



Office of the Attorney General
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MEMORANDUM CONCERNING THE TIME OF
ADMISSION OF THE STATE OF ALASKA

Admission of the State of Alaska into the Union will automatically entitle that State to representation in the Congress, and, by the same token, will signify the beginning of the terms of the senators and representative from Alaska.

If the new State is admitted to the Union before the expiration of the Eighty-fifth Congress, the respective Houses of the Congress could hold that the terms of the senators and representative from that State commenced during the Eighty-fifth Congress. This would, of course, bar the representative from Alaska from being seated in the new Eighty-sixth Congress unless he were subsequently elected to that Congress in a new election. Likewise, the admission of the new State during the Eighty-fifth Congress might bar the new senators from that State from being eligible to draw for a possible six-year term commencing at the beginning of the Eighty-sixth Congress.

Admission of the new State before noon on January 3, 1959, would constitute admission during the Eighty-fifth Congress; admission subsequent to noon on January 3, 1959, would constitute admission during the Eighty-sixth Congress. Admission at precisely noon on January 3, 1959, might be deemed admission during either of those Congresses, and only the respective Houses of the Congress could finally resolve that issue and even they might arrive at contrary results.

In order to avoid that issue and to assure that the commencement of the terms of those senators and representative will not be unduly delayed, the admission of the State should be accomplished immediately after the stroke of noon, official time, on January 3, 1959. This should not adversely affect the seniority of the Alaskan group because seniority among

senators or representatives whose terms commence at the same precise moment is generally determined by the admission date of the States of the senators or representatives concerned. Inasmuch as the State of Alaska will be the State most recently admitted to the Union, the senators and representative from that State will probably be junior to other newly elected senators and representatives. Consequently, the fact that the terms of the senators and representative from Alaska will have begun one minute after the terms of the other newly elected senators and representatives should result in no diminution of the congressional seniority rights of the Alaskan group.

Under the provisions of section 8 (b) of the act of July 7, 1958, the admission of the State of Alaska will be deemed accomplished when the President issues a proclamation declaring that the new State has complied with the procedural requirements specified in that act. Necessarily, it follows that proclamation of the President should be issued immediately after the stroke of noon, official time, on January 3, 1959.

It has been suggested that it might be desirable for the President to "sign" the proclamation on January 2, 1959, if it were possible to postpone the official "issuance" of the proclamation, within the meaning of section 8 (b) of the act (and consequently postpone the admission of the new State), until January 3, 1959.

References to "signing" proclamations and to "issuing" proclamations are generally used interchangeably. Accordingly, it would be inadvisable to attempt to distinguish those terms in connection with the promulgation of this proclamation. Any doubt concerning the precise moment that the admission of the new State will have been accomplished might result in extensive litigation and might seriously impair important rights and privileges, including the seating rights of the elected senators and representative of that State.

In this connection, the General Counsel of the Bureau of the Budget suggested that the President might be able to establish January 3, 1959, as the "issuance" date of the proclamation even if he "signed" the proclamation on January 2, 1959, if he specified in the proclamation that the proclamation was to become effective on January 3, 1959.

Although the inclusion of a January 3, 1959, "effective" date in the proclamation might be determinative of the "issuance" date of the proclamation (and the admission time of the State of Alaska), that result is by no means assured, and, in fact, a contrary result would appear more probable. In any event, inclusion of the postponed effective date in the proclamation would create more legal questions than it would resolve and would probably produce quantities of unnecessary and burdensome litigation.

On the other hand, if the proclamation is effective as soon as it is signed, and if the signing of the proclamation is immediately disclosed, there can be no reasonable doubt that the "issuance" of the proclamation shall have occurred, within the meaning of section 8 (b), at the precise moment of that signing.

It has also been suggested that the President might sign the proclamation on January 2, 1959, but date it January 3, 1959. The date of signature of a proclamation is an integral part of the affidavit which formalizes the document; consequently, any postdating of that affidavit would, in effect, render it a false affidavit. That should be positively avoided.

The views expressed in this memorandum concerning the effect that the issuance of this proclamation might have upon the terms of the senators and representative from Alaska are based upon precedents of the Senate and the House of Representatives. It should be recognized, of course, that those bodies have the sole authority to determine the qualifications of their respective members and under that authority finally determine all questions concerning the terms, seating, and seniority of their members.