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IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

IOWA ATTORNEY GENERAL OPINION
#17-04-1

May 1, 2017

The Honorable David Johnson
State Senator
PO Box 279
Ocheyedan, Iowa 51354

Dear Senator Johnson:

Thank you for your letter of February 1, 2017. Your letter references Governor Terry Branstad's recent nomination to serve as United States Ambassador to China and poses nine specific questions about the effect of his potential resignation as Governor of Iowa. We agree that your letter raises important legal questions about Iowa's constitutional framework for the succession of executive power. This office has not previously addressed these questions directly, nor has the Iowa Supreme Court. Thus, we believe they are appropriately addressed in an official opinion of the Attorney General under Iowa Code section 13.2(*e*).

We share your belief that these important issues require a thoughtful and detailed analysis. Taken as a whole, the nine questions you pose implicate two central constitutional questions. Those two important questions of law are:

> First question: If the governor resigns, does the lieutenant governor become governor?
>
> Second question: If the lieutenant governor becomes governor, may she then appoint a new lieutenant governor?

The answers to these questions must flow from a careful consideration of the succession framework set forth in the words and structure of the Iowa constitution. *See Rudd v. Ray*, 248 N.W.2d 125, 129 (Iowa 1976) ("The framers of our constitution necessarily gave us their ideas in the words they agreed upon."). The debates of the 1857 constitutional convention also shed important light on the meaning and intent of the constitutional provisions establishing that framework. *See N. W. Halsey & Co v. City of Belle Plaine*, 104 N.W. 494, 496 (Iowa 1905) (noting that reading the constitutional debates may aid in a fuller understanding of constitutional provisions). Finally, our answers can and should be informed by interpretations of the same or similar

provisions in other states' constitutions. *See Van Horn v. City of Des Moines*, 191 N.W. 144, 148 (Iowa 1922) (considering "similar provisions in the Constitution[s] of other states" to decide an issue of first impression).

I. Background

We first provide context for the legal questions by identifying the relevant constitutional provisions, examining portions of the 1857 constitutional convention, and noting historical practice both in Iowa and on the federal level.

A. *Constitutional Provisions.* Article IV of the Iowa Constitution establishes the executive branch and sets forth a framework for the succession of executive power. Some provisions of article IV have been amended since 1857, but we initially focus on the original provisions because those established the original framework. In doing so, we consider *all* the original executive branch provisions without placing undue significance on one section. *See Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 565 (Iowa 2011) ("[W]e avoid placing undue importance on isolated portions of an enactment by construing all parts of the enactment together."). We also remain mindful not to render any provision meaningless or redundant. *See* Iowa Code § 4.4(2) (2017) (presuming every piece of language is intended to be effective); *Mall Real Estate, L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 198 (Iowa 2012) ("We . . . interpret statutes in such a way that portions of it do not become redundant or irrelevant."); *see also Junkins v. Branstad*, 448 N.W.2d 480, 483 (Iowa 1989) ("Constitutional provisions are generally subject to the same rules of construction as statutes.").

Considering article IV as a whole promotes a holistic understanding of the constitutional framework, because each provision can inform the others. *See* Iowa Code § 4.1(38) ("Words and phrases shall be construed according to the context . . . ."); *see also Allen v. Clayton*, 18 N.W. 663, 667 (Iowa 1884) (noting that to determine the meaning of a constitutional provision, "the sections preceding and following it, which have reference to the same subject-matter, must be read and considered"); *State ex rel. Martin v. Heil*, 7 N.W.2d 375, 381 (Wis. 1942) ("[T]he provision should be examined in its setting in order to find out . . . the real meaning and substantial purpose of those who adopted it."). The following constitutional provisions are relevant to our analysis.

Article IV, section 1 provides that "The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa." Iowa Const. art. IV, § 1. In other words, the person who has the power is governor. This section has remained unchanged since 1857.

Article IV, sections 2 and 3 originally established that the governor and lieutenant governor would be elected by the people—but not on the same ticket. Article IV, section 6 required candidates for both offices to have the same qualifications.

Article IV, section 10 provided, "When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people."

Article IV, section 14 provided, "No person shall, while holding any office under the authority of the United States, or this State, execute the office of Governor, or Lieutenant Governor, except as hereinafter expressly provided."

Article IV, section 15 established that the lieutenant governor would serve until a successor was elected and qualified, and that "while acting as Governor," the lieutenant governor would receive the same pay as provided for the governor.

Article IV, section 17 provides,

> In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

This section has remained unchanged since 1857.

Article IV, section 18 made the lieutenant governor President of the Senate with a tiebreaking vote, but provided that "when [the lieutenant governor] shall exercise the office of Governor, the Senate shall choose a President pro tempore."

Article IV, section 19 continued the line of succession beyond the lieutenant governor:

> If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of

> performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

Although each provision is important, article IV, section 17 plays the biggest part in answering both questions. "[T]he purpose of art. IV, § 17 is to ensure that the citizens of Iowa are not without a person capable of performing the constitutional and statutory duties imposed upon a governor." 1980 Op. Att'y Gen. 550, 1980 WL 25903, at *3 (Iowa Att'y Gen. Jan. 2, 1980).

Two notable aspects of article IV, section 17 inform our analysis. First, while death and resignation are permanent exits from office, the phrase "other disability" includes temporary conditions such as physical or mental incapacity or time spent undergoing a medical procedure. *See* 1923 Op. Att'y Gen. 263, 263 (Iowa Att'y Gen. Aug. 23, 1923) (answering a question posed by the governor about the operation of article IV, section 17 during a several-month hiatus recommended by his physician). Therefore, article IV, section 17 must operate within a framework applicable to several possible factual scenarios without creating "friction in the machinery of government." *Fitzpatrick v. McAlister*, 248 P. 569, 576 (Okla. 1926). Because the provision applies equally to permanent and temporary disabilities, so too must the answers to the legal questions we address.

The second important aspect of article IV, section 17 is the word "devolve." That word "is defined by lexicographers and in law dictionaries as meaning to roll or tumble down or descend." *Id.* at 573 (citing authorities indicating that meaning as of 1926); *see also* "Devolve," *Black's Law Dictionary* (10th ed. 2014) (defining "devolve" to include transferring rights, duties, or powers and passing by transmission); "Devolve," *Webster's Third New Int'l Dictionary* (1993) (defining "devolve" as "to flow or roll from a situation viewed as higher to one that is lower" and "to fall or be passed . . . as an obligation or responsibility"); 12 *Words & Phrases* 546 (1954). The overall concept is that the word connotes downward movement. This downward movement means the powers and duties of the office of Governor *fall* upon the lieutenant governor; the lieutenant governor does not *rise* to the office of Governor. *See* Okla. Op. Att'y Gen. No. 65-235, at 1–2 (Okla. Att'y Gen. May 19, 1965) ("The office of Governor <u>devolves</u> upon the Lieutenant Governor, he does not ascend to it."). This distinction is both important and purposeful.

Viewing article IV as a whole, section 1 and original section 18 complement each other and dovetail with sections 17 and 19. The words in section 18 indicate that when the powers and duties devolved (as section 17 instructed), the lieutenant governor would "exercise the office of Governor." That aligns with the foundational principle that the person who has the power *is* governor. Iowa Const. art. IV, § 1. The foundational principle is paramount.

Sections 17 and 19 operate to ensure that there is always a successor designated to exercise those "powers and duties"—even in the absence of the elected lieutenant governor.

Additionally, article IV, section 14 is instructive because it expressly permits one person to hold more than one office if the constitution provides for it. The 1857 constitution provided for two possibilities immediately following section 14, both of which referred specifically to the lieutenant governor: the lieutenant governor as governor and the lieutenant governor as senate president. *See* Iowa Const. art. IV, §§ 17–19 (original 1857 version). Section 19 further contemplated other officials holding more than one office by providing for the senate president as governor and the speaker of the house as governor.

B. *Constitutional Debates.* The Iowa Constitution of 1846 made no provision for a lieutenant governor. However, as the 1857 constitutional convention began, one delegate proposed that a committee dedicated to formulating the executive branch of government consider "providing for the election of a Lieutenant Governor who, by virtue of his office, shall . . . exercise all the powers and have the title of Governor in case of the death, removal, or other disability of the Governor." 1 *The Debates of the Constitutional Convention of the State of Iowa* 39 (W. Blair Lord rep., 1857) [hereinafter *The Debates*]. The convention agreed to the resolution. *Id.* Accordingly, the drafters of article IV, section 17 envisioned that the lieutenant governor would "have the title of Governor" if the governor left office, *id.*—and utilized the word "devolve" to accomplish that result. *See Heil*, 7 N.W.2d at 381–82 (recounting similar debate from the Wisconsin constitutional convention in 1847).

The framers of our 1857 constitution also spent significant time debating the constitutional line of succession. Several of the delegates questioned the need for a lieutenant governor at all—possibly because Iowa had no lieutenant governor before 1857—and offered amendments to article IV, section 17. For instance, delegate Warren proposed an amendment substituting the words "Secretary of State" for "Lieutenant Governor." 1 *The Debates* at 587. Delegate Clarke of Johnson County[1] proposed instead "that the duties of the office of Governor, in case of a vacancy, shall devolve upon the president of the Senate." *Id.* The convention actually passed Clarke's amendment, eliminating the position of lieutenant governor from the 1857 constitution and altering the constitutional line of succession.

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[1] "There were two men named Mr. Clarke and one named Mr. Clark at the Iowa convention." *State v. Senn*, 882 N.W.2d 1, 13 n.7 (Iowa 2016); *see* 1 *The Debates*, at 6.

The next morning, however, delegate Gray asked his colleagues "to consider well the importance of the matter before striking" the provisions regarding the lieutenant governor. *Id.* at 591. An advantage of retaining the office was the fact that the lieutenant governor "will be elected directly by the people, instead of by the Legislature." *Id.* Gray found that important because "We all seem to agree in placing elections, as far as possible, directly in the power of the people." *Id.* Delegate Clarke of Henry County agreed:

> Gentlemen [of the convention] do not reflect that they may be taking from the people the power of selecting their own chief magistrate. When a man is a candidate for the office of Lieutenant Governor, the people always vote for him with the understanding that circumstances may arise which will make him their Governor. But if you give to the Senate the power of selecting the man who may be the Governor of the people, you take from the people this power and put it into the hands of the Senate.

Id. at 591–92.

Delegate Gray's remarks sparked renewed debate on the subject, and some delegates changed their minds. For example, delegate Wilson offered that although he had originally voted to eliminate the position of lieutenant governor, "upon reflection . . . the advantages in favor of [having a lieutenant governor] are far superior to the disadvantages." *Id.* at 593. Most significant, however, were Mr. Clark's remarks:

> I voted yesterday to strike out the office of Lieutenant-Governor. I had not reflected upon it well, and I am inclined to the opinion that I did not vote right. Upon hearing the argument thus far upon the question, and upon reflection, I am disposed to favor the office of Lieut[enant] Governor, for one reason, if there were no other: I believe that an executive officer, whoever he may be that shall perform the duties of that office, whether Governor or Lieutenant-Governor, ought to be elected directly by the people, in all cases, at least so far as it is possible to provide for it. We elect the Governor by the direct votes of the people—by the popular will—by the popular voice. In case of his removal or disability, I see no reason why the person filling his place should not be elected directly by the whole people as much as the Governor himself.

Id. at 594.

After some further debate, the convention voted 19–14 against the amendment that would have struck the office of lieutenant governor. *Id.* at

595. Accordingly, the convention also restored other provisions relating to the office of lieutenant governor. *See id.* at 596.

It is evident, both from this historical record and because "[a]ll policital power is inherent in the people," Iowa Const. art. I, § 2, that this "elective principle" lies at the core of our constitutional framework. The framers intended that those in the gubernatorial line of succession be elected. Section 3 further reinforced the framers' commitment to the elective principle by requiring that the lieutenant governor "*be* elected."

C. *Iowa Historical Practice.* Four Iowa governors have either resigned or died while in office. In 1877, Governor Samuel Kirkwood resigned to become a candidate for the United States Senate. Lieutenant Governor Joshua Newbold assumed the powers and duties of Governor upon the resignation. Governor Albert Cummins resigned in 1908 after his election to the United States Senate. Lieutenant Governor Warren Garst assumed the powers and duties of the Governor upon the resignation. In 1954, Governor William Beardsley was killed in an automobile accident. Upon his death, Lieutenant Governor Leo Elthon assumed the powers and duties of Governor. Finally, in 1969 Governor Harold Hughes resigned to take his seat in the United States Senate. Lieutenant Governor Robert Fulton assumed the powers and duties of the Governor upon the resignation.

In each of these four instances, the lieutenant governor (upon whom the powers and duties of the office devolved) was treated as Governor in every respect, but did not appoint a new lieutenant governor. In each of these four instances, a new lieutenant governor was eventually elected by popular vote at the same time the next governor was elected.

This historical practice reveals several significant trends. First, upon the death or resignation of a sitting governor, the lieutenant governor has *always* been considered governor. Second, the new governor has *never* appointed or named a new lieutenant governor.

D. *Federal Language and History.* In 1857, when the Iowa Constitution was ratified, article II, section 1, clause 6 of the United States Constitution read: "In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . . ." Thus, article IV, section 17 of the Iowa Constitution closely tracked language in the United States Constitution at the time.

Under that federal language, multiple presidents died in office. Following each death, the Vice President was considered President in full. Two of these

instances occurred before 1857: John Tyler in 1841 and Millard Fillmore in 1850. Because of this history, the delegates to the 1857 Iowa constitutional convention likely understood the word "devolve" to mean that upon the governor's exit from office, the lieutenant governor would be governor following a downward movement of powers. *See State v. Baldon*, 829 N.W.2d 785, 810 (Iowa 2013) (Appel, J., specially concurring) (noting "the drafters of the Iowa Constitution were well aware" of existing federal law when writing in 1857); *Gallarno v. Long*, 243 N.W. 719, 723 (Iowa 1932) ("[H]istorical . . . matters may be taken into consideration when interpreting the Constitution.").

A federal court decision from 1867 confirms this understanding:

> Three times, since the adoption of the constitution, the president has died, and, under [article II, section 1, clause 6], the powers and duties of the office of president have devolved upon the vice president. All branches of the government have, under such circumstances, recognized the vice president as holding the office of president, as authorized to assume its title . . . . It has never been supposed that, under the provision of the constitution, the vice president . . . acted as the servant, or agent, or locum tenens of the deceased president, or in any other capacity than as holding the office of president fully, for the time being, by virtue of express authority emanating from the United States.

Merriam v. Clinch, 17 F. Cas. 68, 70 (C.C.S.D.N.Y. 1867). The three instances to which the court referred were President Tyler, President Fillmore, and President Andrew Johnson in 1865.

Likewise, the Oklahoma Supreme Court relied upon federal history several decades later in analyzing the word "devolve:"

> [U]pon the death of President Wm. H. Harrison, Vice President Tyler became President of the United States. For almost a century this construction of the federal Constitution has stood without question. It has been recognized as correct, and acquiesced in, not only by the departments of state and all the states of the Union, but officially recognized by every civilized government in the world.
>
> . . . .
>
> Defendant suggests that no court has ever pronounced that to be the law. To our mind, it is so clearly correct that no one has ever presumed to test its correctness in the courts. Therefore it should have greater weight than an ordinary departmental

> construction, not only because it has stood for almost a century, but because it has been recognized as the correct conception of our system of government, and because, for eighty-five years under this construction, there has been no friction in the machinery of government by reason of such construction.

Fitzpatrick, 248 P. at 576; *see also Olcott v. Hoff (Olcott I)*, 181 P. 466, 467 (Or. 1919) ("[U]pon the death of the president no one has ever claimed that the vice president . . . would not succeed to the office of president itself . . . ."); 1939 Mich. Att'y Gen. Rep. 69, 73 (Mich. Att'y Gen. Mar. 28, 1939) ("No one would contend that upon death or resignation of the President, the Vice President does not thereby become President of the United States . . . ."). Between *Merriam* in 1867 and *Fitzpatrick* in 1926, three more presidents died in office—and once again, after each death, the vice President was considered President.[2] The consistent federal understanding of the word "devolve" over several decades further informs our determination of what "devolve" means in article IV, section 17 of the Iowa Constitution.

Moreover, President Tyler did not appoint a new vice president in 1841. A new vice president did not take office until 1845, following the election of George Dallas to the office almost four years later. In 1850, when Millard Fillmore assumed the powers and duties of the presidency upon Zachary Taylor's death, he too did not appoint a new vice president. Once again, the country waited for a new vice president for almost three years until the election of William King.

This historical practice continued upon the death of every President. The most recent instance occurred upon the death of President John F. Kennedy. President Lyndon Johnson did not appoint a new vice president in 1963. Our nation's next vice president, Hubert Humphrey, was elected in 1964.

Having established this historical perspective, we now proceed to analyze the legal questions.

II. If the Governor Resigns, Does the Lieutenant Governor Become Governor?

Beyond dictionary definitions, another important guidepost in determining the meaning of "devolve" is what it was understood to mean at the time it was enacted:

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[2] The three were President Chester Arthur in 1881, President Theodore Roosevelt in 1901, and President Calvin Coolidge in 1923.

> In the interpretation of the Constitution . . . we are to ascertain the meaning by getting at the intention of those making the instrument. What thought was in the mind of those making the Constitution—what was their intention, is the great leading rule of construction.

Ex parte Pritz, 9 Iowa 30, 32 (1858); *accord Griffin v. Pate*, 884 N.W.2d 182, 186 (Iowa 2016) (beginning analysis of a constitutional provision "by looking back to review the history" of it "to gain a better understanding of the concept" as applied in a current case); *Redmond v. Ray*, 268 N.W.2d 849, 853 (Iowa 1978) ("In construing a constitution, our purpose is to ascertain the intent of the framers."). The framers of our 1857 constitution were undoubtedly aware of the federal precedent under the "devolve" framework. This federal practice, and the framers' resolution that the lieutenant governor could "have the title of Governor" if the governor left office, 1 *The Debates* at 39, are strong indications that the verb "devolve" was thought to convey the entire office of Governor upon the lieutenant governor.

A. *Other States' Experiences.* Iowa is not the first state to face significant legal questions regarding a governor's permanent departure from office. While other states' constitutions and experiences do not alone determine what the Iowa Constitution means, *see Handeland v. Brown*, 216 N.W.2d 574, 577 (Iowa 1974), we find valuable to our analysis the language used in those states' constitutions and court decisions or attorney general opinions involving that language.

Our review of available authority reveals a relatively even divide. When the relevant constitutional provision utilized the word "devolve," some authorities in other states have concluded that the lieutenant governor becomes governor. In view of the question as we have phrased it, we call these the "yes" decisions. *See, e.g.*, *Bryant v. English*, 843 S.W.2d 308, 311 (Ark. 1992) ("[W]e hold that . . . the Lieutenant Governor serves as Governor for the residue of the term . . . ."); *State ex rel. Lamey v. Mitchell*, 34 P.2d 369, 370 (Mont. 1934) ("[W]hen the Governor resigns or is permanently removed from office, there is no vacancy in the office of Governor in the sense that there is no one left with power to discharge the duties imposed upon the Governor."); *Fitzpatrick*, 248 P. at 577 ("Mr. Trapp is just as much a Governor, in every literal and practical sense and effect, as though he had been elected to the office."); *Chadwick v. Earhart*, 4 P. 1180, 1181 (Or. 1884) ("[I]t is not shown how . . . . a person can fill the office of governor without being governor."); *State ex rel. Murphy v. McBride*, 70 P. 25, 26 (Wash. 1902) ("The constitution having provided that in case of the death of the governor the duties of the office shall devolve upon the lieutenant governor, there is no vacancy in the office of governor."); 1939 Mich. Att'y Gen. Rep. at 73 (concluding when the governor

dies, the lieutenant governor is "governor of the state [for] all intents and purposes").

Others have concluded that the lieutenant governor or next person "in line" is not truly governor. We call these the "no" decisions. *See, e.g.*, *State ex rel. De Concini v. Garvey*, 195 P.2d 153, 154 (Ariz. 1948) (concluding the person upon whom the powers and duties of governor devolve after the governor's death or resignation "is not governor de jure or de facto but merely ex officio"); *Futrell v. Oldham*, 155 S.W. 502, 504 (Ark. 1913) (concluding under a previous version of the Arkansas Constitution that the person upon whom the powers and duties of governor devolve "acts as Governor . . . merely by virtue of his office as president of the senate, and does not actually become Governor"); *People ex rel. Lynch v. Budd*, 45 P. 1060, 1060 (Cal. 1896) ("[I]t would hardly be contended that when the powers and duties of the governor devolve upon the lieutenant governor the latter thereby becomes governor . . . ."); *State ex rel. Hardin v. Sadler*, 47 P. 450, 450 (Nev. 1897) ("If a vacancy occurs in the office of governor, the powers and duties of the office devolve upon the lieutenant governor . . . . The officer remains lieutenant governor, but invested with the powers and duties of governor."); *State v. Heller*, 42 A. 155, 157 (N.J. 1899) ("The language used is not ambiguous. It declares that the powers, duties, and emoluments of the office shall devolve on the president of the senate; it does not confer upon him the title of the office."); *State ex rel. Martin v. Ekern*, 280 N.W. 393, 399 (Wis. 1938) ("[T]he lieutenant governor does not become governor. He remains lieutenant governor, upon whom devolves the powers and duties of governor.").

B. *Analysis.* The substantial number of "no" decisions is significant. The "no" decisions are based on a careful parsing of the word "devolve" and the other relevant constitutional language. When resolving legal questions, precision and nuance matter. *See Rivera v. Woodward Res. Ctr.*, 865 N.W.2d 887, 897 (Iowa 2015). Thus, placing Iowa among the "no" decisions would be legally defensible. Indeed, in 1977, the Idaho Attorney General acknowledged that, although he believed them to be somewhat counterintuitive, the "no" decisions suggested "the lieutenant governor *never* truly succeeds to the office of governor" under the Idaho Constitution (which at the time used the word "devolve"). Idaho Op. Att'y Gen. No. 77-1, 1977 WL 25063, at *1 (Idaho Att'y Gen. Jan. 4, 1977). The Idaho Attorney General went on to recommend that only the Idaho Supreme Court could answer the question definitively as a matter of Idaho law. *See id.*

Nonetheless, we find the "yes" decisions more persuasive than the "no" decisions for several reasons. First, we believe the "no" decisions elevate form over substance, which the Iowa Supreme Court has repeatedly cautioned against. *See, e.g.*, *Lewis v. Jaeger*, 818 N.W.2d 165, 179 (Iowa 2012); *State ex*

rel. Miller v. Smokers Warehouse Corp., 737 N.W.2d 107, 110 (Iowa 2007); *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 156 (Iowa 1996). The "no" decisions are somewhat technical, drawing a linguistic distinction that, while noteworthy, makes no substantive difference under the circumstances presented here. *See Harriman v. State*, 2 Greene 270, 285 (Iowa 1849) (considering it the court's "imperative duty" to "disregard . . . unmeaning technicalities, and to look more to the substance and merits of each case"); *see also Heil*, 7 N.W.2d at 381 ("It is extremely important in the interpretation of constitutional provisions that we avoid determinations based purely on technical . . . argument and that we seek to discover the true spirit and intent of the provisions examined."). Under Iowa's framework, there could be little dispute that if the governor resigns, the lieutenant governor would possess authority to sign legislation, issue pardons, and even receive the governor's salary. Instead, any dispute centers on the exact description of his or her new role.

On that score, article IV, section 1 of the Iowa Constitution carries significant weight. That section provides, "The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa." Iowa Const. art. IV, § 1. In other words, the person who has the power is governor. As the Arkansas Supreme Court concluded under a similar provision in the Arkansas Constitution, this means when the powers and duties of governor devolve upon the lieutenant governor, that person is thereafter styled the governor. *See Bryant*, 843 S.W.2d at 313; *accord Fitzpatrick*, 248 P. at 572 ("The person who . . . fills the office of chief magistrate is styled 'the Governor of Oklahoma.' He is the 'Governor' for the simple reason that he governs."). Thus, there is no substantive difference between governor and acting governor. *See State ex rel. Chatterton v. Grant*, 73 P. 470, 474 (Wyo. 1903) (concluding that, after the governor died, the question whether a person "[wa]s in fact the governor of the state" was immaterial because, whether governor or acting governor, the person had the powers and duties of the office). A person acting as governor after the powers have devolved *is* governor, because of article IV, section 1.[3]

Second, the "yes" decisions comport with the Iowa framers' understanding of the lieutenant governor's role and with our state's historical practice. In creating the office of lieutenant governor, the framers expected that person to "have the title of Governor" if the governor left office. 1 *The Debates* at 39. Furthermore, each time the governor of Iowa has resigned or

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[3] This office's 1923 opinion acknowledges, as it must, that in some instances the powers and duties will devolve only on a temporary basis. To the extent the 1923 opinion describes *acting as* governor to be substantively different from *being* governor, we now clarify that issue.

died in office, the lieutenant governor was thereafter treated as governor. *See* William H. Fleming, *The Second Officer in the Government, reprinted in Annals of Iowa: A Historical Quarterly*, Vol. XIII, No. 1, at 533–34 (1921) [hereinafter *Annals of Iowa*] (recalling Governor Kirkwood's resignation in 1877 and Governor Cummins's resignation in 1908); Legis. Servs. Agency, *Pieces of Iowa's Past: Lieutenant Governors Who Have Become Governor* 2–3 (Mar. 8, 2017), *available at* https://www.legis.iowa.gov/docs/publications/TB/855445.pdf (noting Governor Beardsley's death in 1954 and Governor Hughes's resignation in 1969). Indeed, one history of Iowa referred to Kirkwood's successor as the "ninth governor of Iowa" following Kirkwood's resignation. 4 Benjamin F. Gue, *History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century* 199–200 (1903). Although historical practice standing alone does not mandate a similar result now, the historical practice is consistent with the framework of executive power we have described. *Gallarno*, 243 N.W.2d at 723 (noting history is important in interpreting constitutional provisions); *see Bryant*, 843 S.W.2d at 312 (finding it "of some persuasion" that, when the governor of Arkansas died in office or resigned, the lieutenant governor was historically treated as governor).

Finally, many of the "no" decisions are driven by legal problems that Iowa's framework avoids. For example, in Arizona, the court concluded one reason the secretary of state did not become governor was the absence of a provision bestowing upon that person "the emoluments of the office of governor . . . when acting [as] governor." *Garvey*, 195 P.2d at 157–58. By contrast, article IV, section 15 of the Iowa Constitution expressly provides that "while acting as governor," the lieutenant governor is "paid the compensation . . . prescribed for the governor." Iowa Const. art. IV, § 15.

Likewise, the Arkansas Supreme Court expressed concerns in *Futrell* about the president of the senate—a legislative officer—performing executive branch duties. *See Futrell*, 155 S.W. at 504; *see also Bryant*, 843 S.W.2d at 312 (explaining that creating the position of lieutenant governor alleviated any separation-of-powers concerns). Iowa's framework has always avoided that problem. Article III, section 1 permitted the lieutenant governor to preside over the senate by allowing one person to perform both legislative and executive duties where expressly provided. Further, under the 1857 constitution, when the lieutenant governor was also president of the senate, article IV, section 18 directed the senate to elect a president pro tempore when the lieutenant governor was exercising the office of governor. And today, the lieutenant governor no longer has any legislative duties, so there is no separation-of-powers problem. Without potential issues like those faced in Arizona and Arkansas, we find the "yes" decisions to be a better analytical guide.

Iowa's amendments to article IV do not change or alter our analysis of the effect of article IV, section 17. A 1952 amendment to article IV, section 19 removed a reference to the lieutenant governor "acting as" governor, replacing it with "if there be a vacancy in the office of Governor"—and that language remains today. There is a natural tendency to ascribe significance to the change, but that amendment doesn't really say much about the title of the person upon whom the powers and duties devolve—because article IV, section 1 controls that question. And in any event, as we have explained, "acting as" governor is simply what the lieutenant governor does when the powers and duties devolve, not a substantive limit on his or her power or title.

The more significant piece of the 1952 amendments, in our view, was a section providing that if the governor-*elect* died, resigned, or failed to qualify, the lieutenant governor-elect would "assume the powers and duties of governor" upon inauguration. As we have noted, article IV, section 1 would therefore make the person with the powers the governor. In other words, the 1952 amendment solidified—not altered—the existing framework for the transfer of executive power in the event of a constitutional contingency.[4]

In 1972, several provisions of article IV were changed, but they did not affect sections 1 or 17. Originally, article IV, sections 2 and 3 provided the governor and lieutenant governor served two-year terms. The 1972 amendment merely increased both terms to four years. Thus, it does not indicate any significant change in the constitutional framework for transferring executive power. Indeed, the 1972 amendments retained the requirement that the governor and lieutenant governor be elected, and that they serve until successors were elected and qualified.

Iowa enacted more significant amendments in 1988. The 1988 amendments provided for the first time that the governor and lieutenant governor are elected together, on one ticket, "as if these two offices were one and the same." Iowa Const. art. IV, § 3. Before 1988, it was possible for the governor and lieutenant governor to represent different political parties. The amendment brought to fruition a constitutional delegate's statement at the 1857 convention: "The governor and lieutenant-governor will always, I presume, be the same in politics, and why not have the successor of the governor of the same politics, instead of bringing in one of the antagonistic party?" 1 *The Debates* at 593.

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[4] Additionally, Governor Beardsley's death occurred in 1954, after the 1952 amendments—but our state's practice of treating the lieutenant governor as governor remained the same.

The 1988 amendments also recast the lieutenant governor's duties. Under original article IV, section 18, the lieutenant governor was president of the senate and possessed a tiebreaking vote. If the lieutenant governor was absent, impeached, or exercising the office of Governor, the Senate was instructed to choose a president pro tempore to preside and break ties. However, the 1988 amendments revised article IV, section 18 to provide that the lieutenant governor "shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor." In other words, the 1988 amendments removed the lieutenant governor's status as president of the Senate.

The only remaining duty "provided by law" is to receive the powers and duties of governor under article IV, section 17 if the governor leaves office; there are no additional statutory duties imposed upon the lieutenant governor. In other words, the lieutenant governor becomes governor *because* he or she is already lieutenant governor. As the Montana Supreme Court put it:

> When the framers of the Constitution provided for the election of a Governor and a Lieutenant Governor as members of the executive department of the state, but conferred upon the latter no executive power or authority other than in the contingencies mentioned . . . , they manifested the intention that the people elect two qualified heads of that department—the one active, the other his lieutenant, ready at a moment's notice to assume the duties of the office, should his superior officer, for any reason, either temporarily or permanently, become unable to perform them.

Mitchell, 34 P.2d at 371–72; *see also State ex rel. Sathre v. Moodie*, 258 N.W. 558, 567 (N.D. 1935) ("The Lieutenant Governor, elected at the same election, ... has been chosen by the people to act as Governor in [the] event the Governor fails to qualify, or is unable to act because of disability."); *Olcott I*, 181 P. at 483 ("[W]hen the people elected Mr. Olcott . . . , by the very terms of the constitution they elected him to become governor upon the death of Governor Withycombe."); *Heil*, 7 N.W.2d at 383 (noting the lieutenant governor "was deliberately chosen by the people for no other important purpose than to substitute for the governor"). Therefore, the 1988 amendments do not alter our analysis on this question.

C. *Answer.* After considering the Iowa Constitution's language and structure, placing it in historical perspective, and comparing other legal analyses on similar constitutional provisions, it is our opinion that under article IV, section 17 of the Iowa Constitution, if the governor resigns and the

powers and duties of the office devolve upon the lieutenant governor, the lieutenant governor becomes governor and has the title of Governor.[5]

III. If the Lieutenant Governor Becomes Governor, May She Then Appoint a New Lieutenant Governor?

The framers of our 1857 constitution knew the federal precedent of *not* appointing a new vice president when the office of president "devolved" to the elected vice president. *See Iowa Ins. Inst. v. Core Grp. of Iowa Ass'n for Justice*, 867 N.W.2d 58, 76 (Iowa 2015) (considering the "circumstances under which the statute was enacted" in order to derive legislative intent); *Rudd*, 248 N.W.2d at 129 ("When words are enshrined in a governmental charter, so as to speak across centuries, their history, purpose, and intended meaning must be closely examined."). Yet, despite this precedent, our framers chose not to depart from the federal model and made no express provision for the appointment of a new lieutenant governor when the elected lieutenant governor was performing the duties of the office of Governor. On the contrary, they provided—in article IV, section 19—a clear, tight and complete line of succession for the powers of the executive even in the absence of the elected lieutenant governor. The federal practice, the framers' decision not to provide for a vacancy in the office of lieutenant governor, and the specific constitutional line of succession are strong indications that they did not see the need for a new lieutenant governor.

The governor has always had authority to fill vacancies in state offices when the constitution and laws did not otherwise provide for doing so. Iowa Const. art. IV, § 10. Yet, despite this provision, in the four prior instances when a governor has resigned or died in office, the new governor has not relied upon the authority in section 10 to fill any "vacancy" in the office of lieutenant governor—suggesting that the constitutional framework avoided one. *See Annals of Iowa* at 533 (noting Governor Newbold did not appoint a new lieutenant governor after Governor Kirkwood's resignation "because the lieutenant-governorship was not vacant").

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[5] Two of your nine original questions ask whether the lieutenant governor would be required to take a new oath of office and who would be empowered to administer that oath. In light of our opinion as detailed above, the answer to those questions is that no new oath is required. When the lieutenant governor is elected and qualifies by taking an oath before the general assembly to discharge the duties of the office of Lieutenant Governor, those duties already include receiving the powers and duties of Governor should a constitutional contingency arise. Nevertheless, we understand each of the four Iowa lieutenant governors who became governor after the resignation or death of a sitting governor chose to take a ceremonial oath of office (in one form or another) when they assumed their new duties. This is because while no new oath is *required*, the constitution does not prohibit one.

A. *Other States' Experiences.* In answering question one, we noted considerable debate among states which use constitutional language similar to our own ("devolve") as to whether the lieutenant governor "becomes" governor or is something less. Interestingly, however, we found virtually *no* debate on whether the new governor can appoint a new lieutenant governor. The widely-accepted answer to that question is no.

Oregon's experience and constitution mirrors Iowa's in every major respect save one: upon the governor's death the duties of the office devolve upon the Secretary of State, not the lieutenant governor. The Oregon Supreme Court closely examined whether the governor's permanent departure created a vacancy in the office of the Secretary of State. *State ex rel. Roberts v. Olcott (Olcott II)*, 187 P. 286 (Or. 1920). Oregon, like Iowa, had a constitutional provision generally allowing for the governor to fill vacancies in state offices. The Oregon Supreme Court determined, however, that there was no vacancy in the office of Secretary of State when the governor died and the duties (and office) of governor devolved on the Secretary. *Id.* at 289. The court reasoned that the constitution set forth an unbroken and automatic line of succession. *Id.*

The same result was reached in a 1939 Michigan Attorney General opinion. That opinion noted that under the "devolve" framework it is well-settled that when the powers and duties of the superior office devolve upon the inferior officer, there is no vacancy in the inferior office. 1939 Mich. Att'y Gen. Rep. at 72 (noting "plain rules of common sense" make clear "that the people never intended to intrust the responsibilities of the governorship to one who has not been elected"); 22 R.C.L. *Public Officers* § 97, at 442–43 (1918). In other words, when the powers and duties of governor devolve upon the lieutenant governor, there is no vacancy in the office of lieutenant governor.[6]

Other states have agreed. *See, e.g., Garvey*, 195 P.2d at 154 (adhering to the "prevailing view" that "the inferior officer does not vacate his office"); *Budd*, 45 P. at 1060 ("It is clear that the Lieutenant Governor does not vacate his office when he assumes the powers and duties of the Governorship."); *Mitchell*, 34 P.2d at 372 (holding the assumption of the duties of the office of governor does not create a vacancy in the office of lieutenant governor because "he is discharging the functions of Governor by the mandate of the Constitution, and that by reason of being the Lieutenant Governor"); *Sadler*, 47 P. at 450 (holding when the powers and duties devolve, "there is no vacancy created thereby in

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[6] That legal principle remains true in Michigan even though the Michigan Constitution was thoroughly redrafted in 1961. *See* 1968 Mich. Att'y Gen Rep. 234, 235 (Mich. Att'y Gen. Apr. 22, 1968) (recounting debate from the 1961 Michigan constitutional convention that stated if the lieutenant governor became governor after the governor's death or resignation, "there is no replacement for him").

the office of lieutenant governor"); *Heller*, 42 A. at 156 (finding no vacancy); *McBride*, 70 P. at 26 ("[T]he office of lieutenant governor did not . . . become vacant, but the officer "remained lieutenant governor, intrusted with the powers and duties of governor."); *Ekern*, 280 N.W. at 399 ("He remains lieutenant governor, upon whom devolved the powers and duties of governor. In such a contingency no vacancy occurs in the office of lieutenant governor."); Okla. Op. Att'y Gen. No. 65-235, at 1 (concluding that when the office of governor "devolves upon, descends to, the Lieutenant Governor, . . . [i]n no sense does the Lieutenant Governor vacate his office"); *see also* Idaho Op. Att'y Gen. No. 77-1, 1977 WL 25063, at *3 ("[M]ost courts hold that resignation of a governor does not create a 'vacancy' in the office of lieutenant governor when that person assumes the devolved duties as governor.").

There are two court decisions in other states which have reached the opposite conclusion, but neither is persuasive. By statute, Arkansas provides for the special election of a new lieutenant governor. Ark. Code § 7-7-105; *Stratton v. Priest*, 932 S.W.2d 321 (Ark. 1996) (affirming the constitutionality of the statute). Iowa lacks a comparable statute calling for a special election. Moreover, a special election upholds the elective principle, whereas simply appointing a new lieutenant governor does not.

Under very trying circumstances a divided New York Court of Appeals held that a catchall statute allowing the governor to fill vacancies could be used to fill a vacancy in the office of lieutenant governor. *Skelos v. Paterson*, 915 N.E.2d 1141, 1142 (N.Y. 2009). We do not find the *Skelos* majority's reasoning persuasive, because it *assumes* a vacancy exists and decides only *who* is empowered to fill it. In Iowa, given our framers' focus on the elective principle and the near-unanimous authority predating *Skelos*, we hesitate to make a similar assumption. *See* Okla. Op. Att'y Gen. No. 65-235, at 1 (declining to acquiesce in the "erroneous assumption" that "the office of Lieutenant Governor becomes vacant when the Lieutenant Governor acquires the powers and duties of the Governorship").

Interestingly, in 1943 the New York Attorney General had opined that a statute allowing the governor to make appointments could not be applied to a lieutenant governor vacancy because it "would lead to the anomalous result that a Governor by appointing a Lieutenant Governor and then resigning could impose upon the people his own choice as their Governor." 1943 N.Y. Op. Att'y Gen. No. 378, 1943 WL 54210, at *4 (N.Y. Att'y Gen. Aug. 2, 1943).

B. *Analysis.* Having taken this wealth of information into consideration, we find the answer to your question in the intersection between article IV, sections 14, 15, 17, 18, and 19 of the Iowa Constitution. Section 14 prohibits an individual from holding two offices "except as herein expressly

provided." The subsequent sections then go on to provide for the line of succession in the event of the governor's death, resignation, removal, or disability. This juxtaposition is not coincidental. In fact, the entire scheme suggests that our framers intended for situations when a single individual would hold two offices—including the offices of Governor and Lieutenant Governor.[7] Indeed, it means that when the executive powers and duties devolve from the governor to the lieutenant governor, those two offices essentially merge. As we previously stated—the lieutenant governor becomes governor *because* she is lieutenant governor.

We are persuaded that "[i]f the framers of the Constitution had intended that there should be a vacancy in the office of Lieutenant Governor upon the resignation, death, or permanent removal of the Governor, they could have easily said so." *Mitchell*, 34 P.2d at 372; *accord Heller*, 42 A. at 156 (concluding if the framers intended a vacancy in the lower office, "it is reasonable to believe they would have said so in no uncertain language"). Our framers did not do so. This omission is telling, especially because our constitution was drafted shortly after two Presidents died in office—and especially when other states *have* amended their constitutions to do so. *See, e.g.*, Del. Const. art. III, § 20 ("Whenever the powers and duties of the office of Governor shall devolve upon the Lieutenant-Governor, . . . his or her office shall become vacant . . . ."); Tex. Const. art. IV, § 16(d) ("On becoming Governor, the person vacates the office of Lieutenant Governor . . . ."); Utah Const. art. VII, § 10(3)(a)(i) (defining vacancies in the office of Lieutenant Governor to include when "the Lieutenant Governor . . . becomes Governor").

In addition to the framers' distinct decision not to provide for a vacancy, other provisions referring to the lieutenant governor "acting as" governor or "exercising the office" of governor are further compelling evidence that there is no vacancy in the office of lieutenant governor. These provisions referring to the lieutenant governor performing particular functions—as opposed to saying merely "the lieutenant governor"—would be unnecessary and even meaningless if the new governor could simply appoint a "replacement" lieutenant governor. *See* Iowa Const. art. IV, §§ 15, 18–19 (1857 original version).

The express language of original section 19 ("If the Lieutenant Governor, while acting as Governor . . .") contemplates a *series* of events—something happens to the elected Governor and then something happens to the elected

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[7] For example, Article III, section 1 prohibits any person from exercising the powers of two branches of government "except in cases hereinafter expressly directed or permitted." The primary exception to this separation of powers provision originally lay in article IV, sections 15 and 18, which called for the Lieutenant Governor to serve as President of the Senate, and article IV, section 19, which named the President of the Senate and Speaker of the House of Representatives to the line of succession.

Lieutenant Governor. As the Oregon Supreme Court noted, the purpose of creating a line of succession is to ensure the automatic transfer of power—to ensure that someone is always endowed with the powers of Chief Magistrate. *See Olcott II*, 187 P. at 289. We believe that was also the purpose of article IV, section 19—to extend the line of gubernatorial succession beyond the lieutenant governor. Inserting a newly-appointed "replacement" lieutenant governor in that order would interrupt the line the framers deliberately chose and make it impossible for section 19's provisions ever to be fully carried out.

Moreover, allowing for the appointment of a new lieutenant governor would subvert the elective principle that the Iowa framers clearly endorsed. Like his or her predecessor, under our Constitution an appointed lieutenant governor would assume the powers and duties of governor upon the governor's death, resignation, removal, or disability. In other words, if a lieutenant governor who becomes governor can appoint a new lieutenant, Iowa could have a governor who was not elected by the people. This would be a particularly unpalatable result because a primary reason for creating the office of lieutenant governor, as expressed at the 1857 constitutional convention, was to ensure that the person first in the line of succession was a statewide elected official. *See Mitchell*, 34 P.2d at 372 (concluding an unelected governor "was never contemplated and never intended by the framers of the Constitution, or the people who adopted it"); 1939 Mich. Att'y Gen. Rep. at 69 ("[I]t was never intended . . . that any person, who has not received the sanction of the electors by direct vote, should be appointed to a position which would entitle him, in certain eventualities, to the high office of governor.").

Finally, as we have noted, section 17's devolution provision applies equally to both permanent and temporary disabilities. So must the answer to this question. While Governor Branstad's prospective resignation would be permanent, it is easy to imagine situations which would remove a governor from office only temporarily. For example, on June 29, 2002 and July 21, 2007, Vice President Dick Cheney assumed the powers and duties of the presidency while President George W. Bush underwent medical procedures. If the lieutenant governor assumed the power and duties of the governorship under similar (temporary) circumstances and appointed a new lieutenant governor, what would happen to those two officials upon the temporarily-disabled governor's return to the office of Governor? Allowing for the appointment of a new lieutenant governor during a temporary disability would be an absurd result. *See Mitchell*, 34 P.2d at 372 ("[I]f the Governor were . . . unable temporarily to perform the duties of his office, it could hardly be argued that while the Lieutenant Governor was discharging the duties of the office of Governor, he could appoint a Lieutenant Governor."); *Heller*, 42 A. at 158 (concluding a vacancy in the lower office made little sense for temporary

disabilities and "could not have been within the contemplation" of those drafting the constitutional provision).

The subsequent amendments to article IV in 1952 and 1988 reinforce our conclusion. In 1952, article IV, section 19 was amended to provide,

> If there be a vacancy in the office of Governor and the Lieutenant Governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of Governor, the President pro tempore of the Senate shall act as Governor until the vacancy is filled or the disability removed. . . .

Like its predecessor, this version of section 19 contemplates a series of events where the governor is first incapacitated and then the lieutenant governor—while exercising the powers and duties of governor—becomes incapacitated. Just like the original 1857 constitution, nothing in the 1952 amendments contemplates that there is a vacancy in the office of lieutenant governor when the sitting governor resigns or dies. *See Ekern*, 280 N.W. at 398–99 (concluding under language materially identical to revised article IV, section 19 that there is no lieutenant governor vacancy when the powers and duties of governor devolve). Tellingly, the historical practice of not appointing a new lieutenant governor continued following the death of Governor Beardsley in 1954 and the resignation of Governor Hughes in 1969—after the 1952 amendments.

As noted previously, in 1988 article IV was amended to provide for the election of governor and lieutenant governor on the same ticket and to alter the lieutenant governor's duties by removing her role as president of the senate. The 1988 amendments also amended article IV, section 2 to provide, that "[t]he governor and the lieutenant governor shall be elected by the qualified electors." This latter amendment reinforces the framers' commitment to the elective principle.

Nothing in the 1988 amendments specifically altered the line of succession outlined in sections 17 and 19. Contemporary editorials do not indicate that the voters contemplated anything other than the single-ticket issue and the lieutenant governor's duties.[8] *See, e.g.*, Editorial, *Preventive Maintenance*, Des Moines Reg., Oct. 16, 1988, at 2C; Thomas A. Fogarty,

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[8] This is in stark contrast to Utah, where its 1980 constitutional amendments addressing gubernatorial succession were presented to the voters as mirroring the succession of the federal government—which by this time had adopted the 25th Amendment. Utah Op. Att'y Gen. No. 03-001, 2003 WL 21996258 (Utah Att'y Gen. Aug. 18, 2003).

Lawmakers Seek to Have Governor, Lt. Gov. Run as Team, Des Moines Reg. (Feb. 3, 1988); Thomas A. Fogarty, *Voters to Decide if Governor, Lt. Gov. Should Run as a Team*, Des Moines Reg. (Apr. 13, 1988); Linda Lantor, *Lieutenant Governor Amendments Big Winners*, Des Moines Reg. (Nov. 9, 1988).

The 1988 amendments' failure to alter the line of succession or address the question of a vacancy in the office of lieutenant governor is striking considering the intervening history between 1952 and 1988. Originally the U.S. Constitution contained language mirroring Iowa's devolution framework. The U.S. Constitution, however, was amended in 1967 following the assassination of President Kennedy. The 25th Amendment to the United States Constitution expressly provided that the vice president becomes president and granted the President the authority to appoint a new vice president with Congressional approval. U.S. Const. amend. 25, §§ 1, 2.

Iowa's legislators and voters in 1988 were obviously aware of the change in the federal system; President Ford became the first unelected U.S. President just the decade before. Yet, Iowa did not attempt to follow the new federal model. While it is often dangerous to reach a conclusion based upon legislative *inaction*, by declining to adopt the federal model, we believe the amendments ratified our historical precedent—namely, that the lieutenant governor assumes the title, powers, and duties of governor, but does not appoint a new lieutenant governor. *See Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 862 (Iowa 2014) (Mansfield, J., specially concurring).

Because it is our opinion that upon a governor's resignation, the lieutenant governor will hold both the Office of Governor and the Office of Lieutenant Governor, as expressly permitted by Article IV, section 14, there is no vacancy in the office of lieutenant governor to be filled. *Cf. Olcott I*, 181 P. at 481 (relying on "except as permitted" language to conclude an individual could "hold the offices of governor and secretary of state at the same time"). As a result, under these facts, Iowa Code section 69.8 does not apply. *See* Iowa Code § 69.8(2) (referring to the governor filling "*a vacancy* in the office of lieutenant governor" (emphasis added)). Consequently, we need not opine on the statute's constitutionality.[9]

C. *Answer.* It is our opinion that if the governor resigns and the powers and duties of the office devolve upon the lieutenant governor, that person does

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[9] Because it is not the factual context in which you have asked your questions, we do not address whether section 69.8 would be applicable if the lieutenant governor resigned or died in office while the governor remained. The Wisconsin Supreme Court has suggested that a vacancy in the office of lieutenant governor exists in *that* factual scenario, but not when the powers and duties of governor devolve upon the lieutenant governor. *See Ekern*, 280 N.W. at 399.

not have constitutional authority to appoint a new lieutenant governor. Upon the governor's resignation, the powers and duties of the office will devolve or fall upon the lieutenant governor—who does not ascend or rise to the office of Governor. However, under our constitutional framework, by possessing the powers and duties of the chief magistrate, the lieutenant governor becomes governor for all intents and purposes, is entitled to use the title of Governor, and is entitled to the compensation of governor for the remainder of the term. The lieutenant governor takes on this authority because she is lieutenant governor. In other words, upon a governor's resignation, the lieutenant governor will hold both the offices of Governor and Lieutenant Governor. There is no vacancy to be filled. Furthermore, on these facts, permitting the appointment of a new lieutenant governor would disregard Iowa's historical practice, violate the elective principle, and interrupt the clear, tight and complete line of succession set out in our constitution.

Very truly yours,

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