

Opinion No. 58-193

September 22, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mr. Edward M. Hartman, Director, Department of Finance and Administration, P. O.
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QUESTION

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1. May the President Pro-Tempore of the Senate by reason of his performance of the duties of the Governor be compensated for his services?
2. If the answer to the aforestated question is in the affirmative what is the manner of payment and what source of funds may be considered?

CONCLUSIONS

1. Yes.
2. See opinion.

OPINION

ANALYSIS

By Article V, § 7 New Mexico Constitution, there is provided in part:

"In case the governor is absent from the state, or is for any reason unable to perform his duties, the lieutenant-governor shall act as governor, with all the power, duties and emoluments of that office until such disability be removed. In case there is no lieutenant-governor, or in case he is for any reason unable to perform the duties of governor, then the secretary of state shall perform the duties of governor, and, in case there is no secretary of state, then the president pro tempore of the senate, or in case there is no president pro tempore of the senate, or he is for any reason unable to perform the duties of governor, then the speaker of the house **shall succeed to the office of governor, or act as governor as hereinbefore provided.**"

Unquestionably, from the provision quoted, the president pro tempore of the senate would act in the governor's stead on any occasion where the other specified and elected executive officials are for any reason not available to render the services required of them by law. And from the language above underlined, it is our opinion that the

president pro tempore as well as the speaker of the house may look to and receive the same emoluments of office known to the governor. It should be pointed out that the conclusions herein reached are stated with due regard to the legal maxim *expressio unius est exclusio alterius* in *In The Matter of the Attorney General*, 2 N.M. 49, as may elsewhere serve as a guide to statutory construction. Instantly, however, we feel the maxim has no applicability in view of the language emphasized.

In response to the second question above put reference is made to § 4-1-1, N.M.S.A., 1953, which specifically provides:

"Whenever the lieutenant-governor shall be called upon to exercise the powers and duties of the governor of the state of New Mexico by reason of the governor's absence or inability to perform his duties, then, in that event, the lieutenant-governor shall receive as compensation for his services to the state of New Mexico while serving in the place and stead of the governor, as above provided, a salary in a sum equal to that received by the governor for a like period of service, and a per diem allowance of fifteen (\$ 15.00) dollars per day."

And § 4-1-2:

"The salary and per diem of the lieutenant-governor, as provided in section 1 (4-1-1) hereof, shall be paid by warrants drawn by the state auditor on the state treasurer and shall be payable out of the general fund."

Recalling again the provisions of Article V, § 7, *supra*, as must be read in conjunction with the statutes immediately hereinbefore quoted, it is our opinion that the president pro tempore of the senate, while acting as governor, is entitled to be paid a sum equal to that received by the governor and that such payment shall be made by warrants drawn on the state treasurer, and payable from the general fund.

Also, it should be pointed out that in keeping with the provisions of § 4-5-1.1, N.M.S.A., 1953 (p.p.).

"The **annual compensation** to be paid elective state executive officers shall be paid out of the **general fund** and be as follows:

Governor seventeen thousand five hundred dollars (\$ 17,500); . . ."

Finally, it is our opinion that the president pro tempore of the senate while acting as governor, should be paid on a basis of a three hundred and sixty five day annual compensation period.