

Robert Byrd Sees Saxbe Job Illegal

By Mary. Russell
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Senate Majority Whip Robert C. Byrd (D-W. Va.) said yesterday that he would vote against confirmation of Sen. William Saxbe (R-Ohio) as attorney general on constitutional grounds and he urged President Nixon to find a new nominee.

Byrd made the statement during a recess of Senate Judiciary Committee hearings at which three constitutional law professors testified that proposed legislation would not remove the constitutional obstacles to Saxbe's nomination, while one law professor said a bill lowering the attorney general's pay would make Saxbe's nomination constitutional.

The Constitution bars any member of Congress from appointment to a civil office for which Congress voted a salary increase during the member's term of office. Saxbe was in the Senate in 1969 when Cabinet officers' salaries were increased by Congress from \$35,000 to \$60,000.

The proposed legislation would return the Attorney General's salary to the \$35,000 figure. But Byrd said he thought the prohibition in the Constitution was "so clear that it can't be waived. In my judgment the bill itself shouldn't be passed. We should not delude the American people into thinking a way can be found around the constitutional obstacle."

Byrd stressed that he had no objection to Saxbe personally but said "in fairness to Mr. Saxbe," the President should look for a new nominee. "The President should have explored this (constitutional) matter further before presenting Mr. Saxbe for

confirmation," Byrd said.

Other senators differed as to how much trouble the Saxbe nomination is in because of the constitutional question.

Minority Leader Hugh Scott (R-Pa.) said, "I don't think it's in trouble."

President Nixon has said he won't send up Saxbe's name for confirmation until the pay bill is passed. The Senate Judiciary Committee is due to act today on the bill, already passed by the Post Office and Civil Service Committee.

University of Chicago Law School professor Philip Kurland testified yesterday that he did not see how reducing the pay could be looked upon "except as an evasion of the Constitution."

But a Duke law professor, William Van Alstyne, disagreed. He said Article I, Section 6 of the Constitution was intended to disqualify members of Congress not from appointment to existing offices, but only from creating offices that they then could fill. It is in "no respect a general corrupt practices act," Van Alstyne said.

Since the pay bill would keep Saxbe from profiting from the appointment, it would meet the intent of the Constitution, Van Alstyne said.

Saxbe appeared unruffled by the controversy over the constitutionality of his nomination. "I'm a great believer in destiny," he told UPI. "If I'm destined to be attorney general, it'll work out."

Asked if he was entertaining any thought of asking President Nixon to withdraw his nomination, Saxbe replied sharply: "No."