

**OPINION  
49-105**

January 10, 1949 (OPINION)

LEGISLATURE

RE: President Pro Tempore--On What Question Lieutenant  
Governor May Vote

You have propounded two questions upon which you desire the opinion of this office.

1. What is the required vote necessary in the senate for the election of a president pro tempore?
2. Section 77 of the state constitution provides that the lieutenant governor shall be president of the senate, but shall have no vote unless they be equally divided. On what questions may the lieutenant governor vote?

Answer to Question No. 1.

On January 5, 1949, Senator Mehlhaff asked for an opinion from this office as to whether or not a two-thirds majority of the members-elect to the senate was required to elect a president pro tempore, and an opinion was issued by this office on that date in which we said, among other things, that "since only a majority of the members-elect is required to enact a law, and since the senate rules are silent as to the number of votes required to elect a president pro tempore, it is the opinion of this office that a majority of the members-elect is sufficient to elect the president pro tempore."

It appears that some of the members are of the impression that the foregoing quotation implies that a majority of the members-elect is required to elect a president pro tempore. However, this, of course, is not what the language implies. The constitution does not prescribe the majority of votes by which a president pro tempore is to be elected, and no such provision is found in the senate rules. It is, therefore, within the power of the legislative assembly to fix the majority required in such a case.

Section 54-0314 of the 1943 Revised Code provides that:

"At any time during the session of the legislative assembly, either house by a majority vote may remove from office any officer or employee. In case of the removal of an officer by either house, his place shall be filled by an election viva voce. In all elections under the provisions of this chapter for officers of either house of the legislative assembly, a majority of all votes cast shall be necessary."

The underscored portion of the statute is direct and unequivocal, and provides that in all elections under the provisions of this chapter for officers of either house of the legislative assembly a majority of all votes cast is sufficient to elect a president pro tempore.

It follows, therefore, that when the the senate is in regular session a majority of the votes cast is sufficient in the election of a president pro tempore.

Answer to Question No. 2.

Section 65 of the state constitution provides that: "No bill shall become a law except by a vote of a majority of all the members-elect in each house, \*\*\*."

In an opinion issued by this office on February 19, 1945, it was held that "the lieutenant governor is not authorized to vote upon a bill in case the vote is evenly divided, because under section 65 of the constitution no bill shall become a law except by a vote of a majority of all the members-elect in each house," for the reason that the lieutenant governor is not elected as a member of the senate but is elected as an officer of the executive branch of the government.

However, said section 65 of the constitution has reference only to the passing of legislative bills.

Section 77 of the state constitution provides that the lieutenant governor shall have no vote unless they be equally divided.

It is, therefore, the opinion of this office that the lieutenant governor may vote upon all parliamentary questions and other question that may arise in the deliberations of the senate, including the election of a president pro tempore, when the votes are equally divided.

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