

March 14, 2016 -- Advisory Letter -- Opinion Request -- Lieutenant Governor's Role While Serving as Acting Governor

The Honorable John Sanchez
Lieutenant Governor
Office of the Governor
State Capitol, Room 417
Santa Fe, NM 87501

Re: Opinion Request – Lieutenant Governor's Role While Serving as Acting Governor

Dear Lieutenant Governor Sanchez:

You have requested an Attorney General's Opinion concerning whether the lieutenant governor may preside over the New Mexico Senate when acting as governor. For the reasons explained below, we conclude that the lieutenant governor cannot preside over the senate when acting as governor.

The New Mexico Constitution charges the lieutenant governor with the duty of presiding over the senate. See N.M. Const. art. V, § 81; N.M. Const. art. IV, § 82. In the governor's absence, the constitution provides that the lieutenant governor "shall act as governor, with all the powers, duties and emoluments of that office" until the governor's return. N.M. Const. art. V, § 7.

You ask whether the lieutenant governor can simultaneously fulfill both of these constitutional duties, which raises an issue of constitutional interpretation. The rules of statutory construction "apply equally" to an interpretation of the constitution. *State v. Boyse*, 2013-NMSC-024, ¶ 8, 303 P.3d 830 (internal quotation marks and citation omitted). Under the rules of constitutional construction, "constitutional provisions should be read together and harmonized in their application if possible." *Denish v. Johnson*, 1996-NMSC-005, ¶ 32, 121 N.M. 280, 910 P.2d 914 (internal quotation marks and citation omitted); see also *In re Generic Investigation into Cable Television Servs.*, 1985-NMSC-087, ¶ 13, 103 N.M. 345, 707 P.2d 1155 ("The provisions of the Constitution should not be considered in isolation, but rather should be construed as a whole.").

Under the state's constitution, the lieutenant governor is designated to preside over the senate. See N.M. Const. art. V, § 8. In addition to this duty, Article V, Section 7 provides for the lieutenant governor to "act as governor" in the governor's absence. Article IV, Section 8 of the New Mexico Constitution allows for the president pro tempore to preside over the senate in the absence of the lieutenant governor. See N.M. Const. art. IV, § 8 ("The senate shall elect a president pro tempore who shall preside in the absence of the lieutenant governor and shall serve until the next session of the legislature."). By including this provision, the framers contemplated a situation in which the lieutenant governor would not be able to preside over the senate. Thus, applying the

rules of statutory construction to harmonize these provisions, the lieutenant governor may either act as the lieutenant governor, or the governor, but not both. See Wash. Att’y Gen. Op. 1951-53 No. 469 (1953) (explaining that the lieutenant governor “assumes all of the duties, powers, and prerogatives of the governor while he so acts” but cannot have “greater power or duty than that of [the] qualified governor”).

For these reasons, we conclude that the lieutenant governor cannot preside over the senate when acting as governor. You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Although we are providing you with our legal advice in the form of a letter instead of an Attorney General’s Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Respectfully,

Jennifer N. Salazar
Assistant Attorney General

cc: Mark Van Dyke, Chief of Staff, Office of the Lt. Governor

[1] Article V, Section 8 of the New Mexico Constitution states: “The lieutenant governor shall be president of the senate, but shall vote only when the senate is equally divided.”

[2] Article IV, Section 8 of the New Mexico Constitution states, in relevant part: “The senate shall be called to order in the hall of the senate by the lieutenant governor. The senate shall elect a president pro tempore who shall preside in the absence of the lieutenant governor and shall serve until the next session of the legislature.”