

Emergency Succession

By Bill Hobby

Recent television and newspaper reports have called attention to a secret federal agency's establishment of a questionable line of succession to the Presidency to assure continued government in the event of a devastating nuclear attack.

A New York Times story said, "If all 17 legal successors to the President were incapacitated, non-elected officials would assume office in extreme emergencies."

This story is reminiscent of a little known and virtually disregarded provision in the Texas Constitution. In 1961, the Legislature recommended, and the voters ratified, a constitutional amendment providing "for temporary succession to powers and duties of public office in periods of emergency resulting from disaster caused by enemy attack."

Enabling legislation was passed in 1963 requiring all state-wide officials, except the governor, to designate "emergency interim successors and specify their order of succession." The officeholder was to designate "a sufficient number of such emergency interim successors so that there will be not less than three nor more than seven such deputies or emergency interim successors or any combination thereof at any time."

Former state representative Bill Hollowell of Grand Saline, author of the constitutional amendment and subsequent enabling legislation setting up a system for selection of an emergency legislature, recalls that longtime Speaker of the United States House Sam Rayburn was concerned about continuity of state governments in event of nuclear attack. Rayburn wrote to Texas House Speaker Jim Turman in 1961 urging Texas legislative action.

While legislation has mandated designation of emergency interim successors in both the executive and legislative branches, few officials have followed through. I was the only state official to fulfill that constitutional requirement (and was ridiculed by Texas Monthly for doing so in my first term as lieutenant governor in 1973). I filed the required list of successors with the Secretary of State. The list included Steve Oaks, then my executive assistant, and the late June Hyer, then parliamentarian of the Senate.

Oddly, the 1962 constitutional amendment allowed the legislature to set up a system of continuity of all state and local agencies but specifically excepted members of the legislature. This was contrary to a 1959 proposal from the Council of State Governments, which recommended provision for designation of emergency legislators.

Rep. Hollowell won passage of such an act in 1985. That act directs the executive director of the Employees Retirement System of Texas to submit to the lieutenant governor and speaker of the house lists of individuals residing in each state senatorial and representative district who are members or retirees of the Employees Retirement System and who previously served as senators or representatives.

Lists are to be prepared for each legislative district ranking the designees in descending order according to the number of years served in one house.

Designees are to be asked by the lieutenant governor and speaker of the house if they are willing to serve as emergency interim successors if the incumbent becomes unable to serve.

There is additional provision for incumbent legislators to file an alternate list of designated successors for use if a successor cannot be obtained from the Employees Retirement System list.

Most of the 50 states have adopted similar plans for designation of executive and legislative successors in event of nuclear emergency.

Reflective, again, of the general belief that nuclear attack will never happen, former Reps. Hollowell and David Hudson of Tyler are the only two legislators in the 181-member Legislature ever to file an alternate list of successors.

Whatever the likelihood of such a disaster, the differences between the federal and state approaches to the problem are significant. The Feds, in the person of President Reagan, set up a secret agency, the National Program Office, to devise a plan that had no legitimacy, no legislative or constitutional authorization. Texas, on the other hand, legally and openly adopted constitutional amendments to do the same thing.

The Cold War Concerns that led to the state action and the weird secrecy of the federal government belong to the era of the drive for nuclear fallout shelters in every house. They are curios of history, but they reflected real concerns of the 1950s and 60s.

Written in 1991.