

# Governor Unhappy Over Treasurer Opinion

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SACRAMENTO — Democratic legislative leaders Thursday endorsed a state attorney general's opinion that a rejection by either house of the Legislature would be sufficient to reject a governor's nominee for the post of state treasurer.

But the governor's office, which maintains that both houses would need to reject a nominee to prevent his appointment, complained that Attorney General John Van de Kamp's office flip-flopped on the question.

Several months ago, Van de Kamp's office stated that the dual veto would be

necessary to frustrate a governor's appointment to a constitutional office.

Vance Raye, Gov. George Deukmejian's legal affairs secretary, said the governor's office consulted with the attorney general's office about the appointment process to replace Treasurer Jess Unruh, who died Aug. 4.

"Their initial advice was that the [California] Constitution requires both houses to reject," Raye said. "It was only later that they reached the opposite conclusion."

"I have no way of accounting for it," added Raye, who was a senior assistant attorney general under Deukmejian before being named the governor's legal af-

fairs secretary in 1983. "In fairness to them, I guess they thought more of it and came to a different conclusion."

Deputy Attorney General Alan Ashby said the final opinion was reached after careful consideration. "There were no political machinations involved," Ashby said.

The 13-page opinion, issued Tuesday at the request of Senate President Pro Tem David Roberti, D-Los Angeles, and Assembly Speaker Willie Brown, D-San Francisco, concluded that ballot arguments by both supporters and opponents of a 1976 constitutional amendment

"demonstrate that voters intended to  
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grant either house of the Legislature the power to veto an appointment by the governor," according to a press release accompanying the opinion.

A letter opinion, while legally influential, is not included in the attorney general's formal, published opinions. Both forms of attorney general opinions are instructive, but neither legally is binding.

Until 1976 the governor's appointment to vacancies in specific state constitutional offices did not require confirmation. Voters approved Assembly Constitutional Amendment 94 in 1976, which requires legislative confirmation.

The legislative leaders requested the opinion to clear up an ambiguity in the Constitution affecting the process for confirmation of a gubernatorial appointment to a vacancy in specified constitutional offices, including Treasurer.

"Based on the available legislative history," the opinion concluded, "this office is persuaded that the 'two-house confirmation' interpretation is probably the one which the legislators and the voters had in mind."

On Aug. 5, the day after Unruh's death, Van de Kamp cited Government Code Section 1775 and Article V, section 5 of the state Constitution providing for the filling of vacancies in constitutional offices. In the case of a vacancy, the chief deputy treasurer is authorized under the Government Code to assume the duties of treasurer until the vacancy is filled, the attorney general concluded.

When the governor nominates a successor, Van de Kamp continued: "That

person is to take office upon the confirmation by a majority vote of the Senate and a majority vote of the Assembly. If the person nominated is refused confirmation by both houses, the person is no longer the nominee. The governor may make another nomination. If the person nominated is neither confirmed nor refused confirmation by both the Senate and the Assembly within 90 days of the submission of the nomination, the person nominated takes office as if he or she were confirmed."

Donna Lucas, Deukmejian's deputy press secretary, said the governor's office found the change in the attorney general's view to be "curious." The governor disagrees with the final conclusion in the informal letter opinion, she said. "We see the language as being very clear that it requires rejection by both houses."

She added that "we hope the question is moot," and that the governor's nomination — expected to be made later this month — will be approved by the Legislature.

The appointment is significant political because Deukmejian is currently the only Republican holding a statewide constitutional office. Lt. Gov. Leo McCarthy is a Democrat, as are Van de Kamp, Secretary of State March Fong Eu and Controller Gray Davis. Superintendent of Public Instruction Bill Honig was a Democrat who became an independent when he ran for the nonpartisan state post in 1982.

Assembly Speaker Brown's press secretary Susan Jetton said the attorney gen-

eral's conclusion confirmed the legal opinions of many other attorneys consulted by the speaker, including the legislative counsel.

"It's not a conflict to anybody but the governor, who doesn't like it," she said.

Roberti issued a statement expressing satisfaction "that the attorney general has conducted a thorough analysis" of the issue.

"We will adhere to its conclusions," Roberti said in a statement.

Van de Kamp's opinion was researched and written by Deputy Attorney General Floyd Shimomura and approved by Van de Kamp and Chief Assistant Attorney General Richard Martland, who heads the attorney general's civil division.

The attorney general's office examined the legislative history of the constitutional amendment — which it did not find helpful — and turned then to the ballot arguments for the 1976 amendment.

Supporters and opponents of the measure believe that it granted to either house the power to block an appointment, they said.

Ashby said the office also considered other analyses. One came from San Francisco attorney Joseph Remcho, which Ashby said was requested by Brown. Another came from the legislative counsel, and a third came from Raye, who "urged us to do other than what we did," Ashby noted.

The attorney general's office declined to release the letters, and a spokesman for the legislative counsel said it could not discuss advice given to legislators.