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SPRINGFIELD

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FILE NO. S-269

OFFICERS:
Lieutenant Governor's
Compensation

Honorable Michael J. Howlett
Auditor of Public Accounts
Capitol Building
Springfield, Illinois 62706

Dear Sir:

In your request of recent date for my opinion,
you state in part:

"In view of the fact that the present Lieutenant Governor will continue in office under his present term until the second Monday of January, 1973, the question is submitted for your consideration and advice, whether the Lieutenant Governor should be paid only his salary of \$25,000 or whether he should be paid additionally an amount which would bring his total salary in line with his total compensation under the 1870 constitution, perhaps based on the year 1970."

In your letter of inquiry you refer to Sections 14 and 21 of Article V of the Illinois Constitution of 1970, Section 23 of Article V of the Illinois Constitution of 1870 and paragraph 1, ch. 53, Ill. Rev. Stat. of 1969.

There are at least nine sections of the Illinois Constitution of 1970 which in some way affect the Lieutenant Governor. They read in whole or in part as follows:

ARTICLE V

Section 1. Officers

"The Executive Branch shall include a * * *, Lieutenant Governor * * * elected by the electors of the State. They shall keep the public records and maintain a residence at the seat of government during their term of office.

Section 2. Terms

"These elected officers of the Executive Branch shall hold office for four years beginning on the second Monday of January after their election and, except in the case of the Lieutenant Governor, until their successors are qualified. They shall be elected at the general election in 1978 and every four years thereafter.

Section 3. Eligibility

"To be eligible to hold the office of * * *, Lieutenant Governor, * * * person must be a United States citizen, at least 25 years old, and a resident of this State for the three years preceding his election.

Section 4. Joint Election

"In the general election for Governor and Lieutenant Governor, one vote shall be cast jointly for the candidates nominated by the

same political party or petition. The General Assembly may provide by law for the joint nomination of candidates for Governor and Lieutenant Governor.

Section 7. Vacancies in Other Elective Offices
" * * * If the Lieutenant Governor fails to qualify or if his office becomes vacant, it shall remain vacant until the end of the term.

Section 14. Lieutenant Governor - Duties
"The Lieutenant Governor shall perform the duties and exercise the powers in the Executive Branch that may be delegated to him by the Governor and that may be prescribed by law.

Section 21. Compensation
"Officers of the Executive Branch shall be paid salaries established by law and shall receive no other compensation for their services. Changes in the salaries of these officers elected or appointed for stated terms shall not take effect during the stated terms. (Emphasis added)

TRANSITION SCHEDULE

Section 1. Delayed Effective Dates
"(a) * * * the incumbent Lieutenant Governor for the remainder of his term shall be the President of the Senate with a right to vote when the Senate is equally divided. (Emphasis added)

Section 3. Election of Executive Officers
" * * *, Lieutenant Governor, * * * elected in 1972 shall serve for four years and those elected in 1976 for two years."

The provisions of Paragraph 1, Chapter 53, Illinois Revised Statutes 1969 read, inter alia:

* * * * *

"To the Lieutenant Governor, the sum of \$25,000; Provided, that if the powers and duties of the

office of Governor shall devolve upon the Lieutenant Governor, the Lieutenant Governor shall during the continuance of such emergency, be entitled to the emoluments thereof as herein provided."

Under the Illinois Constitution of 1870 the Lieutenant Governor holds his office for a term of four years from the second Monday of January next after his election and he shall perform such duties as may be prescribed by law.

(Art. V, Sec. 1 of the Illinois Constitution of 1870.)

The election of Lieutenant Governor shall be held on Tuesday next after the first Monday of November in the year of our Lord 1872 and every four years thereafter (Art.V, Sec. 3 of the Illinois Constitution of 1870). So, the incumbent Lieutenant Governor of the State of Illinois was elected on Tuesday next after the first Monday in November, 1968, and holds his office for a term of four years from the second Monday of January, 1969.

Section 17 of Article V of the Illinois Constitution of 1870 provides:

"In case of the death, conviction on impeachment, failure to qualify, resignation, absence from the state, or other disability of the governor, the powers, duties and emoluments of the office, for the residue of the term, or

until the disability shall be removed, shall devolve upon the lieutenant governor."

In Town of Breesse v. Dickey, 116 Ill. 527 at 535, Justice Sheldon, who delivered the opinion of the court, said:

"The word 'emoluments' is peculiarly appropriate to office, denoting, in its most ordinary signification, the profit which is annexed to the possession of office, as salary, fees and perquisites."

It thus seems clear that "emoluments of the office" as the term is used in Section 17 of Article V of the Illinois Constitution of 1870, does not purport to increase or decrease the salary of the Lieutenant Governor while acting as such, but these "emoluments" are salary, fees and perquisites which the Lieutenant Governor is entitled to receive while acting as Governor of the State.

Article V, section 6, reads as follows:

"Gubernatorial Succession

"(a) In the event of a vacancy, the order of succession to the office of Governor or to the position of Acting Governor shall be the Lieutenant Governor, the elected Attorney General, the elected Secretary of State, and then as provided by law.

"(b) If the Governor is unable to serve because of death, conviction on impeachment, failure to qualify, resignation or other disability, the office of Governor shall be filled by the officer next in line of succession for the remainder of the term or until the disability is removed.

"(c) Whenever the Governor determines that he may be seriously impeded in the exercise of his powers, he shall so notify the Secretary of State and the officer next in line of succession. The latter shall thereafter become Acting Governor with the duties and powers of Governor. When the Governor is prepared to resume office, he shall do so by notifying the Secretary of State and the Acting Governor.

"(d) The General Assembly by law shall specify by whom and by what procedures the ability of the Governor to serve or to resume office may be questioned and determined. The Supreme Court shall have original and exclusive jurisdiction to review such a law and any such determination and, in the absence of such a law, shall make the determination under such rules as it may adopt."

The explanation therein submitted by the Sixth

Constitutional Convention reads as follows:

"This section replaces Article V, Sections 17 and 19 of the 1870 Constitution. It changes the order of succession so that if the Governor and the Lieutenant Governor cannot serve, the office falls upon the elected Attorney General, then the elected Secretary of State, and then according to law. The presiding officers of the General Assembly are removed from the immediate line of succession. This section eliminates as a cause of gubernatorial 'disability' a short absence by the Governor from the State. This section covers situations in which the Chief Executive is unable to serve."

Although the Lieutenant Governor will no longer act as Governor when the incumbent Governor is absent from the state, there may be occasions upon which he will become Governor or Acting Governor under the 1970 Constitution. Should this occur he will become entitled to the emoluments of that office as provided by Ill. Rev. Stats. 1969, Chap. 53, par. 1.

In specific answer to your inquiry, it is my opinion that the Lieutenant Governor should be paid his salary of \$25,000.00 per annum until his term expires on January 10, 1973, and he should be paid any of the "emoluments of the office" of Governor, as provided in par. 1, Ch. 53, Ill. Rev. Stat. 1969, in the event that he should serve as Governor or Acting Governor.

Very truly yours,

A T T O R N E Y G E N E R A L