

Hergert impeached



April 11, 2006 7:00 pm • NATE JENKINS / Lincoln Journal Star

With the last vote and by the slimmest of margins, the Legislature did to University of Nebraska Regent David Hergert Wednesday what it hadn't done in 22 years — move to unseat an elected official.

The historic vote to impeach will now lead to a possibly unprecedented court test of whether campaign-finance violations warrant removal from office, and if they are linked to the regent's duties Hergert has had for more than a year.

In what is expected to be a matter of days or weeks, not months, Hergert will be forced to explain to the state Supreme Court why his numerous violations during the 2004 campaign against incumbent Don Blank shouldn't result in the ultimate penalty for a civil officer.

Hergert, who said he was too busy attending to his large, Mitchell-based ag business to watch the debate Wednesday, plans on making his case to the high court and not resigning from the Board of Regents. Though the vote didn't remove him from office, he is suspended until the Supreme Court makes a final decision.

"He'll have his day in court," Sen. Chris Beutler of Lincoln said after the vote. It followed four hours of debate that was, at turns, fiery, probing of technical matters and personal. Beutler, architect of the state's campaign-finance laws, led the impeachment charge in tandem with Sen. Ernie Chambers of Omaha.

"Ultimately, I think we did the right thing," Beutler said.

Many other senators disagreed, as evidenced by the close vote.

"I thought it was gone, down the drain," a surprised and jubilant Ed Schrock, senator from Holdrege and vocal critic of Hergert, exclaimed to Beutler after hugging the Lincoln senator and excitedly slapping him on the back following the vote.

Schrock, who said during debate that he felt sorry NU had "a man of this integrity," wasn't the only skeptic as the roll call vote ordered at about 4:15 p.m. progressed.

Twenty-five votes were needed to adopt the 10 articles of impeachment. The articles amount to legal allegations against Hergert that the high court will consider when deciding whether he should be removed from office.

The 25th was registered when the last senator on the roll, Roger Wehrbein, was called. The Plattsmouth senator walked onto the floor of the Legislature Wednesday undecided how he would vote.

"I didn't decide until about an hour ago," Wehrbein said shortly after the vote was taken.

Wehrbein's decision turned on a cornerstone of the argument offered by senators supporting impeachment: That Hergert's offenses displayed a lack of honesty, integrity and good faith, all of which are necessary to administer an educational institution.

"There was nothing dishonest," Hergert said about his campaign. "We acknowledged there were a couple reports late and I settled the matter a year ago ... they agreed to close the case.

"The saga has just continued."

Hergert reached a record \$33,500 settlement with the state Accountability and Disclosure Commission last year after acknowledging he broke several campaign-finance laws that prevented Blank from receiving at least \$15,000 in public campaign funds in the final days of the campaign.

Hergert said he expected the vote to be close Wednesday and that, "I'm disappointed with those (senators) that didn't adhere to the advice of the legal counsel."

Hergert was referring to Clarence Mock, the Oakland attorney hired by a special legislative committee that recommended the full Legislature pursue impeachment. That recommendation went against the advice of Mock, who said the state Supreme Court would not remove Hergert from his office because all of Hergert's campaign violations — with the exception, allegedly, of one — were committed before he took office.

Hergert acted criminally, Mock concluded. But he argued that the violation that allegedly occurred after Hergert took office in January of last year would not be viewed as impeachable by the high court because it was unrelated to the duties of his office.

The state constitution says that impeachable offenses are those related to the duties of the office, and that occur while in office. A campaign statement that contained false information and that Beutler said was part of Hergert's "constructed scheme to manipulate the election process" was received by the state several days after Hergert took office.

Hergert and others, including senators who voted against impeachment Wednesday, argued that because the statement in question was signed before Hergert took office it does not indicate wrongdoing after he took his regent's chair.

Sen. Pat Bourne of Omaha, chairman of the committee that recommended the Legislature consider impeachment, repeated the argument Wednesday and said, "Why do we have to move forward with this process when we know full well it will not result in a conviction" by the state Supreme Court?

As for the idea Hergert should be impeached because he breached the oath of office by improperly influencing voters, "That's a leap into the stratosphere," said Sen. Kermit Brashear of Omaha, who was Hergert's attorney when the regent reached the settlement with the state.

Brashear said no evidence that Hergert improperly influenced voters exists and suggested that Beutler manipulated a system of his own creation — the Accountability and Disclosure Commission — to shield Blank from being pegged with campaign violations. Brashear filed a complaint against Blank months ago that is still pending.

“I’m not the father of the Accountability and Disclosure Commission. I don’t whisper in their ear and manipulate the process,” Brashear said.

Beutler said he was astounded by what he called Brashear’s conspiratorial theory. “I think that was a shameful analysis and a totally inappropriate analysis,” Beutler added.

Apart from that exchange, the discussion among lawmakers at times resembled more of a fact-finding endeavor than a debate, with senators mining each other for information with which to gain a firmer grasp of the legal issues involved.

Case law, the legal opinion of the attorney that advised against impeachment and legal analysis from senators who are attorneys were cited as senators tried to make what Sen. Mike Flood of Norfolk described as a “solemn decision.”

Ultimately, just enough senators determined that there was enough evidence for the state Supreme Court to make the next one.

“Today is not an impeachment trial. It is to determine if there are grounds valid enough to conduct that trial,” said Sen. Joel Johnson of Kearney, adding that NU students and faculty are punished for cheating.

“Can he govern and enforce these rules on those individuals when he does not obey them himself?”

Reach Nate Jenkins at 473-7223 or njenkins@journalstar.com.