

THE GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH  
for the  
NEW JERSEY CONSTITUTIONAL CONVENTION

THE GOVERNOR -- QUALIFICATIONS, ELECTION, TERM  
VACANCY IN OFFICE, SUCCESSION

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Sidney Goldmann, Chairman.

## THE GOVERNOR - -

### QUALIFICATIONS, ELECTION, TERM, VACANCY IN OFFICE, SUCCESSION

#### Qualifications

Most states have three qualifications for governor: minimum age, United States citizenship (sometimes for a number of years), and residence in the state for a stated number of years. In 1935 North Dakota experienced considerable trouble because of the clause requiring five years' residence within the state. The winning candidate for office had lived and voted in another state within the prescribed period. The Supreme Court of the State held that he lacked the proper qualifications. As a consequence, the lieutenant governor succeeded to the office.<sup>1</sup>

The "Model State Constitution," published by the National Municipal League, would make "any qualified voter of the state" eligible to the office of governor.<sup>2</sup>

#### Length of Term

In 25 states the governor serves four years; in 22 states the term is two years. New Jersey alone has the three-year term.<sup>3</sup>

Although the number of states having four-year and two-year terms is about the same, the trend is in the direction of the longer term.<sup>4</sup> The chief advantage cited for the four-year term is that the governor has time to formulate a program and take steps toward its accomplishment, whereas a governor serving a two-year term is handicapped because he must concentrate on politics if he wishes to be reelected, and this to the detriment of his program.

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1. Roy L. Miller, "The Gubernatorial Controversy in North Dakota," *American Political Science Review*, June 1935, pp. 418-432.

2. Article V, section 501. (Partial revision of 1946).

3. Council of State Governments, *The Book of the States*, 1945-46, p. 560.

4. Graves, W. B., *American State Government*, (3rd ed., 1946), p. 369.

### Time of Election

Most state elections for governor occur in the even-numbered years. In 10 of the 25 states having the four-year term, the election for governor coincides with the presidential election; 11 use the intermediate even year; Virginia, Mississippi, and Kentucky elect their governors in odd-numbered years, and Louisiana elects in April of the presidential year. Of the 22 states having the two-year term, all elect the governor in the even-numbered years.<sup>5</sup>

Writers on state government urge the use of the odd years in order to focus a greater amount of attention on state issues. W. Brooke Graves, for example, states:

"The holding of state elections to coincide with national elections is unfortunate, because it ordinarily means that little or no serious thought will be given to state problems. Citizens will vote for their preferences in national offices and will without much consideration support the same parties for the state offices, whereas the problems of government in any one of the states are large and significant enough to the well being of citizens to warrant a decision based upon their own merits. The selection of state officers should not be merely an incidental aspect of national party contests."<sup>6</sup>

The "Model State Constitution" proposes that the election be held "in each alternate odd numbered year."<sup>7</sup>

### Date of Taking Office

There is no uniform practice among the states as to the date of the governor's inauguration.<sup>8</sup> The present provision in the New Jersey Constitution is similar to the 20th Amendment of the Federal Constitution in providing for a short delay after the Legislature convenes before the Governor is inaugurated. This gives the Legislature an opportunity to resolve a contested election. The wording of Article V, Par. 3 -- "The Governor shall hold his office for three

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5. The Book of the States, p. 560.

6. American State Government, p. 368.

7. Article V, section 501.

8. The Book of the States, p. 560.

years, to commence on the third Tuesday of January next ensuing the election for Governor by the people, and to end on the Monday preceding the third Tuesday of January, three years thereafter" -- is less precise than the 1944 draft provision which called for the terms of the Governor and the Legislature to begin and end at noon on the second Tuesday of January. The "Model State Constitution" provides that the terms of the governor and the legislature shall begin on the first day of December.

### Vacancy

#### A. Who Succeeds

New Jersey is one of 11 states having no lieutenant governor.<sup>9</sup> Seven states, including New Jersey, name the presiding officer of the senate as the immediate successor to the governor; three name the secretary of state. In Maryland the General Assembly, if in session, elects a governor; if not, the President of the Senate serves until a governor is elected. Second successors are named in 44 states; 20 states name three specific successors. Only five states go beyond this number.<sup>10</sup>

#### B. Frequency of Vacancy

A recent survey of the frequency with which vacancies occur discloses that in 24 states over a 91-year-period the governor's office became vacant 73 times, or an average of about once in 30 years.<sup>11</sup>

#### C. Resignation

On four occasions since 1844, the resignation of the Governor of New Jersey has resulted in the President of the Senate exercising the powers and duties of

9. Book of the States, p. 559. Georgia's new constitution provides for a lieutenant governor.

10. The Congressional Digest, March, 1946, p. 75.

11. Ibid.

the Governor.<sup>12</sup> On two occasions, because of the resignation of the President of the Senate, the powers and duties of the Governor's office devolved upon the Speaker of the House of Assembly.<sup>13</sup> Twice the presidency of the Senate changed hands when the new Legislature organized on the second Tuesday in January.<sup>14</sup> This meant that for a period of one week, until the newly-elected Governor was inaugurated, the new President of the Senate exercised the Governor's powers.

#### D. Absence from the State

The New Jersey Constitution provides that the powers and duties of the office of Governor devolve upon the President of the Senate in the event of the Governor's absence from the State. The "Model State Constitution" has a similar provision. Six states having no lieutenant governor provide for the presiding officer of the senate to assume control; three designate the secretary of state. In Illinois, which has a lieutenant governor, the governor files notice of absence from, and return to, the state.<sup>15</sup>

#### E. Impeachment

The New Jersey Constitution provides that in case of the impeachment of the Governor, the powers and duties of the office devolve upon the President of the Senate. Since impeachment means, technically, the official act and condemnation of the House of Assembly, with the actual trial to be held by the Senate, the President of the Senate presumably would take over the office of Governor prior to the beginning of the trial.

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12. On Jan. 31, 1898, John W. Griggs resigned to become United States Attorney General; on Mar. 1, 1913, Woodrow Wilson resigned to become President of the United States; on May 16, 1919, Walter E. Edge resigned to become United States Senator; on Jan. 3, 1935, A. Harry Moore resigned to become United States Senator;

13. 1899 and 1913.

14. 1920 and 1935.

15. Clyde F. Snider, "Gubernatorial Disability," The University of Chicago Law Review, April 1941, p. 522.

### F. Disability

Occasionally the question arises as to whether there is, in fact, a vacancy in the governor's office. The New Jersey Constitution provides that in case of disability, the powers and duties of the office shall devolve upon the President of the Senate. In common with almost all other states, the New Jersey Constitution provides no means of determining whether the incumbent is capable of performing his official duties. This deficiency provoked a serious controversy in Illinois during the two-year illness of Governor Horner, 1938-40. There were long periods when he was not able to go to the state house, and the charge was made that the duties of the office were performed in his name by a "bedside cabinet." He refused to relinquish the office, however, until two days before his death.<sup>16</sup>

In Mississippi, the secretary of state is empowered to submit the question of disability to the judges of the supreme court who investigate and made a determination.<sup>17</sup> In Alabama, any two of seven officials may ask the supreme court to determine the governor's mental condition. If he is declared to be "unsound of mind," the lieutenant governor performs the duties of the office until the governor is "restored to his mind."<sup>18</sup>

### G. Suggestion of Hendrickson Commission

The draft constitution proposed in the Report of the Commission on Revision of the New Jersey Constitution, 1942 (the Hendrickson Commission), contained a clause which would eliminate to some degree the confusion arising out of situations similar to those described above. The provision was that the head of the Department of Taxation and Finance exercise the powers of the office in

16. Snider, supra, pp. 521-529.

17. Constitution, Article V, Section 131.

18. Constitution, Article V, Section 128.

the event of the Governor's absence or temporary inability to discharge his duties. In case of a vacancy, the head of the Department of Taxation and Finance would serve until a new Governor was elected and qualified.<sup>19</sup>

The proposal that a department head succeed to the powers and duties of the Governor has the added advantage of assuring continuity in the policies inaugurated by him.

#### Disability of Governor-Elect

The disputes in Wisconsin in 1942 and in Georgia in 1946, arising out of the deaths of the governors-elect, indicate the desirability of a clear provision dealing with the inability of the governor-elect to assume office. The present Constitution provides that in the event of the death of the Governor-elect, before he is qualified into office, the powers and duties of the office shall devolve upon the President of the Senate or Speaker of the House of Assembly until a new Governor be elected and qualified.<sup>20</sup> The Constitution is silent concerning the failure of the Governor to qualify or his inability for any reason to assume the office.

#### Succession

Thirty states have no limitation on succession.<sup>21</sup> Thirteen states make the incumbent ineligible to succeed himself. Oregon provides that the governor shall serve no more than eight years in any 12-year period.<sup>22</sup> Tennessee, which has a two-year term, permits no more than three consecutive terms.<sup>23</sup> In Delaware, the governor is ineligible for a third four-year term. One governor of Arizona held office for seven two-year terms, and Maryland's "perpetual governor," Albert C. Ritchie, served four consecutive four-year terms.<sup>24</sup>

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19. Article IV, Section I, Paragraph 6.

20. Article V, Paragraph 14.

21. The Book of the States, p. 560.

22. Constitution, Article V, Section 1.

23. Article III, Section 4.

24. Graves, supra, pp. 369-370.

Election to Fill Vacancy

The present Constitution provides that in the event of a vacancy in the office of governor, a new Governor shall be chosen at the next election for members of the Legislature. This practice is followed by four other states of the 11 having no lieutenant governor. In five states the person succeeding to the powers and duties of the governor is permitted to retain those powers until the expiration of the term. In Maryland, the General Assembly fills the vacancy. The present Constitution of New Jersey further provides that if the vacancy occurs within the 30-day period immediately preceding the election for members of the Legislature, the Governor shall be chosen at the second succeeding election.<sup>25</sup> The 1944 draft constitution changed the 30 days to 60. The draft also provided that there should be no election to fill an unexpired term in any year in which a Governor was to be elected for a full term.<sup>26</sup>

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25. Article V, Paragraph 12.

26. Article IV, Section I, Paragraph 8.

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