

Byrd Says Saxbe Is Ineligible

Washington

Senator Robert C. Byrd (Dem-W. Va.) said yesterday he has concluded that appointment of Senator William B. Saxbe (Rep-Ohio) as Attorney General would be unconstitutional.

He told the Senate this is because Saxbe was a member in 1969 when the salary of the Attorney General and other Cabinet members was increased by Congress from \$35,000 to \$60,000.

The Constitution provides that no Senator or House member shall, during the time for which he was elected, be appointed to any federal office for which the salary was increased during his term.

Byrd, the assistant majority leader, said that from his reading of the constitutional debates of 1787, court decisions and other materials it seems that the prohibition

"was meant to be absolute."

Emphasizing there was nothing personal in his opinion, Byrd said "any senator elected in 1968 would be ineligible for appointment as Attorney General through 1974."

He said he did not believe such a constitutional disqualification could be reme-

died by legislation proposed by the Justice Department to roll back the Attorney General's pay to the level prior to the 1969 raise.

The Senate Judiciary Committee, at Byrd's request, is going to hold a hearing, probably Monday, on the constitutionality of the measure designed to

make Saxbe eligible for appointment as Attorney General.

Byrd's speech was supported by Democratic Leader Mike Mansfield, who said "It is far better to settle the question before, rather than to have it come up afterwards."

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