

## Opinion No. 71-05

January 21, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Honorable Robert Jordan State Representative Legislative-Executive Building  
Santa Fe, New Mexico 87501

### QUESTIONS

#### QUESTION

In view of our present four-year term for Governor and Lieutenant Governor, if the Office of Governor should become vacant prior to the 1972 election, would the Lieutenant Governor fill the entire unexpired term or would the office be on the 1972 general election ballot for the balance of the unexpired term?

#### CONCLUSION

The Lieutenant Governor would fill the Office of Governor for the entire unexpired term of office.

### OPINION

#### {\*8} ANALYSIS

The pertinent constitutional provision is Article 5, Section 7, the following portion of which is applicable in answering your question:

"If after the governor-elect has qualified a vacancy occurs in the office of governor, the lieutenant-governor shall succeed to that office, and to all the powers, duties and emoluments thereof, provided he has by that time qualified for the office of Lieutenant-governor."

There is no other constitutional or statutory provision relating to succession to the office of governor in the situation which you pose. In the case of some offices the conclusion would be different.

Article 5, Section 5, New Mexico Constitution contains the following provision:

{\*9} "Should a vacancy occur in any state office, except Lieutenant-governor and member of the legislature, the governor shall fill such office by appointment, and such successor shall hold office **until the next general election**, when his successor shall be chosen for the unexpired term." (Emphasis added.)

Like provision is made for the offices of district attorney, district and supreme court judge and county commissioner. Article 20, Section 4, New Mexico Constitution.

Vacancies in the offices of United States Senator and Representative are covered by Sections 3-15-14 and 3-15-18, N.M.S.A., 1953 Compilation, respectively.

In the factual situation which you present, since there is no mention whatever of any election to fill the unexpired term, the lieutenant-governor succeeds to the office of governor for the remainder of the term of office to which the governor was elected.

By: Oliver E. Payne

Deputy Attorney General