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FILE NO. S-550

CONSTITUTION:

**Governor's nomination
and Senate confirmation
Ethics Statements**

**Honorable Frank M. Ozinga
State Senator
State House
Springfield, Illinois**

Dear Senator Ozinga:

I have your recent letter in which you state in
part:

"The Executive Committee of the Senate of the 78th General Assembly of the State of Illinois is at this time considering several nominees of Governor Walker for State positions. In the [course] of our investigation of the nominees it was discovered that several had not filed their disclosure of financial interest statements with the Secretary of State's office at the date of their presentation to the Senate.

We request your opinion of the legal responsibility of the Senate toward these nominees who filed late.

It appears that the law states that those

appointees who did not have a copy of their statements on file in the Secretary of State's office as of the date of the Governor's message to the Senate which contained their appointment, are legally ineligible for that office.

Therefore, we request the Attorney General's opinion on the following questions of law:

1. May the Senate legally approve the nomination of these appointees who have filed late?
2. What recourse does the Senate or the Governor have to remedy this situation, if any such recourse exists?"

It is my understanding that confirmation of the Governor's nominations has not, as of this date, been called for a vote before the full Senate. All such nominations have been referred to the Senate Executive Committee for consideration.

It is my opinion that the time for filing ethics statements by those nominees has not as yet expired. However, there is nothing in the law that would prevent the Senate Executive Committee from requiring each nominee to furnish a copy of such statement to the Committee prior to, or at the time of, the Committee's hearing on such nominee.

The 77th General Assembly by Public Act 77-1861 amended the Illinois Governmental Ethics Act and, among other things, added sections 4A-101 and 4A-105. (Ill. Rev. Stat. 1972 Supp., ch. 127, pars. 604A-101, 604A-105) which read in part:

"§4A-101. The following persons shall file verified written statements of economic interests, as provided in this Article:

* * * * *

(d) Persons whose appointment to office is subject to confirmation by the Senate;

* * * * *

"§4A-105. * * * After July 1, 1972 statements must also be filed as follows:

* * * * *

(b) A person whose appointment to office is subject to confirmation by the Senate shall file his statement at the time his name is submitted to the Senate for confirmation.

* * * * *

(Emphasis added.)

Definition of the term "submitted" is critical in determining the time within which the statute requires

Gubernatorial nominees to file their ethics statements. Definition of that term is dependent upon the Legislative intent as derived from the statute in light of the object and purpose sought to be achieved by the Legislature.

Lincoln National Life Insurance Company v. McCarthy,

10 Ill. 2d 484.

The purpose in requiring a nominee for a State appointive office to file an ethics statement prior to confirmation by the Senate must necessarily be to inform the Senate as to the nominee's financial interests as they relate to State government generally and the office to which he aspires particularly.

There appears to be no comparable reason or purpose for filing such statements with the Secretary of State prior to consideration of each nominee by the Executive Committee. As heretofore stated, the Executive Committee can require presentation of copies of those statements on or before the time of its hearing and can also call each nominee before if for the purpose of exhaustive questioning on qualifications

and financial interests.

Further, in construing the term "submitted" as used in The Ethics Act, it is proper to inquire as to other usage of that term in a similar context and to contrast that term with other words which were available but not put to use. (Anderson v. City of Park Ridge, 396 Ill. 235, 244; C., B. & O. R.R. Co. v. Doyle, 258 Ill. 624, 628.) In this light I call your attention to section 9 of article V of the Illinois Constitution of 1970 which reads:

"SECTION 9. GOVERNOR - APPOINTING POWER

(a) The Governor shall nominate and, by and with the advice and consent of the Senate, a majority of the members elected concurring by record vote, shall appoint all officers whose election or appointment is not otherwise provided for. Any nomination not acted upon by the Senate within 60 session days after the receipt thereof shall be deemed to have received the advice and consent of the Senate. The General Assembly shall have no power to elect or appoint officers of the Executive Branch.

(b) If, during a recess of the Senate, there is a vacancy in an office filled by appointment by the Governor by and with the advice and consent of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall make a nomination to fill such office.

(c) No person rejected by the Senate for an office shall, except at the Senate's request, be nominated again for that office at the same session or be appointed to that office during a recess of that Senate."

I I also call your attention to rule 9 of The Rules of the Senate of the 77th General Assembly which reads in part:

"NOMINATIONS

9. Every nomination subject to confirmation by the Senate * * * shall be assigned, on the same day when received, to the Executive Committee. Each person named in a nomination * * * shall be required to appear in person before a meeting of the Executive Committee, convened for the purpose of considering the qualifications of such person for the office for which he or she has been nominated. The appearance of such nominee may be waived by the Executive Committee by the vote of the majority of the members appointed to such Committee.

On considering the report of the Executive Committee on a nomination, the Presiding Officer shall put the following question: 'Does the Senate advise and consent to the nomination just made?' Whenever a group of names has been submitted together, upon the request of five (5) or more members, the question shall be put and the vote taken upon each of the individuals in said group, provided, however, that the Senate may determine, by a majority vote, after having voted upon the question of one or more of such nominees individually, to act upon the question of the remaining nominees in that group as a unit.

* * * * * (Emphasis added.)

Note that section 9 of article V nowhere uses the term "submitted". That section freely employs the words "nominate", "nomination", "receipt" and "received". If in enacting section 4A-105 of The Act (heretofore quoted) the Legislature had wanted to specify the date upon which, the Governor "shall make a nomination" as the date for filing, the language sufficient thereto was readily at hand in section 9. It is reasonable, therefore, to assume that by use of the term "submitted" the Legislature intended to specify some date other than the date upon which the Governor made his nominations. Since that date could obviously be no sooner than the date the Governor's nominations were received by the Senate, it must necessarily be set at sometime thereafter.

This use of "submitted" in contrast to the term "nominated" is more readily apparent in rule 9 (heretofore quoted) where both terms are used in close proximity. When different terms are used in the same statute, it is assumed that those terms are intended to mean different things unless

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the context indicates that such terms are intended to be interchangeable. (In Re Kesl's Estate, 117 Mont. 377, 161 P. 2d 641, 645-646.) In rule 9 the word "submitted" refers to the time when the Governor's nominations are called before the full Senate for a vote. It is at that time that 5 or more Senators can request that each name be voted upon separately. It would be incongruous to say that such request must be made at the time the Governor's nomination is filed or even at the time the nomination or nominations are automatically referred to the Executive Committee. It is reasonable to apply to the term "submitted", as used in section 4A-105 of The Act, the same definition as is applied to that term in Senate Rule 9.

It is, therefore, my opinion that the Governor's nominations which are presently pending before the Executive Committee of the Senate are not, as of this date, subject to the objection that the nominees have failed to file their ethics statements within the time required under the Illinois Governmental Ethics Act.

Very truly yours,

A T T O R N E Y G E N E R A L