In response to this letter of inquiry the President courteously advised that the Attorney General would give consideration to these bills and report to the Judiciary Committee. Pursuant to this correspondence, the Attorney General of the United States on June 11, 1947, addressed a letter to the chairman of the Judiciary Committee which analyzed the several bills on Presidential succession then pending before the committee.

Mr. Chairman, that letter of the Attorney General succinctly covers this whole problem. The Attorney General has the research facilities and the lawyers, and is in a position to furnish to the Congress a factual statement, plus the benefit of his legal conclusions, as to the intent and meaning of doubtful words, phrases, and expressions used in the Constitution and in the statutes.

In the Senate this bill was debated for a large part of 2 days. No such time is available in the House; therefore, I am going to read the pertinent parts of the Attorney General's opinion. In this opinion no words are wasted. Facts and legal conclusions only are stated and the committee reporting this bill concurs in the conclusions reached by the Attorney General.

Mr. Chairman, the Attorney General's letter reads as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., June 11, 1947.

Hon. EARL C. MICHENER,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request for my views concerning a group of related measures (H. R. 163, H. R. 1121, H. R. 2524, H. R. 2749, and H. J. Res. 34) relative to Presidential succession and kindred subjects.

Article II, section 1, clause 6, of the Constitution provides:

"In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected."

Pursuant to this authorization, Congress in 1792 passed the first succession law (act of Mar. 1, 1792, ch. 8, sec. 9, 1 Stat. 240). This law provided:

"In case of removal, death, resignation, or disability both of the President and Vice President of the United States, the President of the Senate pro tempore and in case there shall be no President of the Senate, then the Speaker of the House of Representatives for the time being shall act as President of the United States until the disability be removed or a President shall be elected."

There were a number of objections to this law, both of a political and constitutional nature, and Congress accordingly changed the law in 1886 to read as follows (act of Jan. 19, 1886, ch. 4, secs. 1–2, 24 Stat. 1–2; 3 U. S. C. 21–22):

"That in case of removal, death, resignation, or inability of both the President and Vice President of the United States, the Secretary of State, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Treasury, or if there be none, or in the case of his removal, death, resignation, or inability, then the Secretary of War, or if there be none, or in case of his removal, death, resignation, or inability, then the Attorney General, or if there be none, or in case of his removal, death, resignation, or inability, then the Postmaster General, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice President is removed or a President shall be elected: *Provided*, That whenever the powers and duties of the office of President of the United States shall devolve upon any of the persons named herein, if Congress be not then in session, or if it would not meet in accordance with law within 20 days thereafter, it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress in extraordinary session, giving 20 days' notice of the time of meeting.

"SEC. 2. That the preceding section shall only be held to describe and apply to such officers as shall have been appointed by the advice and consent of the Senate to the offices therein named, and such as are eligible to the office of the President under the Constitution, and not under impeachment by the House of Representatives of the United States at the time the powers and duties of office shall devolve upon them respectively."

On June 19, 1945, the President addressed a message to Congress requesting further changes in the order of Presidential succession (91 CONGRESSIONAL RECORD 6280–6281). The President recommended that the Speaker of the House of Representatives be placed first in the order of succession in case of the removal, death, resignation, or inability to act, of the President and Vice President. Under the plan recommended, the person succeeding to the Presidency would serve until the next congressional election or until a special election called for the purpose of electing a new President and Vice President. The individuals elected at such a general or special election would serve only to fill the unexpired terms. The President suggested that if there were no Speaker, or if the Speaker failed to qualify, the succession pass to the President pro tempore of the Senate and then to the members of the Cabinet, until a duly qualified Speaker is elected.

The President expressed the belief that in a democracy the power to nominate a successor (a member of the Cabinet) should not rest with the Chief Executive, and pointed out that the Speaker is elected in his own district, and is elected as presiding officer of the House by votes of the representatives of all the people of the country. Hence his selection, next to that of the President and Vice President, can most accurately be said to stem from the people themselves.

The President gave the following reasons for preferring the Speaker to the President pro tempore of the Senate: A new House is elected every 2 years, and always at the same time as the President and Vice President. It is usually in agreement politically with the Chief Executive. Only one-third of the Senate, however, is elected with the President and Vice President. It might, therefore, have a majority hostile to the policies of the President and fill the Presidential office with one not in sympathy with the will of the majority of the people. The President referred, in this connection, to the impeachment of President Johnson as suggesting the possibility of a hostile Congress seeking to oust a Vice President who had become President, in order to have the President pro tempore of the Senate become the President. This, he said, was one of the considerations which caused Congress in 1886 to change the law of 1792 under which the President pro tempore of the Senate succeeded the Vice President.

On February 5, 1947, the President renewed his request for legislation changing the order of succession. In this message, he said (93 CONGRESSIONAL RECORD 786):

"On June 19, 1945, I sent a message to the Congress of the United States suggesting that the Congress should give its consideration to the question of the Presidential succession.

"In that message, it was pointed out that under the existing statute governing the succession to the office of President, members of the Cabinet successively fill the office in the event of the death of the elected President and Vice President. It was further pointed out that, in effect, the present law gives to me the power to nominate my immediate successor in the event of my own death or inability to act.

"I said then, and I repeat now, that in a democracy this power should not rest with the Chief Executive. I believe that, insofar as possible, the office of the President should be filled by an elective officer.

"In the message of June 19, 1945, I recommended that the Congress enact legislation placing the Speaker of the House of Representatives first in order of succession, and if there were no Speaker, or if he failed to qualify, that the President pro tempore of the Senate should act until a duly qualified Speaker was elected.

"A bill (H. R. 3587) providing for this succession was introduced in the House of Representatives and was passed by the House on June 29, 1945. It failed, however, to pass the Senate.

"The same need for a revision of the law of succession that existed when I sent the message to the Congress on June 19, 1945, still exists today.

"I see no reason to change or amend the suggestion which I previously made to the Congress, but if the Congress is not disposed to pass the type of bill previously passed by the House, then I recommend that some other plan of succession be devised so that the office of the President would be filled by an officer who holds his position as a result of the expression of the will of the voters of this country.

"It is my belief that the present line of succession as provided by the existing statute, which was enacted in 1886, is not in accord with our basic concept of government by elected representatives of the people.

"I again urge the Congress to give its attention to this subject."

* * * * *

(The Attorney General's analysis of all the bills mentioned in the letter is not included here because it is not pertinent to S. 564. The letter does state the preference of the Attorney General for the Kefauver bill, H. R. 2524, and the Michener bill, H. R. 2749, both of which attempt to carry out the President's recommendations. The Attorney General's report continues:)

* * * * *

There are several legal questions which invariably arise upon the introduction of bills changing the order of Presidential succession. I believe, however, that these questions can be resolved in favor of the validity of legislation which would carry out the President's recommendations.

Opponents of the bill introduced in the Seventy-ninth Congress (H. R. 3587) contended that the Speaker of the House and the President pro tempore were not "officers" within the meaning of article II, section 1, clause 6, of the Constitution. In so doing, they relied heavily upon the Senate's decision in 1798 in the Blount impeachment case. In a plea to the jurisdiction of the Senate, Senator Blount contended that since he held his commission from the State of Tennessee and not from the United States, he was not a "civil officer of the United States" within the meaning of the impeachment clause of the

Constitution (art. II, sec. 4). The Senate sustained the plea and dismissed the articles of impeachment.

* * * * *

The proponents countered with *Lamar* v. *United States* (241 U. S. 103, 112–113 (1916)), holding that a Member of Congress is an "officer acting under the authority of the United States" within the meaning of the impersonation statute (Criminal Code, sec. 32; 18 U. S. C. 76). In its opinion, the Court noted that on another occasion the Senate, after considering the Blount case, concluded that a Member of Congress was a civil officer within the purview of the law requiring the taking of an oath of office (Congressional Globe, 38th Cong., 1st sess., pt. 1, pp. 320–331).

The question at issue, however, is not whether a Member of Congress as such, is a civil officer within the meaning of article II, section 4. The issue is whether the Speaker of the House and the President pro tempore who, though they are Members of Congress, are chosen from those offices by their respective Houses and not by vote of their constituencies, are officers within the meaning of article II, section 1. On this question, the Blount decision is of doubtful authority. The term is used in article II, section 1, without qualification and presumably includes not only officers of the executive branch of the Government but also officers of the judicial and legislative branches.

Further support for the view that the Speaker and President pro tempore are officers within the meaning of article II can be found in the fact that the law of 1792 designated the President pro tempore and the Speaker as successors to the Presidency. This law represents a construction of article II by an early Congress, whose views of the Constitution have long been regarded as authoritative, and reflects a long-continued acquiescence in such a construction (H. Rept. 829, 79th Cong., 1st sess., p. 4).

* * * * *

In conclusion, I wish to state that I am convinced of the need for a revision of the law relating to Presidential succession and, of the measures herein discussed, have a definite preference for H. R. 2524 and H. R. 2749, which are similar in all major respects and are more nearly in harmony with the recommendations of the President. Accordingly, I recommend favorable consideration of the proposal contained in the two measures last mentioned.

I am advised by the Director of the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

DOUGLAS W. MCGREGOR,
Acting Attorney General.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. MICHENER. I yield to the gentleman from Michigan.

Mr. DONDERO. In case there is no Vice President, as now obtains, does it provide that the President pro tempore of the Senate will succeed before the Speaker of the House will become eligible for the Presidency?

Mr. MICHENER. Under existing law?

Mr. DONDERO. Under the present bill.

Mr. MICHENER. Under the proposal the Speaker, as stated just a moment ago, comes first in the order of succession; the President pro tempore of the Senate comes second, and then the Cabinet officers in the order in which they were created. The Committee on the Judiciary has made no changes whatever in the Senate bill. Twenty-six of the twenty-seven Members voted to pass the bill S. 564 without amendment.

Mr. CUNNINGHAM. Mr. Chairman, will the gentleman yield?

Mr. MICHENER. I yield.

Mr. CUNNINGHAM. I would like to be clear on the second paragraph of S. 564. As I understand it, if there is a vacancy in the office of the President, the Speaker of the House accepts the appointment; then, the House elects another Speaker; then, if the Speaker who is acting as President dies, the second Speaker takes his place if he wishes instead of the President pro tempore of the Senate. In other words, there is no chance for a President pro tempore of the Senate to become President as long as the House has a Speaker who qualifies and is willing to serve.

Mr. MICHENER. That is correct.

Mr. CUNNINGHAM. I thank the gentleman.

Mr. MICHENER. That was discussed very thoroughly in the Senate and a number of questions were asked.

I yield to the gentleman from Pennsylvania [Mr. EBERHARTER].

Mr. EBERHARTER. Has the gentleman stated what the present law provides as to the order of succession?

Mr. MICHENER. The present law provides that the order of succession shall be in accordance with the order in which the Cabinet offices were created. The first is Secretary of State and so forth. But the law is incomplete because we have two Cabinet offices that were created since that law was enacted.

Mr. DONDERO. Mr. Chairman, will the gentleman yield for a question?

Mr. MICHENER. I yield.

Mr. DONDERO. Suppose the Speaker of the House is not a native-born American?

Mr. MICHENER. We do not have to spend any time on that question for the reason that the bill is very clear on that point. No one can qualify in the line of succession who does not possess the constitutional qualifications for a President of the United States. He must be 35 years of age; he must be native-born.

The Members have before them the committee report accompanying the bill. On pages 5 and 6 of the report will be found an analysis of its provisions. Time will not permit my discusisng these sections in detail; however, if there are any questions about the meaning of any section, the answers can be found in this committee analysis which is, of course, printed and presented to the membership for just that purpose. Pursuant to the permission granted to me by the House, I print with these remarks a copy of that analysis, which is as follows:

The bill S. 564 provides in section (a) (1) that in the absence of a President or Vice President to discharge the powers and duties of the Office of President, the Speaker of the House of Representatives shall act as President, provided he first retires as Speaker and as a Member of Congress. Section (a) (2) of the bill relates these same requirements to the case of the death of an individual acting as President. The selection of the Speaker to be in the first line of succession is based upon the sound reasoning that of all elected representatives of the people other than the President and Vice President, he more than any other represents the composite voice of the people by virtue of his election to the position of Speaker by the votes of the representatives of the people. He holds, in effect, a mandate from the people to carry out a particular policy or program. He, more than the President pro tempore of the Senate, reflects the latest sentiment of the people, since the 2-year term enjoyed by Representatives in Congress insures that freshness of the popular will which the 6-year senatorial term could not offer nor assure. Moreover, because of the shorter term of a Representative, there is more likelihood of political harmony between the policies of a President or Vice President deceased in office and a Speaker, than between the President and Vice President and the President pro tempore of the Senate.

Section (b) provides that in the absence of a duly qualified Speaker to succeed, the President pro tempore of the Senate shall act as President, conditioned upon his resignation as President pro tempore and as Senator.

Section (c), including subsections (1) and (2) thereunder, provides that the tenure of the person acting as President under the preceding sections shall be until the expiration of the then current Presidential term, or until the qualification or removal of disability of a prior-entitled individual, whichever period is the shorter. It will be observed that here, and in other sections of the bill, the terms "disability" and "inability" are used seemingly interchangeably. The use of the terms in this fashion is predicated upon the identical use in the Constitution in article II, section I, clause 6.

Section (d) (1) provides that in the lack of a President pro tempore, qualified to act as President, then those powers and duties shall be exercised in descending order of selection by the following officers not under a preventing disability: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, and the Secretary of Labor. This order parallels the order provided in the existing law, with the exception of the addition of the Secretaries of Agriculture, Commerce, and Labor. The remoteness of the contingency which would occasion such nonelective officers to act as President removes the objections now made as to that point in existing law. Subsection (d) (2) qualifies the Cabinet-officer-succession provision to the extent that the removal of the disability of a Cabinet officer higher on the list shall not terminate the service of the Cabinet officer then acting as President, although the removal of disability of any other prior-entitled individual in the line of succession would operate to terminate the Presidential tenure of the Cabinet officer then acting in such capacity.

As a further qualification to the assumption of the office of President by a Cabinet officer, it is provided in subsection (d) (3) that the taking of the Presidential oath of office would automatically constitute his resignation as a Cabinet officer. This would preclude any question as to duality of office.

Section (e) provides that the officers named elsewhere in the bill for succession must be constitutionally eligible for the Presidency. In addition, the Cabinet officers named in the potential line of succession shall not only have been appointed by and with the advice and consent of the Senate prior to the disability of the President pro tempore, but must also not have been under impeachment by the House of Representatives at the time of devolution of the powers and duties of the Presidency upon them. The section is dictated from an abundance of caution to obviate even the barest possibility of an undesirable incumbency.

Section (f) provides for payment of the then prevailing Presidential salary to the suc-