

25 February 2015

Opinion¹: Gubernatorial Qualifications

Issue/question:

1. *Is someone who is a two-star at the spring session eligible to run for Governor?*

The short answer is “probably yes.” The person is eligible if the spring is their third regular conference, i.e., if all three of their stars are from regular fall/spring sessions (and not joint session).

It should be noted, however, that the term “star” is never used in either the Constitution or the Statutes to refer to length of participation in OIL; it is only used to refer to the OIL seal (in Article 10 of the Constitution). The practice of OIL has been to award a “star” for each session in which members participate, starting at zero--thus 0-star at one’s first session, 1-star at one’s second session, etc. Thus, the “two-star” referred to in the question is someone who is participating in his/her third session during the spring session.

One complicating factor, and the one which motivates the question, is one of timing. Since Article 5, Section 1.1 of the Constitution states, “No person shall serve as Governor who shall not have been a member of the organization for the duration of at least three (3) conferences except by means of succession,” is someone who is, at the time of the election, participating in her/his third conference eligible? Yes, this person is eligible, because that same section includes that “The term of office shall be from the end of the spring conference in which he or she was elected until the end of the spring conference the following academic year.” Thus, by the time this person would begin their term as Governor (that is, at the end of the spring session), they would have completed their third conference and would therefore be eligible.

However, there is one other complicating factor: “special session stars.” In the spring of 2014, and in accordance with an executive order from Governor Jacob Daniel, Lieutenant Governor Michael Merit issued regulations for special session that included [emphasis added]:

“Session stars will be awarded to all those who attend the Special Session. They will hold the same clout as regular session stars. If Special Session is your first session, yes you get a star. However, I will not make any special requirements on the individual Chambers as to how the handle the Special Session star with regards to the individual competitions governed by their own standing rules. It is not my place, nor should it be. I do ask each Chamber to be as inclusive as they can be when and wherever possible.”

Per Title 5, Section 101 of the OIL Statutes, rules adopted by an Executive Branch official are considered permanent unless: 1) repealed or revised by a future administration; 2) repealed or new rules enacted by the Legislature; or 3) voided by the Supreme Court on the grounds of unconstitutionality or violation of statute. Thus, as a rule adopted by an Executive Branch official, LG Merit’s special session regulations from Spring 2014 are still in effect. This requires some further analysis to determine what exactly from it is meant to still apply.

The first sentence is limited by the phrasing “who attend *the* Special Session” [emphasis mine]--this should be taken to refer to the special session on April 5, 2014, and *not* all future Special Sessions. Indeed, if this had been meant to be for all future special sessions, then the LG could have said “who attend a Special Session” or “*any* Special Session.” The second sentence, however, still applies due to “will”: the stars awarded at the special session from Spring 2014 are still to have “the same clout as regular session stars.” This, then, requires us to examine what clout regular session stars actually have.

¹ The authority to issue opinions is granted in Title 5, Chapter 4, Section 400 of the OIL Statutes.

As I have noted before in this opinion, stars are actually not used in the Statutes or Constitution to indicate longevity with OIL. Thus, any clout they may have is not based on these documents, but instead likely have come from the practices of past Secretaries of State, like adding stickers to badges, and/or the chambers, like informal caucuses acknowledging those with a certain number of stars. The Constitution is clear that eligibility for Governor (and other leadership positions) is based on the number of conferences during which one has been a member and, importantly, not the number of stars one has.

Since eligibility for Governor (and other positions) is based on the number of conferences attended, do special sessions contribute to that number? No, special sessions do not count. This requires an analysis of the use of the words “session” and “conference” in the Statutes and Constitution.

The word “conference” appears in the Constitution 24 times. It is first used in Article 1, Section 2.2, where it is noted that there are two conferences per year (fall and spring), though “Other special meetings shall be held at such times and under such conditions as may be established by law.” The word “session” is used 20 times in the Constitution. While it is often used to describe the spring or fall session (ex: Article 4, Section 3.2), it is also used to describe special session (ex: Article 4, Section 4). The Constitution seems to establish a difference then between conferences and sessions: while all conferences are sessions, not all sessions are conferences (since special sessions are not conferences).

The Statutes, however, are less clear on the distinction between conference and session. “Conference” is used 35 times in the Statutes. For the most part, it exclusively means the organization-wide meetings in the fall and spring. In Title 6, Chapter 207, however, it states, “All attendants of any conference not regularly prescribed by the Constitution shall be assessed a participation fee to be determined by the Board of Directors prior to the converting of said special conference.” Thus, there could be a conference other than in the spring or fall. This might suggest that special sessions would qualify as such conferences. Furthermore, Title 8, Section 101.B. includes a mention of “special session” within the chapter on “Conference Meetings.” However, this interpretation (of special sessions counting as conferences) would have problematic implications for applying the Constitution, suggesting this is a dangerous interpretation.

In order to see the problematic implications, let us suppose for the sake of argument that special sessions should count as conferences. Article 4, Section 2.2 states the Speaker of the House’s term “shall be for the duration of two (2) conferences,” while Section 3.2 states that the President Pro Tempore’s term “shall be for the duration of two (2) conferences.” Since these sections don’t specify “2 regular conferences,” if special sessions were to count as conferences, then these leaders may only have the opportunity to serve for one regular session and one special session. Indeed, a devious Governor could even call for 2 special sessions over the summer (per Article 5, Section 2 of the Constitution), thereby preventing a President Pro Tempore or Speaker of the House from even serving during one regular session! Meanwhile, the Governor and Lieutenant Governor would remain unaffected and in office, since their terms extend “ from the end of the spring conference in which he or she was elected until the end of the spring conference the following academic year.” On the opposite end of the spectrum, a devious Governor could call for multiple joint sessions in order to make a friend eligible to run for office by boosting their conference count. Counting special sessions as conferences for the purpose of eligibility would therefore wreak havoc on the service of such key leaders as the Speaker of the House and President Pro Tempore and increase the risk of mischief by the two parties that can call for special sessions (the Governor and Legislature).

I confess that this opinion has been one of the most difficult to write given the frequent usage of both words throughout our documents and the imprecise use of sessions, stars, and conferences in the organization’s general discussions. I believe my interpretation below provides the most prudent course forward. Good internal legislation to make the meanings of session and conference explicit would benefit the organization.

As it stands, my findings are such:

1) Stars do not affect eligibility--only conference participation does.

2) Conferences and sessions should be seen as different and treated differently. All conferences should be seen as sessions, but not all sessions as conferences. Conferences occur in the spring and fall; sessions occur in the fall, spring, and when called for by either the Governor or Legislature in accordance with the Statutes and Constitution. There could be other conferences that are not in the spring or fall, but these would wreak havoc on organizational leadership due to the scenarios described above, and they therefore should be avoided.

3) Because sessions and conferences are different, special sessions do not count towards the conference requirement for eligibility for Executive positions.

4) International legislation to clarify the meanings of “conference” and “session” would be beneficial.