



State of Minnesota

SENATE

MEMO

November 26, 1976

TO: Senator Alec G. Olson
FROM: Bob Ambrose, Senate Majority Research
RE: Special Elections -- State Senate

There are several questions regarding your resignation which remain unresolved after reading the statutes and talking with Special Assistant Attorney General Robert Hentges (296-2652). Mr. Hentges is looking into the unresolved questions, but in the meantime I thought it would be wise to summarize the statutory provisions and note the nature of the unresolved questions.

OPTIONS

I. Immediate Resignation

Minnesota Statutes, 1975 Supplement, Section 202A.61 provides that a vacancy in a seat in the state legislature "shall be filled for the unexpired term by election upon the writ of the governor If there will not be any session of ... the legislature before the expiration of the term in which the vacancy exists, it shall not be necessary to fill the office." [emphasis added]

Thus, it seems clear that if you resign from the Senate today, since the legislature will not meet again before the end of your current term, there would be no obligation to fill the unexpired term. If a special election was held, it would come right in the middle of the Christmas holiday season.

It is interesting to note that if your resignation had occurred last year at this time, i.e., after the end of the session in an odd-numbered year but more than 33 days prior to the start of the next session, the governor would have been mandated to "seasonably" call a special election early enough that the person elected could take office at the opening of the next session. (Minnesota Statutes, 1975 Supplement, Section 202A.62, subdivision 3)

II. December Resignation

If you resign after about December 2, but before the session opens on January 4, 1977, the provisions of Minnesota Statutes, 1975 Supplement, Section 202A.62, subdivision 2 would apply. This subdivision provides that if "... the legislature will be in session so that a person elected as provided in this section could take office and exercise the functions thereof immediately after his election, the governor shall issue and file his writ within five days after the vacancy occurs, calling the special election for the earliest possible time thereafter which will permit the giving of notice of the special election and the primary therefor as provided in section 202A.63, subdivision 3 [special primary must be at least 14 days before the special election], and in any event not more than 28 days after the issuance of the writ." [emphasis added]

December 2 is 33 days before January 4. Thus, if you resign on December 2 or after, the governor would have no more than five days in which to issue a writ and the special election must occur no more than 28 days thereafter (allowing at least 14 days between the special primary and the special election). The maximum time span between your resignation and the special election would be 33 days.

III. January Resignation

If you do not resign until the legislature convenes on January 4, the provisions of Minnesota Statutes, 1975 Supplement, Section 202A.62, subdivision 2 would still apply. Thus the governor would have up to 5 days in which to issue his writ and the election must occur no more than 28 days later. In this instance, the special election would have to occur on or before February 6, 1977.

UNRESOLVED QUESTIONS

Mr. Hentges is trying to come up with answers to the following questions:

1. If a special election occurs before January 4, would the election be solely for the term ending on January 4 or would it also be for the term beginning on that date?

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2. What creates a vacancy? Is it possible to renounce your certificate of election for your new term while continuing to serve out your present term?
3. When you resign to become Lieutenant Governor, does the vacancy occur immediately or not until the Senate convenes on January 4? The probable answer to this question is that the vacancy occurs as soon as you are sworn in as Lieutenant Governor or whenever you resign, whichever is earlier.

Mr. Hentges still did not have answers to these questions when I checked back with him today. I will contact him again next week.

BA:vb