

1981 S.C. Op. Atty. Gen. 95 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-75, 1981 WL 96601

Office of the Attorney General

State of South Carolina

Opinion No. 81-75

August 25, 1981

*1 The Honorable Richard W. Riley
Governor
Post Office Box 11450
Columbia, South Carolina 29211

Dear Governor Riley:

Your letter of August 17, 1981, requests the opinion of this Office upon the following facts.

You are planning to leave the State on August 28 for an extended period. You refer to [Article IV, Section 11, of the Constitution of this State](#), and ask whether this or any other section has the effect of transferring emergency powers only, with specific reference to the effect which your absence would have upon veto powers of the Governor.

The article and section in question vest in the Lieutenant Governor the specific designation of becoming Governor upon the impeachment, death, resignation, disqualification, disability or removal of the Governor from the State. In the case of the temporary disability of the Governor and in the event of the temporary absence of the Governor from the State, the Lieutenant Governor shall have the full authority to act in an emergency.

The Report of the Committee to Study the Constitution of 1895 attempted to define and identify the meaning of the word 'emergency' and concluded that this problem 'will have to be settled by the courts. Legislation may be useful in outlining the conditions under which the Lieutenant Governor may act under an emergency.' Page 55, Section K. To date, the Legislature has not adopted statutory indicia with respect to the emergency powers which may be exercised by the Lieutenant Governor.

In these circumstances, it is my opinion that the powers that the Lieutenant Governor may exercise are those powers which the temporary absence of a Governor may indicate are necessary and desirable for the conduct of the affairs of the Office of the Governor. One such authority seems clearly to be the exercise of the veto power and, in my opinion, the veto power of the Governor is one of the emergency powers which the Lieutenant Governor may perform during his temporary absence.

The determination of when the absence of the Governor would be temporary is one to which reference was made in discussions of the amendment by the Committee appointed to survey the Constitution of 1895 and to make recommendations to the General Assembly. On pages 207 through 344 of the Minutes of the Committee, the particular part was considered by the various members. No specific period of time was established, although clearly it should be established by legislative direction at the present time. Instead, as noted, the Committee chose to leave the determination of such matters to the courts to be decided in proper circumstances. It is, therefore, in my opinion, impossible to establish clear criteria as to when a Governor's absence ceases to be 'temporary' or when it may be considered to have become a temporary absence so as to bring the constitutional provision into effect. The Committee, or any subsequent Committee, which reported to the General Assembly its recommendations did not define 'emergency' powers, as used in [Article IV, Section 11](#). The same conclusions are applicable, in my opinion, with respect to the determination of when an absence becomes temporary and whether the powers which a Lieutenant Governor may undertake to exercise are or are not of an emergency nature.

*2 As already noted, it is my opinion that the powers that the Lieutenant Governor may exercise in the temporary absence of the Governor cannot be restricted prior to the departure of the Governor from this State; instead, the discretion of the Lieutenant

Governor includes all of the gubernatorial powers which the Governor himself would possess were he present. This is limited, of course, by the terms of the constitutional provision itself, which require only that those powers may be exercised by the Lieutenant Governor during the 'temporary' absence of the Governor, and those powers must also be of an emergency nature. Within this range, the Lieutenant Governor, in my opinion, is free to act.

Very truly yours,

Daniel R. McLeod
Attorney General

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