TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE Transcriber's Office FLOOR DEBATE

June 2, 2005 LR 98

besides the law, there are possible interpretations of the law, and when the court comes to decide what interpretation of the law it's going to take, if there's more than one interpretation possible, it's going to look to the thing we call in law equity" -- what's fair, what's right, what would the people probably have intended in a particular situation if they had envisioned what in fact might have occurred. You and I well know from our own efforts in legislation that out there in the future there are situations that we will not anticipate with each and every law that we pass. We know that. The courts know that. And so there is a certain latitude there where the courts have to decide what the people would want, what is best, so long as that can be done within the language of the law. Now, let's talk about this amendment a little bit. First of all, it says all civil officers of the state for impeachment are...shall be liable to impeachment for any misdemeanor in office. Now nobody has talked about the word "misdemeanor," have they? You know why? Because the court doesn't interpret "misdemeanor" to mean the narrow view of it that you and I would assume it means, a criminal misdemeanor. It doesn't mean that. And let me...let me describe for you the process, how the court got there, so that you understand how the court can get to the Hergert case in addition. Now, back in this case, State v. Hastings, more than 100 years old, here's part of the dialogue: What under our constitution amounts to an impeachable misdemeanor? It is safe to say that no question of greater importance has ever been submitted to the consideration of this court and, solution, we have endeavored to adopt the rule best sanctioned by authority and which is just alike to the state and its servants...and its servants. It is sufficient for our purpose at present to say that we are constrained to reject the views of Professor Dwight, Judge Curtis, and other advocates of the doctrine that an impeachable misdemeanor is necessarily tending to defeat...that an impeachable misdemeanor is necessarily an indictable offense as too narrow and tending to defeat. So what happened? One side in that case had come in and argued that misdemeanor meant exactly that, a criminal indictment for a misdemeanor offense, and the court said, no, we aren't going to do that, even though the language said misdemeanor, and then they said the result is that an impeachable high crime or misdemeanor is one, in its nature or consequences, subversive of