (19) Order of Proof

22 After preliminary motions are heard and decided, the
23 House Committee or its counsel may make an opening
24 statement not to exceed thirty minutes. The Respondent or
25 his counsel may then make an opening statement not to
26 exceed thirty minutes. The Presiding Officer shall

1 determine the order of the presentation of evidence.
2 Closing arguments shall follow the presentation of all
3 evidence to the Court of Impeachment and shall not exceed
4 one hour. On motion of either party before closing
5 argument, the time for closing argument may be extended by
6 a vote of a majority of the Senators present. The argument
7 shall be opened and closed by or on behalf of the House
8 Committee.

9 The Senate shall hear all evidence related to the
10 Article of Impeachment before casting the final vote on
11 the Article of Impeachment.

12 (20) Oaths

13 (a) The following oath or affirmation shall be
14 administered to each Senator and the Presiding Officer by
15 the Chief Justice of the Commonwealth or an Associate
16 Justice:

17 "I do solemnly swear or affirm that I will faithfully
18 and impartially try the impeachment against [Insert the
19 name of the Respondent], and give my decision according to
20 the law and the evidence."

21 (b) Before any witness shall give his testimony, the
22 Clerk of the Court of Impeachment shall administer to the
23 witness the following oath or affirmation:

24 "Do you solemnly swear or affirm that the testimony
25 you shall give in the matter of the impeachment of [Insert
26 the name of the Respondent and his or her title], shall be

1 the truth, the whole truth, and nothing but the truth, so
2 help you God?"

3 (21) Witnesses

4 All witnesses shall be examined by the party
5 producing them or its counsel, and then cross-examined by
6 the opposite party or its counsel. Only one attorney for
7 each party may examine each witness. The Presiding Officer
8 may permit re-direct examination and may permit re-cross
9 examination. After completion of questioning by counsel,
10 any Senator desiring to question the witness shall be
11 permitted to do so. If objection to a Senator's question
12 is raised by counsel for either party or by a Senator, the
13 Senator desiring to question the witness may request a
14 vote on the objection by a majority of the Senators
15 present.

16 (22) Motions

17 (a) The Presiding Officer may rule on all
18 objections, motions, pleas, and procedural questions made
19 by the parties or their counsel. The ruling of the
20 Presiding Officer shall be the judgment of the Senate
21 unless any Senator requests the Presiding Officer to
22 submit the question to be decided by a vote of a majority
23 of the Senators present.

24 (b) On motion of any Senator and a vote of a
25 majority of the Senators present, or at the request of the
26 Presiding Officer, the party shall commit the motion,

1 plea, or procedural question to writing.

2 (c) Except as otherwise provided, arguments by
3 parties or their counsel on motions shall be permitted
4 only with a vote of a majority of the Senators present and
5 shall not exceed fifteen minutes, unless further extended
6 by a majority vote.

7 (d) Roll call votes may be requested by a Senator
8 and shall be taken if five additional Senators concur in
9 the request by standing.

10 (23) Verdict, Judgment, and Costs

11 (a) After closing arguments, all qualified Senators
12 shall be required to vote on the question of whether to
13 sustain the Article of Impeachment. A vote to sustain the
14 Article shall be based on clear and convincing evidence
15 that the Article is true and that the Article constitutes
16 an impeachable offense. The vote on whether to sustain
17 shall be taken as a roll call vote.

18 (b) If the Respondent is acquitted on the Article of
19 Impeachment, a judgment of acquittal shall be pronounced
20 and entered on the Journal on the Court of Impeachment.

21 (c) If two-thirds of the Senators present vote to
22 sustain the Article of Impeachment the Court of
23 Impeachment shall, by resolution, pronounce judgment of
24 conviction and removal from office, and disqualifications
25 to hold any office of honor, trust, or profit under the
26 Constitution. The resolution shall be entered upon the

1 Journal of the Court of Impeachment.

2 (d) A copy of the judgment shall be filed in the
3 office of the Secretary of State.

4 (e) In an impeachment proceeding prosecuted before
5 the Senate, if the Respondent is acquitted, the
6 Commonwealth shall pay the costs of the Respondent. If the
7 Respondent is found guilty, he shall pay the Commonwealth
8 the costs incurred in behalf of the prosecution. Costs
9 shall be taxed by the Clerk of the Court of Impeachment.
10 In no event shall costs include attorneys' fees incurred
11 by the Commonwealth or the Respondent.

12 (24) Official Record

13 The transcript of the proceedings of the Senate
14 sitting as a Court of Impeachment shall be the videotapes
15 produced by Kentucky Educational Television.

16 (25) Instruction

17 At any time, on his own motion or on request of a
18 Senator, the Presiding Officer may instruct the Senators
19 on procedural matters.

20 (26) Conferences

21 At any point during the proceedings and on the
22 request of any Senator, there shall be an immediate
23 conference of all the Senators present. Conferences
24 provided for under this Rule may be closed on a vote of a
25 majority of the Senators present.

26 (27) Prohibited Conduct

1 Threats against and interference with the Court of
2 Impeachment may be prosecuted as provided by law.

3 (28) Amendments to Rules

4 These Rules may be suspended or amended by a vote of
5 two-thirds of the Senators present.

Appendix IX

SENATE OF THE
COMMONWEALTH OF KENTUCKY
SITTING AS A
COURT OF IMPEACHMENT

PRECEPT

The Senate of the Commonwealth of Kentucky, sitting as a Court of Impeachment, to Ward "Butch" Burnette:

Whereas, the House of Representatives of the Commonwealth of Kentucky did on the 28th day of January, 1991, deliver to the Senate an Article of Impeachment against you, in the following words:

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The Article of Impeachment attached hereto is approved as adopted.

Section 2. A committee, with appropriate staff,

shall be appointed by the Speaker of the House to prosecute this Article before the Senate.

Section 3. The Chairman of the committee appointed to prosecute the Article shall lay it before the Senate within five (5) days as required by law, and shall transmit a complete record of the Impeachment Committee proceedings, including the original certified copies of all documents received by the Committee pursuant to the subpoenas issued.

ARTICLE OF IMPEACHMENT

The Commonwealth of Kentucky, by the House of Representatives of the General Assembly, by virtue of the authority vested in it by Section 66 of the Kentucky Constitution and the laws of the Commonwealth, hereby charges Agriculture Commissioner Ward "Butch" Burnette through the following Article of Impeachment, to wit:

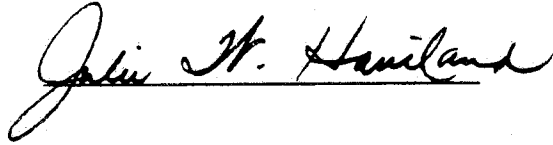
ARTICLE I

Ward "Butch" Burnette, was duly elected and qualified as Commissioner of Agriculture for the Commonwealth of Kentucky and continues to serve in that capacity; during his term of office, he engaged in conduct which resulted in his being charged with and convicted by a Franklin Circuit Court jury of Complicity to Theft by Deception over \$100, a felony in contravention of KRS 514.040 and KRS 502.020, in that he in the County of Franklin, Commonwealth of Kentucky, on or about June 20, 1988, and on or

about July 16, 1988, with the intention of promoting or facilitating the commission of theft by deception, aided one Linda Campbell in committing the offense of theft by deception when he signed and approved time sheets submitted by Linda Campbell reflecting she had worked with the Department of Agriculture full time for the entire month of June, 1988, when he knew she had not been so employed and the time sheets reflecting such employment were false; thereafter, his conviction was affirmed by the Supreme Court of Kentucky; the conduct reflected by his conviction resulted in a theft of funds belonging to the Commonwealth of Kentucky and thereby constituted a wilful disregard of his oath of office; and pursuant to Section 68 of the Constitution of Kentucky, such conduct is a misdemeanor in office and constitutes an impeachable offense under the Constitution of the Commonwealth of Kentucky.

Therefore, you, Ward "Butch" Burnette, are hereby summoned to appear before the Senate of the Commonwealth of Kentucky sitting as a Court of Impeachment, in its Chamber in the City of Frankfort, Kentucky, on Wednesday, the 6th day of February, 1991, at 10:00 a.m. (EST), then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the Commonwealth of Kentucky, sitting as a Court of Impeachment, shall make in the premises according to the Constitution of Kentucky, the laws of the Commonwealth of Kentucky, and the Rules of the Court of Impeachment.

Witness, Julie W. Haviland, Chief Clerk of the Senate and Clerk of the Court of Impeachment of the Commonwealth of Kentucky, at Frankfort, this the 29th day of January, 1991.

A handwritten signature in cursive script that reads "Julie W. Haviland". The signature is written in black ink and is positioned above a horizontal line.

Chief Clerk of the
Senate and Clerk of the
Court of Impeachment

**SENATE OF THE
COMMONWEALTH OF KENTUCKY
SITTING AS A
COURT OF IMPEACHMENT**

RETURN OF SERVICE

This is to certify that I have personally served a true and correct copy of this Precept upon the Respondent, Ward "Butch" Burnette, along with a copy of the Senate Resolution adopting Rules of Procedure for the Court of Impeachment, at the hour of 4:30 P.M., this 29th day of January, 1991, pursuant to KRS 63.040(2).


For the Court of Impeachment

By:


Marshall

RECEIPT OF RETURN OF SERVICE

This is to certify that this Precept has been returned to the Clerk of the Court of Impeachment this 29th day of January, 1991.


Chief Clerk of the Senate
and Clerk of the Court of
Impeachment

IN SENATE

SPECIAL SESSION 1991

SENATE RESOLUTION NO. 55

THURSDAY, FEBRUARY 7, 1991

Senator Joe Wright introduced the following resolution which was ordered to be printed.

A RESOLUTION recognizing and ratifying the proceedings of the Court of Impeachment of the Senate.

WHEREAS, on January 15, 1991, the Speaker of the House of Representatives of the General Assembly of the Commonwealth of Kentucky, in Extraordinary Session, appointed a committee of seven to investigate the matter of Commissioner of Agriculture, Ward "Butch" Burnette, and upon completion of its investigation to report its findings and recommendations to the House; and

WHEREAS, the committee met from time to time after being appointed to conduct its investigation, chose to accept the judicial proceedings and resulting conviction as a valid basis upon which to believe that the conduct alleged did take place, found that this conduct is a sufficient basis on which to recommend that he be impeached, and recommended to the House that a Resolution and Article of Impeachment be adopted and laid before the Senate of the General Assembly of the Commonwealth of Kentucky; and

WHEREAS, the House of Representatives adopted an Article of Impeachment in House Resolution No. 40 on January 25, 1991, by a vote of 97-0; and

WHEREAS, a committee of the House of Representatives was appointed to prosecute the Article of Impeachment and did lay the Article of Impeachment before the Senate on January 28, 1991, and demanded that the Senate take order

for the appearance of Ward "Butch" Burnette to answer the Article of Impeachment and fix a day for the Trial of Impeachment; and

WHEREAS, the Senate adopted Senate Resolution No. 41 on January 29, 1991, designating the Senate as a Court of Impeachment, adopted rules of procedure for the Trial of Impeachment, and designated Wednesday, February 6, 1991, at the hour of 10:00 a.m. (EST) as the day and hour for the trial; and

WHEREAS, the Clerk of the Court of Impeachment informed the House of Representatives and the committee appointed to prosecute the impeachment on January 29, 1991, that the Senate resolved itself into a Court of Impeachment and summoned the Respondent, Ward "Butch" Burnette, by precept on January 29, 1991, to appear before the Court of Impeachment on Wednesday, February 6, 1991, at the hour of 10:00 a.m. (EST) for a Trial of Impeachment; and

WHEREAS, the Court of Impeachment convened on Wednesday, February 6, 1991, to conduct a Trial of Impeachment of the Respondent Ward "Butch" Burnette; and

WHEREAS, the Court of Impeachment was informed that the Respondent, Ward "Butch" Burnette, tendered his resignation as Commissioner of Agriculture, effective February 5, 1991, to Governor Wallace G. Wilkinson; that Governor Wilkinson accepted the Respondent's resignation

as tendered on February 6, 1991; and that the Respondent's letter of resignation and Governor Wilkinson's acceptance of the resignation were received and filed in the office of the Secretary of State on February 6, 1991, at 10:44 a.m. (EST); and

WHEREAS, the Court of Impeachment approved a motion that it take no further action to proceed in the matter of the impeachment of the Respondent, Ward "Butch" Burnette; and

WHEREAS, counsel for the House Committee, acting on behalf of the House Committee, had no objection to the motion of the Court of Impeachment and will recommend concurrence by the full House of Representatives; and

WHEREAS, the Court of Impeachment then did rise;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky:

1 Section 1. The Senate hereby recognizes and ratifies
2 the proceedings of the Court of Impeachment.

3 Section 2. The Clerk of the Senate is directed to
4 deliver a copy of this resolution to the House of
5 Representatives.

6 Section 3. The Clerk of the Senate is directed to
7 spread the proceedings of the Court of Impeachment upon

1 the Journal at length.

IN HOUSE

SPECIAL SESSION 1991

HOUSE RESOLUTION NO. 87

THURSDAY, FEBRUARY 7, 1991

Representatives Gregory D. Stumbo, Tom Jensen, Billie D. Ark, Albert Jones, Sam M. McElroy, Anne Meagher Northup, and Ernesto Scorsone introduced the following resolution which was ordered to be printed.

A RESOLUTION concurring in the termination by the Senate of the impeachment proceedings against Ward "Butch" Burnette.

WHEREAS, on January 15, 1991, the Speaker of the House appointed a committee to investigate the matter of Agriculture Commissioner Ward "Butch" Burnette; and

WHEREAS, on January 23, 1991, the Impeachment Committee issued its final report and recommended to the House of Representatives that Burnette be impeached; and

WHEREAS, on January 25, 1991, the House of Representatives passed House Resolution 40 and the Article of Impeachment attached thereto by a vote of ninety-seven yeas and no nays; and

WHEREAS, the Chairman of the House Impeachment Committee laid the Article of impeachment before the Senate on January 28, 1991 as required by law; and

WHEREAS, the Senate scheduled the impeachment trial for Wednesday, February 6, 1991; and

WHEREAS, just before the Senate convened as a Court of Impeachment, Burnette tendered his resignation to the Governor, the resignation was accepted, and the Senate was notified that Burnette had resigned; and

WHEREAS, the Senate, sitting as a Court of Impeachment, voted by thirty-four yeas and no nays that the impeachment proceedings against Burnette should be terminated, although such termination did not constitute

dismissal of the Article of Impeachment lodged against him; and

WHEREAS, the House Impeachment Committee had no objection to the action of the Senate in terminating the proceedings;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

1 That the House does concur with the termination by the
2 Senate of the impeachment proceedings against Ward "Butch"
3 Burnette as being in the interests of the General Assembly
4 and the people of the Commonwealth of Kentucky.

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