

The State of New Hampshire

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February 8, 1960

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Mr. Robert L. Stark
Deputy Secretary of State
Concord, New Hampshire

Dear Mr. Stark:

You have inquired whether as Deputy Secretary of State you act as Secretary until the election of a new Secretary by the Legislature and whether, if so, you have the duty and right to appoint a Deputy.

My answer to both questions is in the affirmative.

The Constitution provides that in case of the death of the Secretary of State "his deputy shall exercise all the duties of the office of secretary . . . until another shall be appointed." Const., Part II, Art. 69. As has been held by the Supreme Court of New Hampshire, the method of election of the Secretary of State (by joint ballot of the Senators and Representatives assembled in one room) ". . . is an exclusive method which cannot be changed by the Legislature." Opinion of the Justices, 102 N.H. 197 (A.S. July 9, 1959).

Consonant with the foregoing, the statutory law provides that the Secretary of State shall be chosen biennially (RSA 5:1) and that the Deputy shall exercise the duties of the Secretary while the latter is absent or unable from any cause to act (RSA 5:17). One of the powers of the Secretary of State is to appoint a Deputy who serves at the pleasure of the Secretary (RSA 5:16, 17 and 18). Since by constitutional provision you are required to exercise all of the duties of the office of Secretary of State, one of these duties is to appoint a Deputy. A Deputy is recognized as necessary inasmuch as in your absence as Acting Secretary the Deputy exercises the duties of the office of Secretary by law.

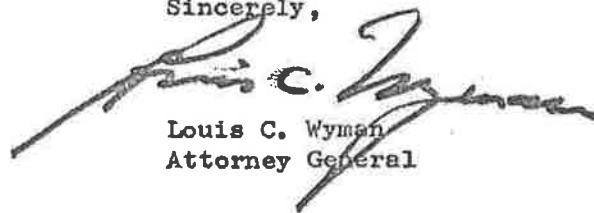
Mr. Robert L. Stark, Deputy Secretary of State
February 8, 1960.

While the word "appointed" appears in Part II, Art. 69, supra, in my opinion this word means chosen in the manner provided by Art. 67, to wit, by joint ballot of the House and Senate. No provision is made anywhere in the law or the Constitution for the appointment of a Secretary of State. Furthermore, as stated above, the Supreme Court of New Hampshire has affirmed that choosing a Secretary by the House and the Senate is a method which cannot be changed by the Legislature and would require constitutional amendment.

In the case of the State Treasurer - also a constitutional officer and also chosen by joint ballot of the House and the Senate - the Legislature has provided for appointment of a commissioner to perform all the duties of the Treasurer until a new Treasurer is elected and qualifies. (RSA 6:20). This commissioner is appointed by the Governor and Council. No such provision has ever been adopted in connection with the office of Secretary of State. Also, the Constitution does not provide that the State Treasurer shall at all times have a Deputy as it does provide for the Secretary of State.

Summarizing, therefore, it is my opinion that by constitutional mandate you act as Secretary of State until another Secretary is chosen by joint ballot of the Senators and Representatives and that in so acting you are required to appoint a Deputy who serves at your pleasure. While acting as Secretary of State, you are entitled to the salary of Secretary of State at the starting point in the range.

Sincerely,



Louis C. Wyman
Attorney General