CONSTITUTION OF VIRGINIA: FUTURE CHANGES (AMENDMENTS) - LEGISLATURE - JUDICIARY.

Lieutenant Governor may be considered member of Senate for purposes of tie-breaking vote when Constitution has not prescribed particular vote and such action is not otherwise constitutionally violative. Lieutenant Governor is not considered member of Senate for purpose of casting tie-breaking vote to defeat Senate joint resolution proposing to amend Constitution, requiring majority vote of members elected to Senate.

The Honorable Kenneth W. Stolle
Member, Senate of Virginia
February 6, 1996

You present a situation in which the Lieutenant Governor acts to break a tie vote by casting a vote in the Senate to defeat 1996 Senate Joint Resolution No. 91, proposing to amend the Constitution of Virginia (1971) pursuant to the provisions of Article XII, § 1. You ask whether the Lieutenant Governor may cast such a vote on a resolution proposing to amend the Constitution since the provisions of Article XII, § 1 establish that only members elected to the Senate shall vote on such matters.¹

A December 1980 opinion of the Attorney General considering whether the Lieutenant Governor may vote to break a tie on legislation pertaining to certain matters contained in Article IV, § 11—requiring a “majority [vote] of all the members elected to each house” to pass the legislation—concludes that “the Lieutenant Governor is not a member of the Senate for purposes of Art. IV, § 11.”²

A February 1980 opinion of the Attorney General concludes that the Senate may treat the Lieutenant Governor as a member of the Senate for purposes of voting to break a tie when the Constitution does not prescribe a particular vote, provided that such action does not otherwise violate the Constitution.³

A 1970 opinion of the Attorney General considers whether the Constitution prohibits the Lieutenant Governor, as President of the Senate, from serving on the Senate Committee on Rules, and concludes that the Constitution contains no provision “which directs that the membership of such a committee consist only of elected members of the Senate,” and, accordingly, “the Senate may, under the authority conferred by Section 47 of the Constitution, authorize the Lieutenant Governor, as President of the Senate, to serve on the committee.”⁴

The Supreme Court of Virginia recognizes that construction of the Constitution and statutes by the Attorney General under the provisions of § 2.1118 of the Code of Virginia "is of the most persuasive character and is entitled to due consideration."⁵ The Court also recognizes that interpretations by the Attorney General are to be given great weight when the General Assembly has not contradicted them.⁶ The December 1980 opinion is directly on point in responding to your question. Since that opinion was rendered, the General Assembly has passed twenty-one amendments to the Constitution which have been submitted for approval to the qualified voters of Virginia.⁷ The General Assembly, in submitting twenty-one amendments to the Constitution, has not contradicted the 1980 opinion, concluding that the Lieutenant Governor is not a member of the Senate for purposes of the majority vote requirement in Article IV, § 11. The failure of the
General Assembly during the past fifteen years to take any action questioning the accuracy of the December 1980 opinion is a strong indication that the opinion is consistent with legislative intent.

"[T]he practical construction given to a statute by public officials, and acted upon by the people, is not only to be considered, but, in cases of doubt, will be regarded as decisive. It is allowed the same effect as a course of judicial decision. The Legislature is presumed to be cognizant of such construction, and, when long continued, in the absence of legislation evincing a dissent, the courts will adopt that construction."[8]

Moreover, lieutenant governors, by their recent actions on similar matters, have acknowledged that the prior opinions of the Attorney General are a correct interpretation of the applicable constitutional provisions, by concluding that they are unable to vote on amendments to tax bills because Article IV, § 11 requires an affirmative vote of a "majority of all the members elected to each house" on such bills.9 In addition, the Lieutenant Governor ruled in 1994 that final adoption of a resolution nominating a person to be elected to the Workers' Compensation Commission required a majority vote of the members elected to each house.10 In the 1969 Session of the General Assembly, the Lieutenant Governor likewise ruled that the affirmative vote of a majority of the members elected to the Senate is required to adopt an amendment to a joint resolution amending the Constitution.11

It is my opinion that, in accordance with the prior opinions of the Attorney General and actions of the General Assembly consistent with the conclusions reached in those opinions, the Lieutenant Governor may not vote on bills and resolutions encompassed within the constitutional provisions referenced above. Accordingly, in the matter you present, I am of the opinion that the Lieutenant Governor improperly cast a vote to break a tie vote in the Senate in an effort to defeat 1996 Senate Joint Resolution No. 91, proposing to amend the Constitution of Virginia under the provisions of Article XII, § 1.

1 Article XII, § 1 1971 Article XII, § 1 requires that any constitutional amendment proposed in either the Senate or the House of Delegates "be agreed to by a majority of the members elected to each of the two houses." (Emphasis added.) See also Art. IV, § 11 (providing for passage of any bill establishing new office, debt, appropriations, and taxes by majority vote of General Assembly); Art. VI, § 7 (providing for election of judges by majority vote of General Assembly).


7 See 1994 Va. Acts Reg. Sess.: Ch. 405, at 578; Ch. 677, at 991; Ch. 770, at 1175; Ch. 315, 1992 Va. Acts Reg. Sess. 400; 1990 Va. Acts Reg. Sess.: Ch. 304, at 417; Ch. 621, at 914; Ch. 735, at 1149; Ch. 736, at 1152; 1986 Va. Acts Reg. Sess.: Ch. 242, at 440; Ch. 250, at 447; Ch. 431, at 729; Ch. 240, 1985 Va. Acts 288; 1984 Va. Acts: Ch. 708, at 1565; Ch. 737, at 1661; 1982 Va. Acts Reg. Sess.: Ch. 164, at 274; Ch. 396, at 645; Ch. 504, at 830; 1980 Va. Acts: Ch. 80, at 92; Ch. 120, at 144; Ch. 636, at 946, Ch. 655, at 991.

J. VA. SEN. 62, 80 (Sp. Sess. 1986). "Article IV, Section 11 of the Constitution of Virginia states that no tax bill shall be passed without a majority "of all members elected to each house". (This means 21 votes of the 40 elected to the Senate.) In 1980 the Attorney General ruled that for the purposes of this provision, the Lieutenant Governor is not a member of the Senate and cannot vote on a tax bill. Speakers of the House have similarly ruled that a vote on an amendment to a tax bill is tantamount to a vote on the measure itself." Id. at 62 (quoting Lt. Gov. Lawrence Douglas Wilder).

J. VA. SEN. 154950 (1994). Although the final adoption of a resolution appointing a person to the Workers' Compensation Commission requires a majority vote of the members elected to each house, matters preliminary to final adoption do not require such members' majority vote.