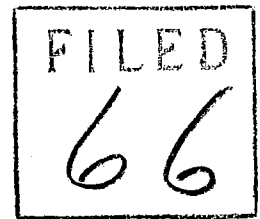


LEGISLATURE: Resignation of Senator during recess of
RESIGNATION Legislature should be directed to the
OF Governor.
SENATOR:

November 18, 1946

11/25



Honorable Milton F. Napier
1200-706 Chestnut Street
St. Louis 1, Missouri

Dear Senator Napier:

Your letter of recent date, requesting an opinion of this department, reads as follows:

"I have a problem, and I need your advice. After the death of Senator Clyde Wagner, I was elected to fill the vacancy thus created in the 29th Senatorial District. Upon redistricting here by the St. Louis Board of Election Commissioners, I found myself in the new 2nd Senatorial District. On November 5th, last, I was elected for a four-year term as State Senator from that District. The question which vexes me now is concerning my resignation from the old 29th. Should my resignation be tendered to the Governor or to the presiding officer of the Senate? I expect to qualify as Senator from the new 2nd District when the legislature convenes on January 7, next. If possible, I would like to take a short vacation, beginning not later than December 15th, so would greatly appreciate it if you could let me have your opinion at your earliest convenience."

The question presented in your letter is, to whom should a Senator tender his resignation during recess of Legislature?

Section 12858, R. S. Mo. 1939, reads as follows:

"If any member elected to either house of the general assembly shall resign in the recess thereof, he shall address and transmit his resignation, in writing, to the governor; and when any such member shall resign during any session, he shall address his resignation, in writing, to the presiding officer of the house of which he is a member, which shall be entered on the journal; in which case, and in all cases of vacancies happening, or being declared, during any session of the general assembly, by death, expulsion or otherwise, the presiding officer of the house in which such vacancy shall happen shall immediately notify the governor thereof."

(Emphasis ours.)

That part of Section 12858, supra, as emphasized is self-explanatory and further search of the Laws of Missouri does not disclose any change in the method provided in this section for tendering resignations by members of the Legislature.

Conclusion

Therefore, it is the opinion of this department that when a member of the Legislature desires to tender his resignation during recess thereof, the same should be addressed to the Governor.

Respectfully submitted,

GORDON P. WEIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

GPW:CP