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**GOVERNOR:** Line of succession to fill vacancy in office.

**LIEUTENANT GOVERNOR:** Vacancy in office.

A vacancy in the office of lieutenant governor cannot be filled.

No. 4625

April 22, 1968.

Honorable Milton Zaagman  
State Senator  
The Capitol  
Lansing, Michigan

You have requested an opinion on two related questions, the first being in the event the Governor were to resign is there any way by which the office of Lieutenant Governor can be filled by appointment or otherwise, and if by appointment, who does the appointing?

The 1963 Michigan Constitution specifies, in part:

"In case of the conviction of the governor on impeachment, his removal from office, his resignation or his death, the lieutenant governor, the elected secretary of state, the elected attorney general and such other persons designated by law shall in that order be governor for the remainder of the governor's term."<sup>1</sup>

This provisions of the Constitution differs from the corresponding provisions of the 1908 Constitution<sup>2</sup> in that the person succeeding to the office of governor becomes governor rather than acting governor.<sup>3</sup> Obviously, if the lieutenant governor were to now succeed to the governorship, a vacancy would occur in the office of lieutenant governor.

The Constitution of 1963 provides for the election of four state executive officers in the following terms:

"The governor, lieutenant governor, secretary of state and attorney general shall be elected for four-year terms at the general election in each alternate even-numbered year."<sup>4</sup>

And further provides for filling vacancies as follows:

"Vacancies in the office of the secretary of state and attorney general shall be filled by appointment by the governor."<sup>5</sup>

It is significant for two reasons that the Constitution provides for a filling of a vacancy in the offices of governor, secretary of state, and attorney general and not for a vacancy in the office of lieutenant governor. First, the constitutional provision which vests the legislative power in the Senate

<sup>1</sup> Article V, Section 26, Michigan Constitution of 1963.

<sup>2</sup> Article VI, Sections 16 and 17, Michigan Constitution of 1908.

<sup>3</sup> O.A.G. 1939-1940, page 69, held that under the provisions of the 1908 Constitution, upon the death of a Governor, the powers and duties of the Governor, devolved upon the office of the lieutenant governor and did not cause a vacancy in the office of lieutenant governor.

<sup>4</sup> Article V, Section 21, Michigan Constitution of 1963.

<sup>5</sup> *Ibid.*

and House of Representatives<sup>6</sup> refers to the power to make, alter and repeal laws not expressly or impliedly forbidden by other provisions of the state and federal Constitution and does not include the exercise of a power, such as the appointing of officers which ordinarily and intrinsically belongs to another branch of government.<sup>7</sup>

Second, the rule of construction that express mention in a statute of one thing implies the exclusion of other similar things is applicable to state constitutions.<sup>8</sup> The use of such rule of construction is appropriate here.<sup>9</sup> The application of this rule to Article V, Section 21 leads to an interpretation that it was the intention of the framers of the Constitution that a vacancy in the office of lieutenant governor not be filled.

This conclusion is supported by resort to the official record of the 1961 Constitutional Convention.<sup>10</sup> In a discussion of a proposal regarding the salary to be paid a state official performing the duties of governor, Delegate Faxon asked the following question and was answered by Delegate King.

"MR. FAXON: Mr. Chairman, Mr. King, if I may ask you a question; if the lieutenant governor is the governor, then who is the lieutenant governor?"

"MR. KING: Mr. Chairman, Mr. Faxon, the lieutenant governor becomes the governor in the event of the absence, disability, impeachment or death of the governor, and there is no replacement for him. By the same token, if the president of the United States should die, the vice president would become president, and once again the office of the vice president would not be filled, either by moving up someone below or by reelection."<sup>11</sup>

This conclusion is further supported by an application of the rule of construction that in interpreting a Constitution or part thereof it should be construed as a whole in order to as far as possible construe each provision so as to harmonize with all the others.<sup>12</sup> Article V, Section 26, which provides for the successor to the governor, evidences an intent on its face that the persons in the immediate line of succession be elected state officials. Reference to the Official Record of the 1961 Constitutional Convention serves to underscore such intent. During the course of the consideration of one of the two committee proposals, a substitute for which eventually became Article V, Section 26, an amendment was adopted to insert the word "elected" in one sentence so that the same would read:

<sup>6</sup> Article IV, Section 1, Michigan Constitution of 1963.

<sup>7</sup> *Walker v. Baker*, 196 S.W. 2d 324 (Tex., 1946).

<sup>8</sup> *Whitney v. Bolin*, 330 P 2d 1003 (Ariz., 1958), *Yelle v. Bishop*, 347 P 2d 1081 (Wash., 1959). See also 16 C.J.S. "Constitutional Law" § 21, page 89 for other cases.

<sup>9</sup> See *City of Ecorse v. Peoples Community Hospital Authority*, 336 Mich. 490 (1953).

<sup>10</sup> *Burdick v. Secretary of State*, 373 Mich. 578 (1964).

<sup>11</sup> Official Record, 1961 Constitutional Convention, Vol. II, p. 1969.

<sup>12</sup> *People v. Case*, 220 Mich. 379 (1922); *Sault Ste. Marie City Commission v. Sault Ste. Marie City Attorney*, 313 Mich. 644 (1946).

"After the lieutenant governor the line of succession and order of precedence of elected state officers who shall act as governor, shall be secretary of state, attorney general, and thereafter as provided by law."<sup>13</sup>

In explaining the amendment, Delegate Thomas G. Sharpe, proponent of the amendment, stated:

"Mr. Chairman, members of the committee, this is self-explanatory, I believe. In view of the increasing interest in the appointive system of our administrative board, there is a possibility in the next 25 years or so that we may have more appointed officials than we are planning for at this time. Because of this fact, I believe that we all would admit to ourselves that we would not want a man to fall in succession to the governorship who was appointed. By adding this word 'elected' I think it will take care of the situation, and I urge your support of this amendment."<sup>14</sup>

The use of Section 26 of the word "elected" before the office of secretary of state and attorney general is explained by referring to Section 21 which provides that vacancies in those offices may be filled by appointment of the governor. In harmonizing those two sections, it is necessary to infer that the omission of the word "elected" before the office of lieutenant governor in Section 26 coupled with the omission of a provision in Section 21 for the filling of a vacancy in the office of lieutenant governor evidences an intent on the part of the framers of the Constitution that such vacancy remain unfilled. This construction harmonizes the two provisions without doing violence to the language of either.

The contrary construction which would permit the legislature to provide by law for the filling of a vacancy in the office of lieutenant governor would present the possibility that an appointed officer would fall into the immediate line of succession to the governorship contrary to the intent of Section 26.

Accordingly, it is my opinion in answer to your first question that a vacancy in the office of lieutenant governor cannot be filled. I note that Section 67 of the Michigan election law<sup>15</sup> provided for the filling of a vacancy in the office of lieutenant governor by appointment of the governor with the advise and consent of the Senate if it is in session. As that provision of Section 67 is violative of the Constitution for the reasons stated above, it is of no force or effect.

Your second question:

"2. Is a State Senator presently serving eligible to receive this appointment if an appointment can be made?"

is made moot by the answer given to your first question.

FRANK J. KELLEY,  
*Attorney General.*

<sup>13</sup> Official Record, 1961 Constitutional Convention, Vol. II, p. 1968.

<sup>14</sup> *Ibid.*

<sup>15</sup> Section 67, Act 116, P.A. 1954, as last amended by Act 34, P.A. 1963, 2nd Ex. Sess., being M.S.A. 1968 Cum. Supp. § 6.1067.