

Opinion No. 13-975

January 4, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Antonio Lucero, Secretary of State, Santa Fe, N. M.

SECRETARY OF STATE.

No part of duty of Secretary of State to call House of Representatives to order on January 14, 1913.

OPINION

{*136} I have had your letter of the 28th ultimo on my desk for some days but have not been able sooner to make answer to it. In that letter you inquire whether the language of Section 8 of Article IV of the Constitution, makes it the duty of the Secretary of State to call to order the House of Representatives every time there is a session held and to preside over its deliberations until the house has elected, by a majority vote, one of its members to be its presiding officer or speaker.

Having been informed that there is some diversity of views on this subject, with special reference to the approaching session of the legislature, I have made some effort to ascertain what can be urged for or against its being your duty to call the house to order when it next meets. I learn it is urged by some of those who are of opinion that there must be a new organization of the house at the approaching session by the election of a new speaker, that the constitution provides a general system of elections to "be held in the state on the Tuesday after the first Monday in November in each even numbered year," (Section 6 of Article XX) and that in January, next after each of such elections, the legislature is to meet in regular session (Section 5 of Article IV), and that the direction as to the duty of the speaker contained in the section referred to in your letter applies to the regular sessions held in January next after the regular elections held in November, and that in accordance with this general system the approaching session of the legislature must be considered as one at which it is your duty to preside until a speaker is elected.

It is undoubtedly true that the constitution does contemplate, after {*137} the first state election, that each regular election shall be followed in January by a session of the legislature and there is no doubt that at such sessions it would be the duty of the Secretary of State to call the house to order and to preside until a speaker is elected; but I am unable to reach the conclusion that this has any application to the approaching session of the legislature. The constitution provides in Section 5 of Article IV that the first session of the legislature shall begin on a day to be specified in the proclamation of the Governor which proclamation is provided for in Section 20 of Article XXII, and that subsequent sessions shall begin on second Tuesday of January next after each general

election. No distinction is made as to the character of that first session and the subsequent sessions. That first session is provided for by the constitution just as completely as the subsequent sessions, and the last sentence of said Section 5 indicates that it is a "regular session" just as much as any subsequent session, as it says "No regular session shall exceed sixty days, except the first, which may be ninety days."

The first election was held in November, 1911, at which members of the House of Representatives were elected. Ordinarily their term of office would, as provided in Section 4 of Article IV of the constitution, be for two years, but by Section 22 of Article XXII it was provided in effect that their term of office should expire at the same time as if they had been elected in November, 1912. They were not given a new term of office to begin as though they had been elected in November, 1912, but their term of office was made to run from the date of their qualification until after the election in 1914. Ordinarily the first session of any legislature will be the regular one in January next after the election in November, but as the Governor has power to call special sessions of the legislature, we might have a number of sessions of the same legislature within the meaning of the constitution. It is inconceivable that the constitution can mean that at each of these sessions when called a new speaker must be elected, especially when we consider that such called session can not exceed thirty days in length and much time might be consumed in the preliminary work of organization.

I am unable to see any way to avoid the conclusion that the session of the legislature held in pursuance of the Governor's proclamation, which expired in June last, and the approaching session to be held on the second Tuesday of this month, are only two sessions of the same legislature and that if the Governor should call several special sessions between now and November, 1914, they would all be sessions of the same legislature, and that the organization of the house perfected at the first one would continue unless displaced by a vote of the house itself.

It has been suggested that Section 8 of Article IV indicates that each session is to be a separate organization because it provides that the senate shall elect a president pro tempore who shall serve until the next session of the legislature. But it is to be observed, however, that the election of a president pro tempore is not essential to the organization of the senate or to its power to transact business. If there were a deadlock as to such election, business would undoubtedly go on and the lieutenant-governor would preside over the deliberations of the senate; but as to the house there appears to be no way of {*138} doing business until the speaker is elected, and if it had been the intention of the constitution to require the election of a speaker at each session of the legislature it would have been easy to say so just as is said with regard to the president pro tempore of the senate. With that provision with regard to the senate and the omission of any similar provision as to the speaker of the house, the argument seems strong that the speaker's term of office continues from one session to another unless terminated by the house itself.

Some light may be thrown upon this question by reference to the practice as to the organization of the national house of representatives. Congress by the constitution, in the absence of any different provision by congress itself, holds regular sessions beginning on the first Monday of December in each year, the first of such regular sessions being about thirteen months after the election of the representatives. There is neither constitutional nor statutory direction as to the details of the organization of the house beyond that which makes it the duty of the last clerk of the house of representatives to make up a roll of the members-elect. In actual practice the clerk calls such roll and the members so called upon the roll proceed to the election of a speaker, the clerk presiding until that election is had. The members of the house then take the oath of office and proceed to business. It has happened many times that the president of the United States has called congress in special session at times previous to the beginning of the first regular session of that body. At such special sessions the house has always elected a speaker who has continued in office until the expiration of the congress no matter how many sessions there might be.

I have heard it suggested that the first session of our legislature is not to be considered as a regular session thereof, but as a special or extraordinary session called by the constitution for the purpose of setting the state government in operation and that the first proper session of the state legislature is the one now approaching, and that then the organization of the house should begin. Such construction, however, does violence as hereinbefore indicated to the clear language of the constitution, but even if it were permissible our house of representatives would be in substantially the same condition as the national house of representatives when called in special session in advance of the regular session, and no one has ever imagined as far as I am informed that any new organization of the national house was necessary when the regular session afterwards began.

My conclusion is that it is no part of your duty to call the house of representatives to order when it meets on the 14th of January.