

1977 WL 37046 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 7, 1977

\*1 The Honorable L. Marion Gressette  
President Pro Tempore of the Senate  
St. Matthews, South Carolina

Dear Senator Gressette:

You have requested that I advise you concerning the circumstances in which you would exercise the powers of the Governor or Lieutenant Governor, and I advise as follows:

Article IV, Section 9, of the Constitution provides:

‘The Senate shall as soon as practicable after the convening of the General Assembly choose a President Pro Tempore to act in the absence of the Lieutenant Governor. A member of the Senate acting as Lieutenant Governor shall thereupon vacate his seat and another person shall be elected in his stead.’

The absence of the Lieutenant Governor may be of two types: temporary or permanent, neither of which is defined by law. If it is of a temporary nature, your assumption of the powers of the Lieutenant Governor does not cause a vacancy in your seat as a member of the Senate; if the absence is of a permanent nature, it would cause you to vacate your seat and another person would then be elected in your stead. I reach this conclusion in view of other provisions of the Constitution relating to the Executive Department and, in particular, Section 7 of Article IV, which refers to the inability of the Governor or Lieutenant Governor to serve for any reason whatsoever, and which provides that their duties shall ‘for the time being’ devolve in statutory order of succession. You, as President Pro Tempore, are first in statutory order of succession. Section 7 provides further that while so acting, as first in statutory line of succession, you are not in violation of the dual officeholding provision of the Constitution. This precise wording, as well as the history of the section, makes it clear that the inability of the Governor and Lieutenant Governor to serve has reference only to inability of a temporary nature, such as that which has existed in recent days during the absence from the State of both the Governor and Lieutenant Governor. In such circumstances, you are empowered to act as Governor but you do not thereby vacate your seat in the Senate. I do not believe that the Constitution intends that you would not forfeit your seat while acting temporarily as Governor pursuant to Article VII but that you would forfeit your seat while acting as temporary Lieutenant Governor.

I therefore advise that when the Governor and Lieutenant Governor are temporarily unable to perform their duties, the office of Governor devolves upon you pursuant to Section 1–3–120 of the Code of Laws for South Carolina, 1976, and that you do not, in such circumstances, lose your seat as a member of the Senate.

There are a number of circumstances in which the Lieutenant Governor may be permanently ‘absent’ within the meaning of Section 9: The Governor may die, decline to serve, be removed by impeachment, resign, become permanently disabled or permanently remove from the State, in which event the Lieutenant Governor would accede to the Governorship and you would accede to the office of Lieutenant Governor. Where there is such a permanent accession by the Lieutenant Governor and a consequent accession by you as President Pro Tempore to the Lieutenant Governorship, a vacation of your Senate seat would result; whereas, in temporary circumstances, you would serve as Lieutenant Governor or Governor, as the case may be, without vacation of your seat.

\*2 The powers which you are authorized to exercise as Governor in temporary circumstances are, in my opinion, those of an emergency nature. Emergency powers are not defined but must depend upon circumstances as they present themselves and, ultimately, may be resolved by the courts.

The conclusions expressed herein are based on present constitutional provisions, the Constitution of 1895, and the history of the present constitutional provisions as set forth in the Report of the Constitutional Study Committee and the Minutes of that Committee.

With best wishes,  
Very truly yours,

Daniel R. McLeod  
Attorney General

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