

We are of the opinion, therefore, that a fraternal benefit society, incorporated under the Act of July 17, 1935, P. L. 1092, 40 P. S. § 1051 et seq., has no authority to amend its articles of incorporation.

Yours very truly,

DEPARTMENT OF JUSTICE,

CHARLES J. MARGIOTTI,  
Attorney General.

RALPH B. UMSTED,  
Deputy Attorney General.

---

OPINION No. 618

*Public Officers—Lieutenant Governor, absence—Duties of his office to be performed by the President Pro Tem of the Senate—Constitution Art. 2, sec. 9 and Art. 4, sec. 14.*

By virtue of the constitutional provisions of the Pennsylvania Constitution, as set forth in article 2, section 9 and article 4, section 14, the President Pro Tempore of the Senate has constitutional authority to perform all the duties of the Lieutenant Governor, when the Lieutenant Governor is absent or unable to perform the duties of his office. The Constitution mandates that he performs these duties.

Harrisburg, Pa., November 13, 1950.

Honorable James H. Duff, Governor, Harrisburg, Pennsylvania.

Sir: By your communication you state that Daniel B. Strickler is the Lieutenant-Governor, and is now serving in active United States military service as a Major General commanding the 28th Infantry Division of the Pennsylvania National Guard.

By virtue of the provisions of The Administrative Code of 1929, as amended, section 403, the Lieutenant-Governor is a member of the Board of Pardons.

The office of Lieutenant-Governor carries with it necessary duties that must be performed to carry on the government of the Commonwealth.

You request advice as to whether or not the President Pro Tempore of the Senate can, in the absence or disability of the Lieutenant-Governor, perform the duties of the office of Lieutenant-Governor.

The Administrative Code of 1929, as amended, the Act of April 9, 1929, P. L. 177, Section 403, 71 P. S. § 113, provides:

The Board of Pardons shall consist of the Lieutenant Governor, Secretary of the Commonwealth, Attorney General, and Secretary of Internal Affairs.

The Pennsylvania Constitution, Article 2, Section 9, provides:

The Senate shall, at the beginning and close of each regular session and at such other times as may be necessary, elect one of its members President pro tempore, who shall perform the duties of the Lieutenant Governor, in any case of absence or disability of that officer, \* \* \*

The Pennsylvania Constitution, supra Article 4, Section 14, provides:

In case \* \* \* the Lieutenant Governor \* \* \* shall be unable to exercise the duties of his office, the powers, duties \* \* \* until the disability be removed, shall devolve upon the President pro tempore of the Senate; \* \* \*

It is manifest that the present duties of the Lieutenant-Governor, as a member of the Pennsylvania National Guard, require his presence elsewhere than in the Commonwealth of Pennsylvania. Because of this absence, Strickler is unable to perform the duties of his office of Lieutenant-Governor.

There can be no office without responsive duties and functions to be performed. Civil government must be maintained.

The Pennsylvania Constitution, supra, article 2, section 9, and article 4, section 14, mandates that the President Pro Tempore of the Senate shall perform the duties of the Lieutenant-Governor in any case of absence, where the Lieutenant-Governor is unable to exercise the duties of his office.

The Pennsylvania Constitution, supra, providing that the President Pro Tempore of the Senate perform the duties of the office of Lieutenant-Governor is interpreted to mean perform all the duties of the office of Lieutenant-Governor.

The opinion requested is responsively limited to the specific question propounded.

We are not unmindful of other points of law that may arise which are not considered in this opinion.

It is our opinion, that by virtue of the constitutional provisions of the Pennsylvania Constitution, supra, as set forth in article 2, section 9, and article 4, section 14, the President Pro Tempore of the Senate has constitutional authority to perform all the duties of the office of Lieutenant-Governor, when the Lieutenant-Governor is absent or unable to perform the duties of his office. The Constitution mandates that he perform these duties.

Very truly yours

DEPARTMENT OF JUSTICE,

CHARLES J. MARGIOTTI,  
Attorney General.

ELMER T. BOLLA,  
Deputy Attorney General

---

OPINION No. 619

*Public Utility Commission—Salary Increases—Constitution.*

Article III, section 13, does not apply to members of the Commission. Each member is entitled to receive a salary fixed by the Act of March 31, 1949, P. L. 369, from the date of its enactment.

Harrisburg, Pa., November 30, 1950.

Honorable Weldon B. Heyburn, Auditor General, Harrisburg,  
Pennsylvania.

Sir: You have asked us whether the increased salaries provided by the Act of March 31, 1949, P. L. 369, 66 P. S. 452 (Pocket Part), can be approved by you for the five present members of the Public Utility Commission.

The Public Utility Commission was created by the Act of March 31, 1937, P. L. 160, 66 P. S. 452, which provided that the commission should consist of five members. The membership was classified by providing that the commissioners first appointed should serve for two, four, six, eight and ten years respectively; and that thereafter each successor should be appointed for a term of ten years.

The terms of the five commissioners presently in office will expire on the thirty-first day of March of the years 1951, 1953, 1955, 1957 and 1959 respectively.