

DEPARTMENT ATTORNEY GENERAL

*Office Memorandum*

TO : THE HONORABLE ALEC G. OLSON  
President of the Minnesota Senate

DATE: Dec. 17, 1976

FROM : ROBERT C. HENTGES *RCH*  
Special Assistant  
Attorney General

PHONE: 296-2652

SUBJECT: SUCCESSION OF THE HONORABLE ALEC G. OLSON TO THE OFFICE OF LIEUTENANT GOVERNOR

As you are aware, when a vacancy occurs in the office of governor, the lieutenant governor becomes governor for the duration of the vacancy. Minn. Const. art. V § 5; Minn. Stat. § 4.06 (1974). In turn, when a vacancy occurs in the office of lieutenant governor, the last duly elected presiding officer of the senate becomes lieutenant governor. *Id.* In each case, the succeeding officer must take an oath or affirmation before entering upon the duties of the assumed office. Minn. Const. art. V § 6.

As the last duly elected presiding officer of the senate and upon taking an oath or affirmation, you will succeed to the office of lieutenant governor in the event Lt. Gov. Rudy Perpich becomes governor pursuant to the constitutional scheme of succession. Because you currently hold the office of senator in the sixty-ninth session of the legislature and are a senator-elect for the seventieth session of the legislature, it appears that you are subject to the provisions of Minn. Const. art. IV § 5.<sup>1</sup> That section provides:

---

1 /

In the case of State ex rel. Marr v. Stearns, 72 Minn. 200, 75 N.W. 210 (1898), reviewed on other grounds 179 U.S. 223 (1900) the Minnesota Supreme Court held that the presiding officer of the senate may remain a senator when he becomes lieutenant governor by reason of a vacancy in that office. Consequently, there would appear to be authority for you to remain a senator after your succession to lieutenant governor and during your term in that office. However, the rationale of State ex rel. Marr v. Stearns, *supra*, is sufficiently weak to raise serious doubts as to whether it would be adopted by the Court if the issue were presented to it again.

Dec. 17, 1976

No senator or representative shall hold any other office under the authority of the United States or the state of Minnesota, except that of postmaster or of notary public. If elected or appointed to another office, a legislator may resign from the legislature by tendering his resignation to the governor.

In order to avoid the prohibition of Minn. Const. art. IV § 5 and assuming succession becomes necessary prior to the administration of oaths for the seventieth session of the legislature, it appears that you should take the following actions upon taking an oath or affirmation and entering upon the duties of lieutenant governor.

First, you should resign from the sixty-ninth session of the legislature by tendering your resignation to the governor. Minn. Const. art. IV § 5. Second, and this may be done in conjunction with your resignation from the expiring session, you should inform the governor that, as senator-elect to the seventieth session, you do not intend to take the oath for that office. This would allow the governor to call for a special election pursuant to Minn. Stat. § 202A.62 subd. 2 (Supp. 1975) and Minn. Stat. § 351.02(6) (1974).<sup>2</sup>

You may also wish to send a copy of your resignation to the secretary of the senate so that he or the temporary secretary may note your resignation in order to fill the silence that will otherwise follow announcement of District 21 during the call of the roll on January 4, 1977.

---

2/

It appears that if you indicate your intention to refuse to take the oath of office as senator in the seventieth session, your seat will be vacant as of the time the oath would have been administered. See, Minn. Stat. § 351.02(6) and (8) (1974).