

the [sic], can bind the judgment, neither of the Executive nor of the Senate, in the ulterior action of either, its dictum upon the main question, presented in your resolutions, (and which was discussed in the argument of counsel and is specially referred to in the statement of the case by the Court itself,) would have answered the very purpose for which the proceedings were instituted. It was simply decided that the opinion of the Court should be had upon an important question, in regard to which the two co-ordinate branches of the appointing power had failed to concur. That opinion, though not binding, would certainly have been received with great deference.

You will perceive from the decision of the Court, that, whilst the opinion is expressed that the appointment of a successor to supersede the present incumbent, can only be effected by the concurrent acts of the Governor and the Senate, nothing is said as to the necessity of previous legislation to supply the alleged omission in the Constitution, relative to the period at which the tenure of the present incumbent shall determine. The opinion of the Court simply denies the validity of the commission issued during the recess, and avers the necessity of the concurrence of the Senate. The preliminary question of the supposed omission in the Constitution has not been referred to. We are therefore at the point from which we started, having received no additional light upon the subject.

Under these circumstances, I would not renew the nomination at this time, were it not that the Governor is required, by the fourteenth section of Article II of the Constitution, to send in his nominations within fifty days from the commencement of the session. I therefore send in the nomination, in order that you may have it in your power to act upon it, should you reconsider the views expressed in your resolutions of the last session, or should a law be passed to obviate the difficulty suggested by you.

I must not, however, be considered as having at all receded from the position assumed by me in my message of the 31st of May last. On the contrary, further reflection has only the more fully satisfied me of the correctness of the interpretation which I then gave to the second section of Article IX of the Constitution. I am still of the opinion that an appointment by the Governor with the concurrence of the Senate, at whatever period made, was looked to by the Constitution as the act which was to terminate the tenure of the present incumbent, and, consequently, that any enactment of the Legislature, touching that matter, would be superfluous and void.

I respectfully nominate James H. Watkins, of N., for the office of Adjutant General.

C. Louis Lowe