

**LETTER OPINION
2001-L-49**

November 19, 2001

The Honorable Bob Stenehjem
State Senator
7475 41st St SE
Bismarck, ND 58504-3200

Dear Senator Stenehjem:

You asked whether the Governor must submit the names of three persons appointed to office since the 2001 Legislature adjourned to the Senate for confirmation during the upcoming special session of the Legislative Assembly. You also inquire about a vacancy on the State Gaming Commission.

The Governor recently issued an executive order calling the 57th Legislative Assembly into special session on November 26, 2001.¹ Since adjournment of the regular legislative session on April 29, 2001, the Governor has appointed Mr. Tim Karsky as Commissioner of Financial Institutions, Ms. Karen Tyler as Securities Commissioner, and Mr. Bruce Christianson to the State Board of Higher Education. All of the appointees as well as any potential appointee to the State Gaming Commission are or would be serving subject to Senate confirmation. The interim appointee as Commissioner of Financial Institutions holds office until the Senate confirms or rejects the appointment. N.D.C.C. § 6-01-08. The interim appointee as Securities Commissioner holds office until the Senate confirms or rejects the appointment. N.D.C.C. § 10-04-03(1). An interim appointee to the State Gaming Commission holds office until the Senate confirms or rejects the appointment. N.D.C.C. § 53-06.1-01.1. The interim appointee to the Board of Higher Education serves "until the opening of the next session of the legislature, at which time the appointment must be certified to the senate for confirmation." N.D. Const. art. VIII, § 6(2)(c). Thus, Mr. Christenson's interim appointment is required to be submitted for confirmation at the next legislative session after the appointment.

¹ See N.D. Const. art. V, § 7 (authorizing the Governor to call a special session).

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The next legislative session is the special session starting at the end of the month. The North Dakota Supreme Court has long held that a special session of the legislature is a session of the Legislative Assembly. State ex rel. Langer v. Olson, 176 N.W. 528 (N.D. 1920). See also 2001 N.D. Op. Att'y Gen. L-15, pp. L-63 to L-64 (same). The court in Olson explained that “[n]o distinction in the Constitution can be found in terms between the powers and duties of a regular and a special session of the legislative assembly.” Olson at 533.

N.D. Const. art. V, § 8 requires the Governor to make a temporary appointment to any appointive office subject to Senate confirmation if a vacancy occurs while the Senate is recessed or adjourned. In that instance article V, § 8 provides that “[w]hen the senate reconvenes the governor shall make a nomination to fill the office.” Because the laws providing for the interim appointments of Mr. Karsky and Ms. Tyler do not specify when their nominations are to be submitted for Senate confirmation, N.D. Const. art. V, § 8 controls. That constitutional provision requires the Governor to make a nomination for the offices filled temporarily by appointment when the Senate reconvenes.

It is therefore my opinion that if the Governor wants the interim appointees in question to continue to serve in the offices to which they have been appointed, their names must be submitted to the Senate for confirmation at the upcoming special session pursuant to N.D. Const. arts. V, § 8 and VIII, § 6(2)(c). This would also hold true regarding any individual appointed to fill a vacancy on the State Gaming Commission.

Sincerely

Wayne Stenehjem
Attorney General

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