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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

APPROVED
FEB 18 1975

FEB 13 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 58 - Compensation and other emoluments attached to the Office of the Attorney General
Sponsor - Sen. Scott (R) Pennsylvania

Posted
2/19

To Archives
2/19

Last Day for Action

February 22, 1975 - Saturday

Purpose

Restores to the Office of Attorney General the salary rate of \$60,000 now paid to all other positions at Level I of the Executive Schedule.

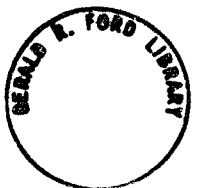
Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval

Discussion

When William B. Saxbe began his term of service as a Senator from Ohio on January 3, 1969, the salary of the Attorney General was \$35,000. Subsequently, on January 15, 1969, President Johnson transmitted to the Congress a recommendation increasing the annual salary for all cabinet positions to \$60,000. The recommended increase became effective in February 1969.

Late in 1973, President Nixon nominated Senator Saxbe to be Attorney General. This nomination ran into difficulty because of the provisions of Article I, Section 6, Clause 2 of the Constitution, which reads:



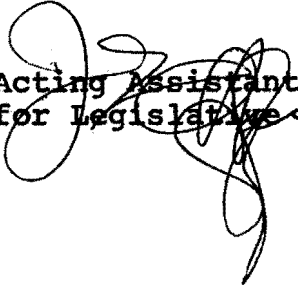
"No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."

To remove this Constitutional impediment to the appointment of Senator Saxbe, P.L. 93-178 was enacted on December 10, 1973. Section 1 of that Act had the effect of providing that the pay of the Attorney General would be \$35,000 for the six-year period of the Senator's term, thereby making it possible for him to assume office. Section 2 of P.L. 93-178 allowed court tests and expedited adjudication of any challenge of the constitutionality of Senator Saxbe's appointment and continuation as Attorney General.

Earlier this year, the Administration submitted legislation to Congress which would have completely repealed P.L. 93-178, effective January 3, 1975. S. 58, as enrolled, would repeal only section 1, the salary limitation provision of P.L. 93-178, effective as of February 4, 1975.

In its report to the Senate Post Office and Civil Service Committee on S. 58, Justice supported enactment of the bill on the basis that either it or the Department's proposal would accomplish the desired objective of restoring the salary of the Attorney General to the regular statutory rate. Justice has indicated informally that it does not view the failure of S. 58 to repeal section 2 of P.L. 93-178 as presenting any difficulty.

The effective date of February 4, 1975 is after the resignation of Attorney General Saxbe, but before the assumption of the office by Attorney General Levi.


Acting Assistant Director
for Legislative Reference

Enclosures



THE WHITE HOUSE
WASHINGTON
February 14, 1975

ACTION
Last Day: February 22

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CAVANAUGH
SUBJECT: Enrolled Bill S. 58 - Compensation and other emoluments attached to the Office of Attorney General

Attached for your consideration is Enrolled Bill S. 58, sponsored by Senator Scott, which restores to the Office of Attorney General the salary rate of \$60,000 now paid to all other positions at Level I of the Executive Schedule.

The legislation would repeal the salary limitation imposed under P.L. 93-178 of December 10, 1973 which provided that Attorney General Saxbe's compensation would be \$35,000 for the six-year period of his elected senatorial term.

Additional background information is provided in OMB's enrolled bill report (Tab A).

Justice, OMB, Max Friedersdorf and Phil Areeda recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 58 (Tab B).



To -
Hansen Handwritten
2-13-75
10:30 a.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 13 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 58 - Compensation and other emoluments attached to the Office of the Attorney General
Sponsor - Sen. Scott (R) Pennsylvania

Last Day for Action

February 22, 1975 - Saturday

Purpose

Restores to the Office of Attorney General the salary rate of \$60,000 now paid to all other positions at Level I of the Executive Schedule.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval

Discussion

When William B. Saxbe began his term of service as a Senator from Ohio on January 3, 1969, the salary of the Attorney General was \$35,000. Subsequently, on January 15, 1969, President Johnson transmitted to the Congress a recommendation increasing the annual salary for all cabinet positions to \$60,000. The recommended increase became effective in February 1969.

Late in 1973, President Nixon nominated Senator Saxbe to be Attorney General. This nomination ran into difficulty because of the provisions of Article I, Section 6, Clause 2 of the Constitution, which reads:



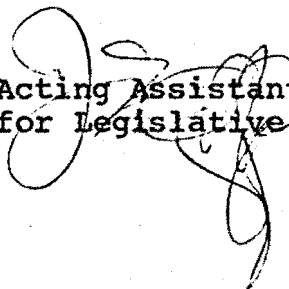
"No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."

To remove this Constitutional impediment to the appointment of Senator Saxbe, P.L. 93-178 was enacted on December 10, 1973. Section 1 of that Act had the effect of providing that the pay of the Attorney General would be \$35,000 for the six-year period of the Senator's term, thereby making it possible for him to assume office. Section 2 of P.L. 93-178 allowed court tests and expedited adjudication of any challenge of the constitutionality of Senator Saxbe's appointment and continuation as Attorney General.

Earlier this year, the Administration submitted legislation to Congress which would have completely repealed P.L. 93-178, effective January 3, 1975. S. 58, as enrolled, would repeal only section 1, the salary limitation provision of P.L. 93-178, effective as of February 4, 1975.

In its report to the Senate Post Office and Civil Service Committee on S. 58, Justice supported enactment of the bill on the basis that either it or the Department's proposal would accomplish the desired objective of restoring the salary of the Attorney General to the regular statutory rate. Justice has indicated informally that it does not view the failure of S. 58 to repeal section 2 of P.L. 93-178 as presenting any difficulty.

The effective date of February 4, 1975 is after the resignation of Attorney General Saxbe, but before the assumption of the office by Attorney General Levi.


Acting Assistant Director
for Legislative Reference

Enclosures

Department of Justice
Washington, D.C. 20530

FEB 10 1975

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20530

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 58, "Compensation and other emoluments attached to the Office of the Attorney General."

When Senator William B. Saxbe of Ohio began his term of service in the United States Senate on January 3, 1969, the salary for the Office of Attorney General was established by P.L. 89-544 (80 Stat. 460, September 6, 1966) at \$35,000. On January 15, 1969, the President transmitted to the Congress pursuant to P.L. 90-206 (81 Stat. 642, December 16, 1967) a recommendation increasing the annual salary for the Office of Attorney General to \$60,000. The recommended increase became effective in February, 1969. See 5 U.S.C. 5312 note.

Article I, Section 6, Clause 2 of the Constitution provides: "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; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."

Public Law 93-178 (87 Stat. 697, December 10, 1973) was enacted to remove the question concerning the impact of Article I, Section 6, Clause 2 on the President's nomination of Senator William B. Saxbe to be Attorney General of the United States. It provided that the compensation and other emoluments attached to the Office of Attorney General shall be those which were in effect on January 1, 1969, notwithstanding the provisions of the salary recommendations for 1969 increases transmitted to the Congress on January 15, 1969, and notwithstanding any other provision of law, or



provision which has the force and effect of law, which is enacted or becomes effective during the period from noon, January 3, 1969, through noon January 2 [sic], 1975.

Inasmuch as the term for which William B. Saxbe was elected ended at noon on January 3, 1975, the Acting Attorney General forwarded to the Congress a legislative proposal which would have repealed Public Law 93-178 effective January 3, 1975.

S. 58, as enacted, would repeal the salary and emoluments limitations of Public Law 93-178 effective as of February 4, 1975. This effective date is after the resignation of William B. Saxbe as Attorney General, but before the assumption of the office by Edward H. Levi.

While the Department would have preferred enactment of the proposal submitted by the Department, the Department supports S. 58 and recommends that it receive Executive approval.

Sincerely,



A. Mitchell McConnell, Jr.
Acting Assistant Attorney General



THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR:

WARREN HENDRIKS

FROM:

MAX L. FRIEDERSDORF *M-6*

SUBJECT:

Action Memorandum - Log No. 55
Enrolled Bill S. 58 - Compensation
and other emoluments attached to
the Office of Attorney General

The Office of Legislative Affairs concurs with the Agencies
that the enrolled bill should be **signed**.

Attachments

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 55

Date: February 13, 1975

Time: 11:00 a.m.

FOR ACTION: Geoff Shepard
Phil Areeda
Max Friedersdorf

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Friday, February 14

Time: 3:00 p.m.

SUBJECT:

Enrolled Bill S. 58 - Compensation and other emoluments
attached to the Office of Attorney General

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*approved
GCS
2-18-75*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a
delay in submitting the required material, please
telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

51

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 55

Date: February 13, 1975

Time: 11:00 a.m.

FOR ACTION: Geoff Shepard
Phil Areeda ✓
Max Friedersdorf

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Friday, February 14

Time: 3:00 p.m.

SUBJECT:

Enrolled Bill S. 58 - Compensation and other emoluments attached to the Office of Attorney General

ACTION REQUESTED:

___ For Necessary Action

For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

For Your Comments

___ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Approve
P Areeda

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

ATTORNEY GENERAL'S SALARY

FEBRUARY 5, 1975.—Ordered to be printed

Mr. MCGEE, from the Committee on Post Office and Civil Service,
submitted the following

R E P O R T

[To accompany S. 58]

The Committee on Post Office and Civil Service, to which was referred the bill (S. 58) concerning compensation and other emoluments attached to the Office of the Attorney General having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The Committee on Post Office and Civil Service, to which was referred the bill (S. 58) to repeal Section 1 of the Act entitled "An Act to insure that the compensation and other emoluments attached to the Office of the Attorney General are those which were in effect on January 1, 1969" (Public Law 93-178; 87 Stat. 697), having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 58, as amended, is to restore to the Office of the Attorney General the annual rate of basic pay of \$60,000 that now attaches to positions at Level I of the Executive Schedule. The effective date of S. 58, as amended by the Committee, is intended to be contemporaneous with the expiration of the term of service of former Senator William B. Saxbe as Attorney General. The Committee has no desire or intention to resolve any constitutional issue regarding the original appointment of former Senator William B. Saxbe as Attorney General of the United States. Such issues are not within the jurisdiction of the Senate Committee on Post Office and Civil Service.

STATEMENT

On December 10, 1973, the annual salary of the Office of the Attorney General was reduced from \$60,000 per annum to its January 15,

1969, level of \$35,000 per annum. The legislation enacted that resulted in the reduction was introduced at the request of former President Richard M. Nixon for the stated purpose of eliminating a Constitutional impediment to former Senator Saxbe's eligibility to be Attorney General of the United States.

During Senator Saxbe's term of service in the United States Senate the annual salary of the Office of the Attorney General was increased from \$35,000 to \$60,000. Article I, section 6, clause 2 of the Constitution provides:

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; * * *.

Public Law 93-178 achieved the Administration's purpose by reducing the salary attached to the Office of the Attorney General to that amount authorized by law before Senator Saxbe began his Senate term.

On February 3, 1975, former Senator Saxbe resigned from his position as Attorney General of the United States so that he could be administered the oath to become Ambassador to India. Accordingly, it became timely to then restore to the Office of Attorney General the annual rate of basic pay of \$60,000 that in 1969 attached to all positions at Level I of the Executive Schedule.

COST

The Committee estimates that the additional annual cost would be \$25,000 less such individual income taxes as are collected thereon. In addition, there would be costs of the Government for various contributions to such employee benefit programs as the Attorney General should elect to have apply to himself.

AMENDMENT

Although former Attorney General William B. Saxbe was confirmed as Ambassador to India during the 93d Congress, he did not formally resign his position as Attorney General until 12:00 Noon February 3, 1975. Accordingly, the Committee has amended S. 58 by changing its effective date from "January 3, 1975," to "February 4, 1975." This will assure that his successor will be paid at the same annual rate of basic pay as all other Executive Level I officials.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in *italic*):

PUBLIC LAW 93-178, 93D CONGRESS, H.R. 11710, DECEMBER 10, 1973

AN ACT To insure that the compensation and other emoluments attached to the Office of Attorney General are those which were in effect on January 1, 1969

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That the compensation and other emoluments attached to the Office of Attorney General shall be those which were in effect on January 1, 1969 notwithstanding the provisions of the salary recommendations for 1969 increases transmitted to the Congress on January 15, 1969, and notwithstanding any other provision of law, or provision which has the force and effect of law, which is enacted or becomes effective during the period from noon, January 3, 1969, through noon, January 2, 1975.]

SEC. 2. (a) Any person aggrieved by an action of the Attorney General may bring a civil action in the appropriate district court to contest the constitutionality of the appointment and continuance in office of the Attorney General on the ground that such appointment and continuance in office is in violation of article I, section 6, clause 2, of the Constitution. The United States district courts shall have exclusive jurisdiction, without regard to the sum or value of the matter in controversy, to determine the validity of such appointment and continuance in office.

(b) Any action brought under this section shall be heard and determined by a panel of three judges in accordance with the provisions of section 2284 of title 28, United States Code. Any appeal from the action of a court convened pursuant to such section shall lie to the Supreme Court.

(c) Any judge designated to hear any action brought under this section shall cause such action to be in every way expedited.

Approved December 10, 1973.

AGENCY VIEWS

Following is a letter from the Acting Assistant Attorney General for Legislative Affairs, United States Department of Justice, requesting that S. 58 be acted upon affirmatively.

DEPARTMENT OF JUSTICE,
Washington, D.C., February 4, 1975.

HON. GALE MCGEE,

*Chairman, Committee on Post Office and Civil Service,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on S. 58, a bill relating to the compensation and other emoluments attached to the Office of the Attorney General.

When Senator William B. Saxbe of Ohio began his term of service in the United States Senate on January 3, 1969, the salary for the Office of Attorney General was established by Public Law 89-544 (80 Stat. 460, September 6, 1966) at \$35,000. On January 15, 1969, the President transmitted to the Congress pursuant to Public Law 90-206

(81 Stat. 642, December 16, 1967) a recommendation increasing the annual salary for the Office of Attorney General to \$60,000.

Article I, Section 6, Clause 2 of the Constitution provides: "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; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."

Public Law 93-178 (87 Stat. 697, December 10, 1973) was enacted to remove the question concerning the impact of Article I, Section 6, Clause 2 on the President's nomination of Senator William B. Saxbe to be Attorney General of the United States. It provided that the compensation and other emoluments attached to the Office of Attorney General shall be those which were in effect on January 1, 1969, notwithstanding the provisions of the salary recommendations for 1969 increases transmitted to the Congress on January 15, 1969, and notwithstanding any other provision of law, or provision which has the force and effect of law, which is enacted or becomes effective during the period from noon, January 3, 1969, through noon January 2 [sic], 1975.

Inasmuch as the term for which William B. Saxbe was elected ended at noon on January 3, 1975, the Acting Attorney General has forwarded to the President of the Senate a legislative proposal which would repeal Public Law 93-178 effective January 3, 1975. Since S. 58 would also repeal the salary and emoluments limitations of Public Law 93-178, the Department supports its enactment. Either the Department's proposal or S. 58 would restore the compensation and emoluments attached to the Office of the Attorney General on and after January 3, 1975 to those that attach to offices and positions at Level I of the Executive Schedule (5 U.S.C. 5312).

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

A. MITCHELL McCONNELL, Jr.,
Acting Assistant Attorney General.

○

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the fourteenth day of January,
one thousand nine hundred and seventy-five*

An Act

Compensation and other emoluments attached to the Office of the Attorney General.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act entitled "An Act to insure that the compensation and other emoluments attached to the Office of the Attorney General are those which were in effect on January 1, 1969" (Public Law 93-178; 87 Stat. 697), is repealed effective as of February 4, 1975, and the compensation and other emoluments attached to the Office of the Attorney General shall, on and after that date, be those that now or hereafter attach to offices and positions at level I of the Executive Schedule (5 U.S.C. 5312).

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

February 11, 1975

Dear Mr. Director:

The following bill was received at the White House on February 11th:

S. 58

Please let the President have reports and recommendations as to the approval of this bill as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.