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# Robert Byrd Sees Saxbe Job Illegal

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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. Saxbee 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." He said it was as much a politi-

cal question as a constitutional question and pointed out that Lyndon B. Johnson while a member of Congress held a commission in the Navy as a lieutenant commander for one year, a violation of the Constitution.