

Who's governor when Lombardo's away? Still Lombardo, says administration

A pair of top executive branch officials left Nevada earlier this week, potentially leaving no formal acting governor as required by state law.

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Gov. Joe Lombardo speaks during a rally in support of opportunity scholarships at Saint Anne Catholic School in Las Vegas on Friday, August 4, 2023. (Daniel Clark/The Nevada Independent)

Last week, Gov. Joe Lombardo departed Nevada for a trip to Texas and a trade mission in Canada. Soon after, on Monday, Lt. Gov. Stavros Anthony left the Silver State for a trip promoting Nevada tourism in Mexico.

Their simultaneous absences and a lack of clarity in Nevada law on what happens when the governor leaves the state has revived a historical conundrum — who is in charge when the governor is not physically present in the state?

Though Lombardo's office says his absence from the state, which will end when he returns Thursday, has not precluded him from continuing his responsibilities as governor, the Nevada Constitution [stipulates](#) that in the case of the governor's "absence from the state," the powers and duties of the governor's office fall to the lieutenant governor.

Lines of succession have long been in place for catastrophic events or extraordinary situations, such as the resignation or removal of a top-ranking executive. The U.S. Constitution designates the vice president as next in

line to the president — Gerald Ford assumed the presidency after Richard Nixon’s resignation and Lyndon Johnson ascended to the position after the assassination of John F. Kennedy.

Nevada Democratic legislative leaders, who could have assumed powers in a more dire situation, declined to comment on the lack of a formal designation of an acting governor, but said they were not informed that both the governor and lieutenant governor were out of state at the same time.

Thanks to modern technology, a situation involving a governor’s absence is different from when the Nevada Constitution was drafted in 1864, a time during which the governor would be much more limited in continuing their duties outside of the state.

“While on the Canada trade mission, Governor Lombardo has remained in regular communication with staff and state officials, and he has fully maintained and executed his responsibilities as governor,” Lombardo’s Chief of Staff Ben Kieckhefer said in a statement.

During his trip, Lombardo’s office has continued to make announcements, including his spearheading of [a letter](#) from 17 Republican governors on Tuesday criticizing the Biden administration’s environmental policy.

A spokesperson for Lombardo’s office also wrote in an email that “while it is customary to alert the lieutenant governor about out-of-state travel, legal precedent upholds that the governor has the ability to leave the state without formally transferring any powers to the lieutenant governor.”

His office cited a [1966 opinion from the Nevada Supreme Court](#) finding that Lt. Gov. Paul Laxalt did not have the authority to request the impanelment of a state grand jury while Gov. Grant Sawyer spent roughly five hours outside the state at a dinner in Sacramento, California.

The opinion in favor of Sawyer — produced by a three-member court that included two Sawyer appointees — laid out a dispute of whether “absence from the state” within the state constitution “was intended by the framers ... to mean simply physical non-presence.”

The court found that “absence” is an ambiguous word, and in this case, referred to “effective absence” — meaning “an absence which is measured by the state’s need at a given moment for a particular act by the official then physically not present.” In that case, the court determined that the governor’s absence for a few hours on a Sunday evening did not amount to an “effective absence.”

“In [the] event of a specified official’s physical non-presence, the crux of a provision for succession in the event of ‘absence’ is the state’s immediate need for a specific act or function,” the opinion stated.

Lombardo’s administration said he was able to continue to manage day-to-day affairs as needed while on his international trade mission.

The [constitutional provision](#) dealing with executive vacancies also recognizes the greater weight of the governor’s military powers, allowing the governor “with the consent of the Legislature” to be out of the state in time of war, and to continue as “commander in chief of the military forces of the state.”

The Lombardo administration’s view would align with opinions in some other states, such as Washington, which has almost identical state constitutional language governing absences from the state. A [2019 opinion](#) from Washington Attorney General Bob Ferguson, requested by Washington’s Gov. Jay Inslee, concluded “that if both the governor and the lieutenant governor are absent from the state, the powers of the office of governor are vested in the elected governor.”

Though some states, such as [North Carolina](#) or [Massachusetts](#), more clearly define the line of succession for who serves as “acting governor” in cases of gubernatorial absences, situations similar to Nevada’s have wrought conflict. In June, Louisiana’s governor and secretary of state disagreed over who was in charge while both the governor and lieutenant governor were out of the country, the [Louisiana Illuminator reported](#).

The issue also arose in Arizona this week, after the state’s Republican treasurer, Kimberly Yee, briefly became acting governor after Democratic Gov. Katie Hobbs left the state. In a [formal statement](#) posted to X (formerly Twitter), Yee announced she wouldn’t use the authority to circumvent Hobbs — but still criticized her administration over a long-running partisan feud over [state agency cabinet nominations](#).

History of Nevada acting governors

There is a lengthy historical precedent in Nevada — even in the modern era — for the lieutenant governor to step into the governor’s shoes when the state’s top-ranking official is away.

In 2015, Lt. Gov. Mark Hutchison served as acting governor while Gov. Brian Sandoval was away on a trade mission in Europe, the [Associated Press reported](#). In 2009, Lt. Gov. Brian Krolicki spent a week in the top executive role while Gov. Jim Gibbons was overseas, the [Las Vegas Sun reported](#). In the prior administration, Lt. Gov. Lorraine Hunt also [filled in](#) multiple times as [acting governor](#) for Gov. Kenny Guinn.

In other cases, some officials have served for longer periods as acting governor in instances where the governor died or was elected to another seat. Gov. Bob Miller first assumed the role in 1989 after Gov. Richard Bryan was elected to the U.S. Senate.

But what happens when both the governor and lieutenant governor are gone?

While in some past cases the role of acting governor has gone next to the president pro tempore of the Senate, the [state constitution](#) only directs that transition of responsibilities if there is a “vacancy” in the governor’s office.

The state constitution states that if the governor’s seat is vacant and the lieutenant governor is removed from office, incapable of performing their duties or absent from the state, the Senate president pro tem “shall act as governor until the vacancy be filled or the disability cease.”

A similar line of succession is in place in [state law](#) if the lieutenant governor’s office is also vacant, with power going next to the speaker of the Assembly and then the secretary of state.

A spokesperson for Senate Democrats said Wednesday that Sen. Pat Spearman (D-North Las Vegas), who serves as the president pro tem, was not notified by either the governor or the lieutenant governor that they would both be out of the country at the same time. A spokesperson for Assembly Democrats said that Speaker Steve Yeager (D-Las Vegas) has never been provided with information about either official’s travel plans.

Despite the Lombardo administration’s stance on the law and assertion that Lombardo “fully maintained” his responsibilities, circumstances similar to those that played out earlier this week in Nevada have seen the Senate president pro tem briefly serve as acting governor — albeit in limited circumstances.

In June 2007, Gov. Jim Gibbons and Lt. Gov. Brian Krolicki left the state to survey fire damage on the California side of Lake Tahoe. During that time, the then-President Pro Tem of the Senate Mark Amodei (now a congressman) spent five hours as acting governor. He took the time to call his mother, the [Associated Press reported](#).

State Sen. Joe Neal experienced a similar situation, serving as acting governor at one point in 1991, according to his [biography](#) and an [interview](#) with UNLV historian Claytee White. In 2006, Neal told White that when the governor and lieutenant governor had left the state, a reporter, Ed Vogel, had notified him he was acting governor, adding that the “president pro tem of the senate always fulfills that constitutional responsibility as being the acting governor when the governor and the lieutenant governor are out of state.”

But Neal’s and Amodei’s actions stand at odds with what Lombardo’s administration had to say about the situation.

Under [state law](#), the governor’s absence from the state would not be considered a “vacancy” from office, meaning the line of succession beyond the lieutenant governor did not kick into place.

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