

Authority to Fill Vacancies: Legal Background

The Governor's authority to appoint a Lieutenant Governor is grounded in Article XIII, Section 3 of the New York State Constitution, which authorizes the Legislature to provide for the filling of vacancies in state offices.

The Legislature did so by enacting Public Officers Law Sections 41, 42 and 43.

Public Officer Law Section 41 provides that a vacancy in the offices of Comptroller or Attorney General can be filled pursuant to a joint resolution of the Legislature.

Public Officer Law Section 42 provides for the filling of vacancies in the United States Senate and the House of Representatives, as well as any other elected office *except* the offices of governor and lieutenant governor, by election or Gubernatorial appointment, unless the Constitution provides otherwise.

Public Officer Law Section 43 authorizes the governor to appoint a person to execute the duties of any other elective office until the vacancy shall be filled by election, if there is no other provision of law for filling the office.

The State Constitution makes no provision for filling the office of Lieutenant Governor when only that position is vacant. Article IV, Section VI, provides that when both the offices of governor and lieutenant governor are vacant, both positions are to be filled by general election.

Article IV, Section 6 also provides that the temporary president of the senate will perform the duties of lieutenant governor during a vacancy. The assumption of the duties of lieutenant governor by the temporary president, however does not fill the vacancy. Neither any other Constitutional provision or statute provides for filling a vacancy in the office of lieutenant governor alone. Accordingly, appointment of a lieutenant governor by the governor falls squarely within the plain meaning of Public Officers Law 43.

Public Officers Law

Section 43. Filling other vacancies.

If a vacancy shall occur, otherwise than by expiration of term, with no provision of law for filling the same, if the office be elective, the governor shall appoint a person to execute the duties thereof until the vacancy shall be filled by an election. But if the term of such officer shall expire with the calendar year in which the appointment shall be made, or if the office be appointive, the appointee shall hold for the residue of the term.