

STATE OF NORTH DAKOTA
ATTORNEY GENERAL'S OPINION 81-100

Date Issued: September 10, 1981

Requested By: Lieutenant Governor Ernest Sands

--QUESTION PRESENTED--

Whether any power and authority possessed by the governor may be delegated to the lieutenant governor.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that all power and authority given to the governor, except those responsibilities explicitly reserved to the governor under the Constitution, may be delegated to the lieutenant governor.

--ANALYSIS--

Article V, Section 7 of the Constitution of North Dakota states, in part, as follows:

The powers and duties of the Lieutenant Governor shall be to serve as president of the Senate, and he may, when the Senate is equally divided, vote on procedural matters, and on substantive matters if his vote would be decisive. Additional duties shall be prescribed by the Governor.

In State ex rel., Peterson vs. Olson, 307 N.W.2d 528 (N.D. 1981), the North Dakota Supreme Court held that the governor has the authority under this constitutional section to delegate to the lieutenant governor all powers which the governor possesses with the exception of those reserved especially to the governor by the Constitution. Apart from those duties explicitly reserved to the Governor under the Constitution, the Governor has the authority to delegate duties to the Lieutenant Governor. 307 N.W.2d 528, 533.

Article V of the Constitution contains those specific powers provided to the governor. Thus, the governor is able to delegate to the lieutenant governor all of those powers and authority he possesses with the exception of those listed under Article V. Specifically, the following authority cannot be delegated to the lieutenant governor:

1. Authority to act as Commander-in-Chief of the military and naval forces;
2. Authority to convene the Legislature;

3. Authority to give a State of the State message to the Legislature;
4. Authority to grant reprieves, commutations, and pardons;
5. Authority to be a member of the Board of Pardons;
6. Authority to fill vacant public offices by appointment where statutory or constitutional provisions do not provide for a replacement;
7. Authority to call special elections;
8. Authority to approve or disapprove Legislative bills;
9. Authority to disapprove appropriation items; and
10. Authority to be a member of the Board of University and School Lands.

The following is a list of gubernatorial memberships on state boards, commissions, and agencies. These gubernatorial memberships may be delegated by the governor to the lieutenant governor.

Memberships	N.D.C.C.
Business and Industrial Development Commission	54-34-03
Emergency Commission	54-16-01
Equalization, State Board of	57-13-01
Game and Fish Employees Board	20.1-02-19
Heritage Commission, State	55-09-01
Highway Patrol Hearing Board, Chairman	39-03-03
Highway Patrol Retirement Board	39-03.1-03
Historical Society, Board of Directors	55-01-01
Indian Affairs Commission	54-36-01
Industrial Commission	54-17-02
Investment Board, State	21-10-01
Laboratories Commission, State	19-01-02
Multi-State Tax Commission	57-59-03
Natural Resources Council	54-49.1-02
Parole Board, Chairman	12-59-01
State Employee Election Commission	54-44.3-05
Water Conservation Commission	61-02-04

The following is a list of gubernatorial powers, duties and responsibilities. These gubernatorial powers, duties and responsibilities may be delegated by the governor to the lieutenant governor.

Powers	N.D.C.C.
Bank of North Dakota; execution of instruments for	6-09-26
Bond; designate fiscal agent bank for payment of real estate	54-30-16
Bonding Fund; remove defaulting official from State	26-23-17
Bonds; cancel State	54-29-02
Corporations; direct investigations into	54-07-01
Counties; approve organization of new	11-02-03 through
11-02-06	
County to which unorganized territory attached; designate	11-30-08
Disaster Emergencies; responsibilities in	37-17.1-05
Director of Institutions; remove	12-46-04
Distinguished Service Medal; award	37-01-10
Executive and Ministerial Officers; supervise	54-07-01
Extradition Matters; approve and hear	29-30.2
Highway Right-of-way; sell	24-01-28
Highway Safety Act; responsibilities under	54-07-05
Indians; proclaim civil jurisdiction of State over	27-19-03
Interstate Agreement on Detainers; enter into	29-34-01
Interstate Compacts on Juveniles; enter into	27-22-02
Legislative Council; give messages to meetings of	54-35-05
Maps; fix fees for copies of government	61-03-11
Metric System; coordinate Executive Branch conversion to	54-07-01
Military: Approve Court Martial sentences	37-09-14
Approve Units of National Guard	37-02-02
Award Medals	37-01-09 and 37-
01-10	
Convene Court Martials	37-09-03
Order out National Guard	37-01-04
Organize State Guard	37-10-01
Proclaim state of insurrection	37-01-08
Issue rules and regulations governing military	37-01-22
Seize mines and public utilities	37-01-06
Staff appointments	37-02-06 Suspend
the law relating to purchase of supplies	37-03-07
Motor Vehicles; authorize excess and overweight and size	39-12-23
limits for	
Multi-State Tax Compact; enter into	57-59-01
Parolee Supervision; enter agreement for out-of-state	12-56-01
Patents for new land; issue	54-07-01
Proclamations: Consolidation of counties	11-05-10
Disorganization of counties	11-30-17
Game and Fish	20.1-08
Holidays	1-03-01
Election of Presidential Electors	16.1-14-03
Mother's Day	1-03-06
State of Insurrection	37-01-08

State of Emergency requiring closing of schools	15-40.1-09.1
Public Health Work; approve matching funds for	23-01-11
Public Officers; receive resignation of	44-02-02
Public Officers; receive reports of	54-06-04
Public Officers; remove of	44-11
Public Works Contracts; enter into	50-17-01
Reciprocal Enforcement of Support Act; approve interstate	14-12.1-05
and rendition of persons under	14-12.1-06
Retirement System; authorize referendum	52-10-07
Rewards; offer	54-07-01
Schools during state of emergency; close	15-40.1-09.1
State-owned land; execute conveyances of	54-01-05.1
State-owned land; grant easements to	54-01-17.1
State University land; execute conveyances of	15-11-30
States; communicate with other	54-07-01
Theodore Roosevelt Roughrider Award; award	54-02-07
Travel outside the state; approve official	54-06-10
Treasurer; suspend or remove State	54-11-07
Unemployment relief; enter agreement with President of United	50-17-01
States for	
University Radio Station; approve transfer of	15-11-27
Vehicle Equipment safety compact; execute	39-23-01
Warden; removal of state penitentiary	12-46-04
Williston Experiment Farm; convey	4-05-06
Workmen's Compensation Fund; prescribe additional bond of	65-04-30
State Treasurer for	

The following is a list of appointments to be made by the governor. The authority to make appointments to the following boards, commissions, and agencies may be delegated by the governor to the lieutenant governor.

Appointments	N.D.C.C.
Abstractors Board of Examiners	43-01-02
Accounts and Purchases Department; Director of	54-44-03
Adjutant General	37-03-01
Aeronautics Commission	2-05-01 and 54-07-01.2
Agricultural Products Utilization Commission	4-14.1-03
Air Pollution Control Advisory Council	23-25-02 and 54-07-01.2
Appointments following impeachment of officer	44-09-08
Architecture; Board of	43-03-03
Assistant Adjutants General	37-03-01
Audiology and Speech Pathology Board of Examiners	43-37-05
Auditor; Special State	54-10-20
Bank of North Dakota Advisory Board	6-09.1-02

Banking and Financial Institutions; Commission of Banking Board	6-01-08 6-01-03
Barber Examiners; Board of	43-04-04
Beef Commission	4-34-03
Business and Industrial Development Commission	54-07-01.2
Capitol Grounds Planning Commission	48-10-01
Chiropractic Advisory Committee	23-17-08
Chiropractic Examiners; Board of	43-06-03
Civil Air Patrol; Commanding officer of	54-45-01
Council on the Arts	54-07-01.2 and 54-54-02
County Commissioners in newly organized county	11-03-06
Credit Union Board	6-01-03 and 54-07-01.2
Dairy Products Promotion Commission	4-27-04 and 54-07-01.2
Deeds; Commissioner of	44-07-01
Dental Examiners; Board of	43-28-03
Developmental Disabilities; State Council on	25-01-01.1
Economic Development; Director of	54-34-02
Education Fact Finding Commission	15-38.1-03
Educational Broadcasting Council	15-65-02 and 54-07-01.2
Electrical Board; State	43-09-02
Embalmers; Board of	43-10-02
Federal Aid Coordinator	54-27.1-01
Game and Fish Advisory Board	54-07-01.2
Game and Fish Commissioner	20.1-02-01
Garrison Diversion Mitigation and Enhancement Lands Commission	61-24.1-03
Governor's Staff; Members of	37-02-06
Hairdressers and Cosmetologists; State Board of	43-11-03
Health Council	23-01-02 and 54-07-01.2
Health Officer	23-01-05
Hearing Aid Dealers and Fitters Board	43-33-15
Higher Education; Board of	15-10-02
Highway Commissioner	24-02-02
Highway Patrol Superintendent	39-03-02
Historical Board	55-01-01 and 54-07-01.2
Human Resources; Council on	50-26-01 and 54-07-01.2
Indian Scholarships; State Board for	15-63-01
Institutions; Director of	54-21-06
Interstate Aid Placement Compact; Administrator of	14-13-08

Interstate Library Compact; Administrator of	54-24.1-05
Job Service of North Dakota; Director of	52-02-01
Judicial Qualifications Commission	27-23-02
Juvenile Compact; Administrator of State	27-22-03
Livestock Sanitary Board	36-01-01 and 54-07-01.2
Massage Examiners; Board of	43-25-05
Mediation Board	34-11-02
Medical Center Advisory Council	15-52-03
Medical Examiners; Board of	43-17-03
Merit System Council	54-07-01.2
Milk Stabilization Board	54-07-01.2 & 4-18.1-04
Nursing Home Administrators; Board of	43-34-02
Nursing; State Board of	43-12.1-05
Optometry; Board of	43-13-03
Park and Recreations; Director of	55-08-01
Parole Board	54-07-01.2
Personnel Board	54-44.3-03
Pharmacy; Board of	43-15-03
Physical Therapists' Examining Commission	43-26-04
Plumbing; Board of	43-18-02
Podiatry Registry; Board of	43-05-03
Post-Secondary Education Commission	15-20.3-01
Presidential Elector's Contest Board	16.1-14-07
Professional Engineers and Land Surveyors Registration	43-19.1-03
Board Property and Disbursing Officer	37-05-01
Psychologists Examiners Board	43-32-02
Public Accountancy Board	43-02.1-02
Public School Education; State Board of	15-21-17 and 54-07-01.2
Real Estate Commission	43-23-01
Registrar of Motor Vehicles	39-01-01
Securities Commissioner	10-04-03
Senator; Vacancy of United States	16.1-13-08
Social Service Board	50-06-02 and 54-07-01.2
Soil Conservation Commission	4-22-03
Special Commissioner	44-11-04
State Examiner (Commissioner of Banking and Financial Institutions)	6-01-08
Tax Appeals Board	57-23.1-01
Teachers' Professional Practices Commission	15-38-17 and 54-07-01.2
Teachers' Retirement Fund Trustees	54-07-01.2
Trade Commission	51-10-03

Veterans' Affairs Administrative Commission	37-18.1-01 & 54-07-01.2
Veterinary Medical Examiners Board	43-29-02
Watchmakers' Examiners Board	43-27-04
Water Conservation Commission	61-02-04 and 54-07-01.2
Water Pollution Control Board	61-28-03 and 54-07-01.2
Water Well Contractors Board	43-35-03
Weather Modification Board	2-07-02.1
Workmens' Compensation Commissioners	65-02-01 and 54-07-01.2
Yellowstone-Missouri-Fort Union Commission	55-06-01 and 54-07-01.2

In the event of the death, impeachment, resignation, failure to qualify, removal from office, or absence from the state of the governor, all powers and duties of the office of the governor shall fall upon the lieutenant governor pursuant to Article V, Section 2 of the Constitution. Nothing in State ex rel. Peterson vs. Olson, supra, conditions, restricts, or limits the authority of the governor to delegate statutory duties to the lieutenant governor. Therefore, the governor may delegate to the lieutenant governor statutory duties and responsibilities on a temporary or permanent basis, or in any other manner or fashion as desired by the governor.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Terry L. Adkins
Assistant Attorney General

Date issued: September 10, 1981
Date amended: January 20, 1982

Requested by: Lieutenant Governor Ernest Sands

Whether any power and authority possessed by the governor may be delegated to the lieutenant governor. It is my opinion that all power and authority given to the governor, except those responsibilities explicitly reserved to the governor under the Constitution, may be delegated to the lieutenant governor. Article V, Section 7 of the Constitution of North Dakota states, in part, as follows: The powers and duties of the Lieutenant Governor shall be to serve as president of the Senate, and he may, when the Senate is

equally divided, vote on procedural matters, and on substantive matters if his vote would be decisive. Additional duties shall be prescribed by the Governor. In State ex rel., Peterson v. Olson, 307 N.W.2d 528 (N.D. 1981), the North Dakota Supreme Court held that the governor has the authority under this constitutional section to delegate to the lieutenant governor all powers which the governor possesses with the exception of those reserved especially to the governor by the Constitution. Apart from those duties explicitly reserved to the Governor under the Constitution, the Governor has the authority to delegate duties to the Lieutenant Governor. 307 N.W.2d 528, 533. Article V of the Constitution contains those specific powers provided to the governor. Thus, the governor is able to delegate to the lieutenant governor all of those powers and authority he possesses with the exception of those listed under Article V. Specifically, the following authority cannot be delegated to the lieutenant governor:

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Economic Development Commission	54-34-03
Emergency Commission	54-16-01
Equalization, State Board of	57-13-01
Game and Fish Employees Board	20.1-02-19

Highway Patrol Retirement Board	39-03.1-03
Indian Affairs Commission	54-36-01
Industrial Commission	54-17-02
Investment Board, State	21-10-01
Laboratories Commission, State	19-01-02
State Employee Election Committee	54-44.3-05
Water Conservation Commission	61-02-04
Yellowstone-Missouri-Fort Union Commission	55-06-01

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Bonds; cancel State	54-29-02
Corporations; direct investigations into	54-07-01
Counties; approve organization of new	11-02-03 through
	11-02-06
County to which unorganized territory attached; designate	11-30-08
Disaster Emergencies; responsibilities in	37-17.1-05
Distinguished Service Medal; award	37-01-10
Executive and Ministerial Officers; supervise	54-07-01
Extradition Matters; approve and hear	29-30.2
Firemen's Relief Association; withhold payments to	18-05-13
Highway Right-of-Way; sell	24-01-28
Highway Safety Act; responsibilities under	54-07-05
Indians; proclaim civil jurisdiction of State over	27-19-03
Interstate Agreement on Detainers; enter into	29-34-01
Interstate Compacts on Juveniles; enter into	27-22-02
Legislative Council; give messages to meetings of	54-35-05
Maps; fix fees for copies of government	61-03-11
Metric System; coordinate Executive Branch conversion to	54-07-01
Military: Approve Court Martial sentences	37-09-14
Approve Units of National Guard	37-02-02
Award Medals	37-01-09 and
	37-01-10
Commander in Chief	37-02-04
Convene Court Martials	37-09-03
Order out National Guard	37-01-04
Organize State Guard	37-12-01
Proclaim state of insurrection	37-01-08
Issue rules and regulations governing military	37-01-22
Seize mines and public utilities	37-01-06
Staff appointments	37-02-06

Suspend the law relating to purchase of supplies	37-03-07
Motor Vehicles; authorize excess and overweight and size limits for	39-12-23
Office of Management and Budget designated as administering state agency	54-07-01.4
Official Bond; require additional	44-01-13
Parolee Supervision; enter agreement for out-of-state	12-56-01
Patents for new land; issue	54-07-01
Proclamations: Consolidation of counties	11-05-10
Disorganization of counties	11-30-07
Game and Fish	21.1-08
Holidays	1-03-01
Election of Presidential Electors	16.1-14-03
Mother's Day	1-03-06
State of Insurrection	37-01-08
State of Emergency requiring closing of schools	15-40.1-09.1
Public Health Work; approve matching funds for	23-01-11
Public Officers; receive resignation of	44-02-02
Public Officers; receive reports of	54-06-04
Public Officers; remove of	44-11
Public Works Contracts; enter into	50-17-01
Reciprocal Enforcement of Support Act; approve interstate rendition of persons under	14-12.1-05 and 14-12.1-06
Retirement System; authorize referendum	52-10-07
Rewards; offer	54-07-01
Schools during state of emergency; close	15-40.1-09.1
State-owned land; execute conveyances of	54-01-05.1
State-owned land; grant easements to	54-01-17.1
State University land; execute conveyances of	15-11-30
States; communicate with other	54-02-07
Travel outside the state; approve official	54-06-10
Treasurer; suspend or remove State	54-11-07
Unemployment relief; enter agreement with President of United States for	50-17-01
University Radio Station; approve transfer of	15-11-27
Vehicle Equipment safety compact; execute	39-23-01
Williston Experiment Farm; convey	4-05-06
Workmen's Compensation Fund; prescribe additional bond of State Treasurer for	65-04-30

The following is a list of appointments to be made by the governor. The authority to make appointments to the following boards, commissions, and agencies may be delegated by the governor to the lieutenant governor.

Appointments	N.D.C.C.
Abstractors Board of Examiners	43-01-02

Adjutant General	37-03-01
Aeronautics Commission	2-05-01 and 54-07-01.2
Agricultural Products Utilization Commission	4-14.1-03
Air Pollution Control Advisory Council	23-25-02 and 54-07-01.2
Appointments following impeachment of officer	44-09-08
Architecture; Board of	43-03-03
Assistant Adjutants General	37-03-02
Audiology and Speech Pathology Board of Examiners	43-37-05
Auditor; Special State	54-10-20
Bank of North Dakota Advisory Board	6-09.1-02
Banking Board	6-01-03
Barber Examiners; Board of	43-04-04
Beef Commission	4-34-03
Capitol Arts and Historic Preservation Advisory Committee	48-11-01
Capitol Grounds Planning Commission	48-10-01
Chiropractic Advisory Committee	23-17-08
Chiropractic Examiners; Board of	43-06-03
Civil Air Patrol; commanding officer of	54-45-01
Council on the Arts	54-07-01.2 and 54-54-02
County Commissioners in newly organized county	11-03-06
Credit Union Board	6-01-03 and 54-07-01.2
Dairy Products Promotion Commission	4-27-04 and 54-07-01.2
Dental Examiners; Board of	43-28-03
Developmental Disabilities; State Council on	25-01-01.1
Economic Development Commission	54-34-03
Economic Development Commission; Director of	54-34-02
Education Fact Finding Commission	15-38.1-03
Educational Broadcasting Council	15-65-02 and 54-07-01.2
Electrical Board; State	43-09-02
Embalmers; Board of	43-10-02
Game and Fish Advisory Board	54-07-01.2
Game and Fish Commissioner	20.1-02-01
Garrison Diversion Mitigation and Enhancement Lands Commission	61-24.1-03
Governor's Staff; Members of	37-02-06
Hairdressers and Cosmetologists; State Board of	43-11-03
Health Council	23-01-02 and 54-07-01.2
Health Officer	23-01-05
Hearing Aid Dealers and Fitters Board	43-33-15

Higher Education; Board of	15-10-02
Highway Commissioner	24-02-02
Highway Patrol Superintendent	39-03-02
Historical Board	55-01-01 and 54-07-01.2
Human Resources; Council on	50-26-01 and 54-07-01.2
Human Services Department; Director of	50-06-01.3
Indian Scholarships; State Board for	15-63-01
Institutions; Director of	54-21-06
Interstate Aid Placement Compact; Administrator of	14-13-08
Interstate Library Compact; Administrator of	54-24.1-05
Job Service of North Dakota; Director of	52-02-01
Judicial Nominating Committee	27-25-02
Judicial Qualifications Commission	27-23-02
Juvenile Compact; Administrator of State	27-22-03
Livestock Sanitary Board	36-01-01 and 54-07-01.2
Management and Budget; Director of the Office of	54-44-03
Massage Examiners; Board of	43-25-05
Mediation Board	34-11-02
Medical Center Advisory Council	15-52-03
Medical Examiners; Board of	43-17-03
Milk Stabilization Board	54-07-01.2 and 4-18.1-04
Multi-State Tax Commission	57-59-03
Nursing Home Administrators; Board of	43-34-02
Nursing; State Board of	43-12.1-05
Optometry; Board of	43-13-03
Parks and Recreation; Director of	55-08-01
Parole Board	54-07-01.2 and 12-59-01
Personnel Board	54-44.3-03
Pharmacy, Board of	43-15-03
Physical Therapists' Examining Commission	43-26-04
Plumbing, Board of	43-18-02
Podiatry Registry; Board of	43-05-03
Post-Secondary Education Commission	15-20.3-01
Presidential Elector's Contest Board	16.1-14-07
Professional Engineers and Land Surveyors Registration Board	43-19.1-03
Property and Disbursing Officer	37-05-01
Psychologists Examiners Board	43-32-02
Public Accountancy Board	43-02.1-02
Public School Education; State Board of	15-21-17 and 54-07-01.2
Real Estate Commission	43-23-01

Registrar of Motor Vehicles	39-02-01
Securities Commissioner	10-04-03
Senator; Vacancy of United States	16.1-13-08
Soil Classifiers; State Board of Registration for Professional	43-36-02
Soil Conservation Commission	4-22-03
Special Commissioner	44-11-04
State Examiner (Commissioner of Banking and Financial Institutions)	6-01-08
Tax Appeals Board	57-23.1-01
Teachers' Professional Practices Commission	15-38-17 and 54-07-01.2
Teachers' Retirement Fund Trustees	54-07-01.2
Trade Commission	51-10-13
Uniform State Laws Commission	54-55-01
Veterans' Affairs Administrative Commission	37-18.1-01 and 54-07-01.2
Veterinary Medical Examiners Board	43-29-02
Watchmakers' Examiners Board	43-27-04
Water Conservation Commission	61-02-04 and 54-07-01.2
Water Pollution Control Board	61-28-03 and 54-07-01.2
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Workmen's Compensation Commissioners	65-02-01 and 54-07-01.2
Yellowstone-Missouri-Fort Union Commission	55-06-01 and 54-07-01.2

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This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Terry L. Adkins

Assistant Attorney General