

**Opinion No. 1****Governor—Nomination by to Fill Office—Necessity For Confirmation by the Senate.**

**Held: 1. Where Governor has made no nomination to fill office of Chairman of Industrial Accident Board of the State of Montana, and where the Governor has not submitted a nomination in writing to the Senate and request for confirmation thereof, as by law required, or at all, there being no nomination legally before the Senate there can be no confirmation and any attempt on the part of the Senate to confirm a nomination which has never been made is null and void, has no legal effect, and is futile.**

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January 18th, 1949.

Mr. J. Fred Toman, Chairman  
State Boards and Offices Committee  
Senate of the State of Montana  
Capitol Building  
Helena, Montana

Dear Senator Toman:

You have submitted to me the following:

"The Committee on State Boards and Offices of the Senate has before it for consideration an Interim Appointment made by Governor Sam C. Ford, of Walter B. Coombs of Missoula County, to be Chairman of the State Industrial Accident Board, which in the wording of the communication "requires confirmation" by the Senate.

Since there is some question in the minds of the members of the Committee as to the actual requirements of the law on this matter, we request an opinion as to whether this appointment does or does not require confirmation by the Senate."

In expressing an opinion on the foregoing, it is necessary to look to the letters of January 12th, 1949, from Governor Bonner to the President of the Senate. After careful perusal of the two letters above referred to, it is necessary then to look to the Constitution of the State of Montana, and the statutes dealing with the subject and pertinent thereto, to the end that my opinion be based on the facts submitted to me and the laws applicable thereto.

The first letter of January 12th, 1949, above referred to, merely notifies the Senate of purported appointments made by former Governor Sam C. Ford. That, among many others, the name of Walter B. Coombs as Chairman of the Industrial Accident Board of the State of Montana appears thereon as one of the purported appointees of former Governor Ford.

This letter does not purport to be an appointment of Mr. Coombs as Chairman of the State Industrial Accident Board by Governor

Bonner, nor does it attempt to nominate nor is it a nomination of Mr. Coombs by Governor Bonner. Moreover, the letter does not make any request on the Senate to confirm the appointment of Mr. Coombs for

the obvious reason that Governor Bonner, from the record before me, has at no time either appointed or nominated Mr. Coombs as Chairman of the State Industrial Accident Board and consequently is in no position to request a confirmation of an act that has never been performed by him.

The last paragraph of this letter is as follows:

"The purpose of this communication is merely to inform your Honorable body of the foregoing appointment in accordance with Section 125, R.C.M., 1935."

It is my opinion that this letter was written by Governor Bonner under his interpretation of and in compliance with Section 125, R.C.M., 1935.

My opinion hereinabove expressed is born out and fortified by the contents of the second letter of January 12th, 1949, addressed to the President of the Senate by Governor Bonner. In the second letter above referred to, Governor Bonner specifically nominates a group of individuals to certain designated positions and with the advice and consent of the Senate does appoint these individuals to specific positions. This letter is, in my opinion, several and separate nominations by Governor Bonner, and several and separate requests for confirmation by the Senate.

The name of Walter B. Coombs is conspicuously absent from the list of nominations contained in this letter.

It is my opinion this letter was written by Governor Bonner under his interpretation of and in compliance with Section 424, R.C.M., 1935.

Section 7 of Article VII of the Montana State Constitution is as follows:

"The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occur in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of secretary of state, state auditor, state treasurer, attorney-general or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified."

Section 125, R.C.M., 1935, is as follows:

TO TRANSMIT LIST OF APPOINTMENTS TO LEGISLATIVE ASSEMBLY. "Within ten days after the meeting of the legislative assembly, the governor must transmit to it a list of all appointments made by him under the provisions of section 515 of this code, made during the recess of the legislative assembly."

Section 424, R.C.M., 1935, is as follows:

NOMINATIONS TO SENATE MUST BE IN WRITING. "Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which he is nominated."

Section 515, R.C.M., 1935, is as follows:

VACANCIES OCCURRING DURING RECESS OF THE LEGISLATIVE ASSEMBLY. "Vacancies occurring in office during the recess of the legislative assembly, the appointment to which is vested in the Governor and the Senate, or in the Legislative Assembly, must be filled by appointment made by the governor; but the person so appointed can only hold the office until the adjournment of the next session of the legislative assembly."

It thus appears from the record and facts submitted to me that Governor Bonner has merely advised the Senate of purported interim appointments made by former Governor Ford, among them being Walter B. Coombs as Chairman of the Industrial Accident Board of the State of Montana.

From the facts and record before me, nowhere does it appear that Governor Bonner has ever at any time either appointed or nominated Mr. Coombs as Chairman of the Industrial Accident Board of the State of Montana, and of necessity it follows without saying that Governor Bonner has never at any time requested the Senate of the State of Montana to confirm the nomination of Mr. Coombs, which nomination was never at any time made by him.

Where the Governor, as here, has not submitted a nomination, any action by the Senate in confirmation has no legal effect and is futile.

Opinion Attorney General of Montana, Volume 19 at page 78.

It is therefore my opinion, inasmuch as from the facts and record before me, it appears that Governor Bonner has neither nominated nor appointed Mr. Coombs as Chairman of the Industrial Accident Board of the State of Montana, there is nothing before the Senate of the State of Montana to confirm so far as Mr. Coombs is concerned, and the matter of his confirmation is not now before the Senate.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.