

1969 Rise in Cabinet Pay Could Prove Bar to Saxbe

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By WALTER RUGABER

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WASHINGTON, Nov. 1—Senator William B. Saxbe's nomination to be Attorney General ran into constitutional difficulties today, and the Justice Department conceded that "remedial legislation" would be needed before he could take office.

The apparent barrier to the Ohio Republican is posed by Article 1, Section 6, of the Constitution, the second clause of which says, in part:

"No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased, during such time."

Mr. Saxbe entered the Senate on Jan. 3, 1969, to begin his present six-year term. On Feb. 4 that year he voted in support of a pay increase for Cabinet officers, which ultimately became law.

Although a spokesman for Mr. Saxbe contended that these circumstances would not bar the Senator from taking office as Attorney General, other sources disagreed.

Acting Attorney General Robert H. Bork said, after the question was raised this afternoon, "Remedial legislation will be forwarded to the Congress with the nomination."

The intended remedy has been used at least once before in 1909, when Philander Chase Knox, a Pennsylvania Senator was nominated to be Secretary of State by President Taft.

The salary increase for the Secretary was withdrawn by Congress, and Mr. Knox took office under the old rate of pay.

For Mr. Saxbe, such a move would mean a reduction in the pay of the Attorney General from \$60,000 a year to \$35,000. His current salary as Senator is \$42,500.

The nomination of Gerald R. Ford to be Vice President is not affected by the constitutional provision because there have been no salary increases since the one in 1969 and Mr. Ford's present term as a member of the House began after the end of the House term in which the increases were voted.

A source on the staff of the

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Senate Judiciary Committee, which must pass on Mr. Saxbe's nomination, said that the 1909 legislation was politically and constitutionally controversial at the time.

"It [the nomination] doesn't look good," the source said.

It appeared that the Nixon Administration did not study the question before Mr. Saxbe's nomination was announced. Gerald L. Warren, the deputy White House press secretary, was asked about the Administration's position but did not respond.

The same constitutional issue, while not in precisely comparable circumstances, has been raised twice before in the Nixon Administration.

Served Without Pay

Donald Rumsfeld, then a Republican member of the House, was named director of the Office of Economic Opportunity even though the salary had been raised in his term as a legislator.

The difficulty was skirted by paying Mr. Rumsfeld nothing as director and \$42,500 a year,

the amount to which the director's salary had been increased, as an "assistant to the President."

The second case involved Melvin R. Laird, now one of Mr. Nixon's chief advisers. He asked Ramsey Clark, the Attorney General under President Johnson, for an opinion on whether he should enter Congress in 1969 after his re-election to the House.

It was known that the pay

of Cabinet members was likely to be raised in that session, and Mr. Laird was to be nominated to be Secretary of Defense. If Mr. Laird took the oath as a member of the House on Jan. 3, 1969, the question was whether he could then become Defense Secretary after Mr. Nixon's inauguration on Jan. 20.

Mr. Clark replied, in an official opinion, that Mr. Laird could go into Congress in early

January as long as he got out and into his Cabinet post before the pay rise took effect. He did.

As to the Vice President, a Congressional source noted that legislation to expand his free postal privileges, a possible "emolument" of office, was under consideration. It is not likely to be passed before Mr. Ford's nomination is acted upon, the source observed wryly.