



PROVISIONS RELATED TO FILLING A VACANCY IN THE OFFICE OF LIEUTENANT GOVERNOR

The 1963 Michigan Constitution makes clear the line of succession to the office of the governor when a vacancy occurs. Under Article V, Section 26, the first person to fill a gubernatorial vacancy is the constitutionally-established lieutenant governor. However, the Constitution is silent with respect to filling a void in the office of lieutenant governor. The lack of specific constitutional provisions for filling a vacancy in the office of lieutenant governor was a change from the prior 1908 Constitution.

Roles of the Lieutenant Governor. The office of the lieutenant governor is created in Article V, Section 21 of the 1963 Constitution. Article V, Section 25 provides that this office has both executive and legislative roles. The executive role of Michigan's lieutenant governor is largely ceremonial. The Constitution does not invest this position with any unique executive branch powers as Article V, Section 1 vests all executive power with the governor. The lieutenant governor may perform duties assigned by the governor under Article V, Section 25; however, this section prohibits the governor from delegating any of his/her powers to the lieutenant governor.

In the governor's absence from the state (e.g., attendance at out-of-state meetings and foreign trade missions) or in a case of the governor's inability to serve (e.g., placed under anesthesia for medical procedures), the powers of the governor first devolve to the lieutenant governor. This is not equivalent to a scenario where the person elected to the position of lieutenant governor ascends to the office of the governor because of a vacancy in that office. In the former case, the lieutenant governor serves temporarily as the governor whereas in the latter the lieutenant governor becomes the governor until the next gubernatorial election.

The lieutenant governor does not have any express executive powers; however, the Michigan Constitution expressly provides this position with legislative powers. Article V, Section 25 designates the lieuten-

ant governor as the president of the Michigan Senate, the presiding official of the chamber. Twenty-five other states also grant this role to their lieutenant governor. The lieutenant governor's role and responsibilities as the presiding officer of the Michigan Senate are prescribed by the rules of the body. Further, Section 25 grants the lieutenant governor the power to cast the deciding vote in the event of a tie vote in the 38 member Michigan Senate, the only time that this official may vote.

Gubernatorial Succession. In Michigan, the office of lieutenant governor is first in line of succession to the governorship, a feature shared with 43 other states. (Note: Four states designate the senate presiding officer as successor and three states have the secretary of state as successor.) Vacancies in the office of governor can occur as a result of impeachment, removal, resignation, or death. Following the lieutenant governor, the next in line is the elected secretary of state, the elected attorney general, and others as prescribed by law (Article V, Section 26).¹ Section 67 of the Michigan Election Law (Public Act 116 of 1954) designates

¹ In the debate surrounding the construction of Section 26, delegates to the 1961 Constitutional Convention argued the importance of including the word "elected" before "secretary of state" and "attorney general" to ensure that the line of succession to the governorship only consists of elected officials, as opposed to appointed ones. Section 21 gives the governor the authority to appoint individuals to fill vacancies in the offices of secretary of state and attorney general.

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the president pro tempore of the Senate and the speaker of the House of Representatives, in that order, to follow the attorney general in the line of gubernatorial succession.

The last time that a sitting Michigan governor vacated the office was in 1969, when Governor George Romney resigned to become the Secretary of the U.S. Department of Housing and Urban Development. William Milliken had been reelected lieutenant governor in 1966 with Governor Romney and succeeded him as governor on January 22, 1969. As a result, a vacancy in the office of lieutenant governor was created effective immediately upon Milliken's ascension to the governorship and remained vacant until the next gubernatorial election in 1970.

Vacancies in the Office. Whereas the Michigan Constitution provides a method for filling vacancies in the other statewide elected executive offices (e.g., governor, secretary of state, and attorney general), it is silent with respect to a vacancy in the office of lieutenant governor. Article V, Section 21 provides that vacancies in the offices of secretary of state and attorney general are to be filled by gubernatorial appointment, suggesting that the framers of the 1963 Constitution intended vacancies in the office of lieutenant governor to go unfilled. This is confirmed by reviewing the official record of the 1961 Constitutional Convention, which contains an exchange between two delegates directly related to this issue.

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.²

Lacking constitutional authority to fill vacancies in the office of lieutenant governor, the office must remain unfilled until the next gubernatorial election. The void of constitutional authority, however, does not apply to the role played by the lieutenant governor as president of the Michigan Senate. In 1995, Michigan Attorney General Frank Kelley opined that the Michigan Senate has the authority to select its presiding officer in the event of a vacancy in the office of lieutenant governor.³ The role of the person filling such a position would be limited to the duties of the presiding officer of the Michigan Senate and would not comprise other roles of the lieutenant governor, including breaking a tie vote. Senate rules contain an ordering of presiding officers in the absence of the president of the senate.

Issues When a Vacancy Occurs. A vacancy in the office of lieutenant governor raises a number of

issues that merit exploration. Some issues are practical, dealing with established governmental procedures, while others are purely political.

With respect to the practical concerns, a vacancy in the office of lieutenant governor would create a vacancy on the State Administrative Board, a body which also consists of the governor, secretary of state, attorney general, treasurer, superintendent of public instruction, and transportation director. This Board, created in state law in 1921, has general supervisory control over the administrative activities of all state departments and agencies through contract and lease approvals and claim settlements. Without the lieutenant governor on the Board, the body would consist of six members and tie votes could occur. A method for breaking a tie would have to be developed.

Similarly, a void in the office of the president of the Senate would remove the tie-breaking mechanism for votes. Senate rules do not contemplate or provide for an alternative method for breaking an equally divided vote, as the Michigan Constitution invests this authority solely with the lieutenant governor. This is different from the voting procedure in the House of Representatives, which consists of 110 members. In that body, an affirmative vote of a simple majority (56 members) is required to pass a bill. Unlike the process in the Michigan Senate, a tie vote in the House does not go to a deciding IIIth vote. An equally divided vote in the House constitutes a failed vote.

² Official Record, 1961 Constitutional Convention, Vol. II, p. 1969.

³ OAG 6849, 1995.

One political consideration that arises when a lieutenant governor ascends to the governorship relates to the line of succession and the political party affiliation of the individuals in that line. Without a lieutenant governor in place, the secretary of state would assume the gubernatorial powers and duties in the event that the governor leaves the state or is unable to perform the duties of the office. The current lieutenant governor is from a different political party than the next three individuals in line for succession of the governor.

In some states, the governor and the lieutenant governor represent different political parties. In Michigan, the governor and the lieutenant governor are elected on the same ticket by a joint vote, a feature the state shares with 25 of the other 43 states that have a lieutenant governor. In the other 18 states, the governor and lieutenant governor appear on separate tickets, and thus may come from different political parties. The joint election of the governor and lieutenant governor was a new feature of the 1963 Constitution and was intended to ensure that the same political party would remain in control of the executive branch should a vacancy occur in the governorship, at least until the next gubernatorial election.

Does Michigan Need a Procedure to Fill a Vacancy in the Office of Lieutenant Governor? The 1908 Michigan Constitution contained a

provision (Article VI, Section 10) to require the governor to appoint, with the consent of the Michigan Senate, a person to fill a vacancy in the office of the lieutenant governor whenever one occurs. This provision was not included in the 1963 Constitution. Today, the question arises as to whether Michigan should have a constitutional process for filling a vacancy in the office of lieutenant governor. The answer to this question lies in examining the roles and duties of this position as currently constituted.

With respect to the position's role as an elected executive official, an unfilled vacancy poses few problems as the position has no express powers or duties. The most important role of the lieutenant governor is as the first in line as the "governor in waiting".

The lieutenant governor does have express legislative powers that cannot be carried out by another individual in the event of a vacancy. Specifically, a vacancy in the office of lieutenant governor means that tie votes will go undecided. Is this a problem for the legislative process in the Senate? The legislative process is one of give and take that rarely results in a tie vote. It can be argued that the processes of consensus and compromise that underlie legislative decision making will have to adapt to the reality that a tie vote will result in a failed vote and adjust accordingly. The decision making

process in the Michigan House of Representatives does not provide a tie-breaking vote, which has not rendered the legislative process in that chamber inoperable.

Establishing a procedure for gubernatorial appointment of a lieutenant governor could result in a person serving as governor that was not directly elected by Michigan citizens. The 1908 Constitution allowed for such an occurrence. Under Article VI, Section 10 it was possible that an "appointed" lieutenant governor could serve as the governor, either temporarily as a result of the elected governor's absence from the state or permanently as a result of the elected governor's death, resignation, impeachment, or removal. This is part of the rationale behind the current constitutional ordering of gubernatorial succession, i.e., *elected* secretary of state and *elected* attorney general.

It does not appear that the functioning of Michigan state government, either in the executive or legislative branch, would be adversely affected in any significant way by a vacancy in the office of lieutenant governor. There may be political concerns when a lieutenant governor ascends to the office of governor and the next in line of gubernatorial succession is an elected secretary of state from a different political party. However, it is unlikely that these concerns would have significant effects on the every day activities of state government.