

resolution of either house of the legislature stating the questions to be answered or by a comparable request of the governor.

FRANK J. KELLEY,  
*Attorney General.*

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**PUBLIC OFFICES AND OFFICERS:  
CONSTITUTIONAL LAW:**

**Senate disapproval of executive appointments.**

Under Article V, Section 6 of the Michigan Constitution of 1963 a majority vote of the members, elected to and serving in the senate is necessary to disapprove an appointment of the governor which requires the advice and consent of the senate.

No. 4407

April 6, 1965.

Hon. John T. Bowman  
State Senator  
The Capitol  
Lansing, Michigan

By letter dated January 11, 1965 you have asked my opinion with reference to Article V, Section 6 of the Michigan Constitution of 1963. Specifically you are concerned with whether:

“\* \* \* on the question of advising and consenting to a nomination to office by the Governor, if a majority vote in the negative is needed for disapproval.”

Article V, Section 6 of the Michigan Constitution of 1963 provides:

“Appointment by and with the advice and consent of the senate when used in this constitution or laws in effect or hereafter enacted means appointment subject to disapproval by a majority vote of the members elected to and serving in the senate if such action is taken within 60 session days after the date of such appointment. Any appointment not disapproved within such period shall stand confirmed.”

The Michigan Supreme Court in *Burdick v. Secretary of State*, 373 Mich. 578, has indicated that the language of the Address to the People is pertinent in considering the meaning of a constitutional provision.

The Address to the People states, in part, with reference to this section:

“This is a new section providing a constitutional definition of appointment by and with advice and consent of the senate as it applies to this constitution and laws now in effect or hereafter enacted. Such an appointment is subject to disapproval by a majority vote of the members elected to and serving in the senate, provided the senate acts to disapprove within 60 session days after the appointment is submitted to it. If fewer than 60 session days remain for consideration after

submission of an appointment, the time available for possible disapproval will be extended into the next regular or special session for the balance of the specified period.”

Official Record, Constitutional Convention 1961, Vol. 2, p. 3379.

In Opinion No. 4406, issued December 30, 1964, the nature of advice and consent was considered. It was there stated:

“Where the power of appointment to fill a vacancy in office is conferred upon the governor subject to the advice and consent of the senate, the power of appointment is in conjunction with the senate and may not be exercised by one branch of the government to the exclusion of another. Thus, the appointment does not become complete until the senate acts finally upon the appointment. *Attorney General, ex rel. McKenzie v. Warner*, 299 Mich. 172 (1941).

“The Michigan Constitution of 1908 provided in Article VI, Section 10 that whenever a vacancy shall occur in any state office the governor shall fill the same by appointment by and with the advice and consent of the senate, if in session. The Attorney General has construed this constitutional provision to mean that where an appointment is made by the governor, subject to the advice and consent of the senate, the act of appointment is not completed until the senate has taken affirmative action on the appointment. However, if the senate was not in session at the time the governor exercised the power of appointment, the appointee could assume his office upon the filing of the oath of office. O.A.G. No. 648, 1947-1948, page 522; O.A.G. No. 1341, 1951-1952, page 153; O.A.G. No. 1411, 1951-1952, page 259.

“The people have defined the term ‘appointment by and with the advice and consent of the senate,’ found in Article V, Section 6 of the Michigan Constitution of 1963, to mean ‘appointment subject to disapproval by a majority vote of the members elected to and serving in the senate if such action is taken within 60 session days after the date of such appointment. Any appointment not disapproved within such period shall stand confirmed.’”

It is, therefore, my opinion that a majority vote of the members elected to and serving in the senate is necessary to disapprove an appointment of the governor which requires the advice and consent of the senate.

FRANK J. KELLEY,  
*Attorney General.*