

Warning on Saxbe Eligibility

Washington

Three of four law school professors testifying before a Senate committee said yesterday Senator William B. Saxbe (Rep-Ohio) cannot be made constitutionally eligible with the aid of a special bill, for appointment as attorney general.

The assistant majority leader, Senator Robert C. Byrd of West Virginia, told newsmen that "in fairness to Senator Saxbe," President Nixon should find someone else to head the Justice Department.

After presiding over a Senate Judiciary Committee hearing on a bill designed to hurdle a constitutional barrier to Saxbe's nomination, Byrd said the administration should have explored the question of Saxbe's eligibility before selecting him.

Saxbe was a member of the Senate in 1969 when the attorney general's annual salary and that of other cabinet members was increased from \$35,000 to \$60,000.

Under the Constitution, no member of Congress shall, during the term for which he was elected, be appointed to a federal office for which the salary has been increased during that time.

The issue is not whether this bars Saxbe from appointment until after his Senate term expires on Jan. 3, 1975, but whether an ad-

ministration-proposed bill to roll back the attorney general's salary to \$35,000 would make him eligible.

The Justice Department says the bill complies with the constitutional purpose because Saxbe would not benefit from the 1969 increase.

Professor William Van Alstyne, associate dean of the Duke University Law School supported this view.

But Professor Philip Kurland of the University of Chicago Law School, William Swindler of the William and Mary College of Law

and Dean Willard Lorenson of the West Virginia University Law School disagreed.

They argued that the constitutional prohibition is clear and explicit and that Saxbe's disqualification cannot be overcome by the special legislation.

Swindler testified that any such measure would do "violence to the letter and the spirit of the Constitution." Kurland said it could be looked on as an evasion of the Constitution.

Judiciary Committee members appear divided on the issue. Senate minority

leader Hugh Scott and some other GOP members said that whether a strict or liberal construction is placed on the Constitution often seems to depend on the viewpoint of witnesses.

Senator Sam J. Ervin Jr. (Dem-N.C.) said the constitutional prohibition was absolute and could not be waived or nullified.

Saxbe's nomination has not been submitted to the Senate, and the Justice Department has said it will not be until Congress considers the special bill.

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