

May 24, 1977

**77-30 MEMORANDUM OPINION FOR THE
CHAIRMAN OF THE RENEGOTIATION
BOARD**

**Determination of Date of Commencement of Service
of Federal Officers—Renegotiation Board**

This is in response to your letter requesting that this Office advise you whether two recently appointed members of the Renegotiation Board began their service, for purposes of seniority, when their commissions were signed by the President or when they took the oath of office. From your letter, we understand that the President signed the commission of Mr. A four days before he signed the Commission of Mr. B. We further understand that neither commission was stated to be subject to any condition precedent and that both Messrs. A and B took the oath of office on the same day.

The Constitution provides that the President "shall appoint . . . officers of the United States," Art. II, § 2, and that he "shall commission all the officers of the United States." *Id.* § 3. It is silent as to when an appointment is effective. But at an early date the Supreme Court held in *Marbury v. Madison*, 5 U.S. 137, 156 (1803), that the last act to be done by the President in the appointment process "is the signature of the commission." And in *United States v. LeBaron*, 60 U.S. 73, 79 (1856), the Court stated that with respect to an appointment "[i]t is of no importance that the person commissioned must give a bond and take an oath." Although there appear to be no judicial or administrative holdings directly in point on the questions you pose, it is our opinion that these cases establish the proposition that where two officers in the same body are commissioned on different dates, the officer commissioned first is the senior. Any doubt on this score is resolved by the Acts of Congress dealing with the precedence of Federal judges, which confer precedence according to the date of their commissions. 28 U.S.C. § 4 (Supreme Court), 28 U.S.C. § 45(b) (circuit judges), 28 U.S.C. § 136(b) (district judges), 28 U.S.C. § 172 (Court of Claims).

We therefore conclude that Mr. A takes precedence over Mr. B because his commission was signed prior to the date that Mr. B's was

signed. It should be noted, however, that the beginning of service for other purposes, such as the computation of pay, is determined under different principles.

JOHN M. HARMON
Acting Assistant Attorney General
Office of Legal Counsel