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February 20, 1951  
Op. No. 51-56

Hon. Warner B. Mattice  
President, Arizona State Senate  
Capitol Building  
Phoenix, Arizona

Dear Senator:

We have your oral request for our opinion concerning the submission to the senate by Governor Garvey of Mr. Goree as a member of the Arizona Power Authority. It appears that Mr. Macdonald resigned last August as a member of the Authority, and at that time Governor Garvey appointed Mr. Goree to serve from August 9, 1950 to March 1, 1953, "to fill the vacancy created by the resignation of George F. Macdonald". It further appears that on January 2, 1951, this nomination was delivered to the secretary of the senate.

The Power Authority was created by the Power Authority Act of 1944 and appears as Article 19, Chapter 72 of the Arizona Code Supplement. Section 75-1910 provides for the appointment of the commissioners and further provides for filling vacancies for unexpired terms and uses this language:

"Members appointed shall be competent to act between the term of their appointment and the time of confirmation or rejection by the senate."

It thus appears that the appointment of Mr. Goree was a valid appointment to exist until the senate acted thereon.

The first question which must be decided is whether or not the governor has the right to withdraw a name submitted at any time prior to the action thereon by the senate. In this connection it is to be noted that like other offices the office of the governor is a continuing one, and its powers and duties are not in the person who operates it but pertain to the

office. McGuinness v. Hunt, 57 Ariz. 70. Therefore, any act which the former governor could have performed prior to January 1, 1951 could be performed by the present governor after he took office, and it is our opinion that the former governor had the right to withdraw his nomination of Mr. Goree prior to action thereon by the senate and that this right also exists in the present governor who, having succeeded to the office, has the same right to withdraw the name at any time prior to formal action thereon by the senate. McBride v. Osborn, 59 Ariz. 321.

This leaves but one question to be determined which is: Is the name of Mr. Goree legally before the senate for action because Mr. Garvey went out of office prior to the convening of the present senate? This question has not been before the courts of this State; however, in People v. Shawber, 222 Pac. 11, the question was discussed in some detail, and the conclusion there reached by the Wyoming Supreme Court was that the former governor having made the nomination, it was not necessary that a formal presentation of the name of a nominee be made to the senate. This conclusion was based upon the fact that the senate is presumed to know generally the changes which are made among the executives of the state and to have independent knowledge of appointments made by the governor. In this case, the senate approved a nomination made by the former governor which was not formally submitted to the senate but which was approved by the senate without such formal submission. The same question was discussed in State v. Matassarini, 217 Pac. 930, where the Kansas Supreme Court reached the same conclusion, and again in Barrett v. Duff, 217 Pac. 918, where, after a review of many authorities, the Kansas Court also followed this rule. Later cases adhering to this rule are:

- Bell v. Sampson, 23 SW 2nd 575;
- McChesney v. Sampson, 23 SW 2nd 584; and
- State v. Halliday, 219 NW 125.

Because it appears that there is no positive requirement that the name of a nominee be formally presented to the senate and because under the statute the appointment made by

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Mr. Garvey is presumed to be valid until the senate acts thereon, it is our opinion that the name of Mr. Goree is legally and properly before the senate for its action, subject of course to the right of the present governor to withdraw Mr. Goree's name should he so desire at any time prior to final action thereon by the senate.

Respectfully submitted,

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cc: Governor Howard Pyle  
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