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Title: Letter from Roger B. Taney to J. Mason Campbell

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hashington been. 21. 1049 I be fortunately have no conference tonight - and L'am able thington to take on how from other ingogenments, to think our the subject of your opinion ond to write to you the result of my replections -But I am acting somewhat in the dock - for 3" how not the articles of the constitution of mary loco to which you refer before me - and much to he there is brighy stated in your letter. And acting with that limited necous of information Law my now muser sun that you are right. - The constitution 1836 you day west the whole lynewtive power in the Governor, and west in him the appaintment of are Him not otherwise Sirecto, to the constitutions on by lows candistrut with the lindt tention. he has is mint by lacus consistent with the Constitution in wheat to appointments? There are a clop of the who have him been appointed by the execution - be for example the land to leter in the deferent counties - and also the clarkes of the Lattery lovering come. These officers is they may to to have an not regard as the officers of the

to make the function pot to purpose its fund tions I prosure the peace - and the clarker of the Littery commissioners - and Insolvent Commy 20 20 are menging aids to the officers to enable them to perform their duties. They are the instruments the hands by which the officers perform their duties. To provide for such appointments as there by low pring it to the day we to to consiste the two the budthe how. How they in not state officers Bus twood a low defining the governor of the from to appoint State officers by Consistent with the constitution? who were oppoint from? Hondey the Legislature? - For the Bise of right Describer the Executive, Legislation and Judicial powers should be deporte - and when it was supposed being any to reserve to nowin to the Ligislation as in the com of the Theosoner, it was reserved. Lecturely the officery ment of Latting lammingscomers is not a legislation act in its character - but an Executive and - and I think you had bust consider it will before you upprops an spinion. - I to not mun to up my an openion in this letter - for I have my the constitution of manylored as-how - and is 2 has I how not time to consider it - But 2 men to suggest difficulties to be considered a separating weight. I down the from my much

Ludad I sould un when grammer white it is & how have for a propional your spinion is not agains by the lamines to point out their light duty. It is for the Rigislature to spirit in guiding their action - how the Registertime how not ashed it. The attorney June is their officer & adviser. Why should your introduction don the wood) your opinion unashed for? Is is entirely respectful to their us is present house your spinion is to how inflower If the Law was papers, them is would be extensived aproper lune for a propipione ofining to malite the luminous to Secrete when Many could laurencey act unanit again - do no propriemal duty again, 3 to give on ofinion for the Seguilation, why should you do it I when there is no duty the way, considerations of extracting ange to in regardid. - toly should you hut an opinion in the hour to be badgered 2 abund and In carero by hand normes? why should you notwenter to and in wresting how more me governor for whom you how noted! why should you bring whom you all the day and unquenchable and hostility

of the whole hady of your hotilies from from the righest to the lowers. - Low why up mit if the mean is attempted it will produce returned equitament. La not believe it will even be supported by Whigh enough to compit - Think growing of there mothers before you give an opinion. Buty whom is in a stip that may how most serious and injurious to you - And you are winder no saigntion of duty to to he it - but ought L'Atrinha to obstace from it I have written a long letter - without lime to think much - and if there is any thing too energetic in my language infinite is the hoste in which I write - the joing I have undergone in land this morning and the dispositioned I face in many ming that comments you have to see it is J. Mofor Complete East. B. B. Sancy god All go dayington Strat

1847 Dec. 21 TANEY, ROGER BROOKE

To James Mason Campbell.

Washington Decr. 21, 1847

My Dear sir

We fortunately have no conference tonight- and I am able therefore to take an hour from other engagements, to think over the subject of your opinion and to write to you the result of my reflections.

But I am acting somewhat in the dark - for I have not the articles of the constitution of Maryland to which you refer before me - and must take them as briefly stated in your letter. And acting with that limited means of information I am by no means sure that you are right. The constitution of 1836 you say vests the whole Executive power in the Governor, and vests in him the appointment of all officers not otherwise directed, by the constitution or by laws consistent with the constitution in respect to appointments? There are a class of officers who have never been appointed by the executive - as for example the constables in the different counties and also the clerks of the lottery commissioners. Those officers if they may be so called are not regarded as the officers of this state - but the first as ministerial agents - who are necessary to enable the judicial power to perform its functions & preserve the peace - and Insolvent commrs. &c. &c. are necessary aids to the officers to enable them to perform their duties. They are the instruments - the hands by which the officers perform their duties. To provide for such appointments as these by law giving it to the jury courts or commrs. would evidently be a law consistent with the constitution. For they are not state officers. But would a law depriving the Governor of the power to appoint state officers be consistent with the constitution? For the Bill of rights declares that the Executive, Legislative and Judicial powers whould be separate and when it was supposed necessary to reserve the power to the Legislature as in the case of the Treasurer, it was reserved. Certainly the appointment of Lottery commissioners is not a Legislative act in its character - but an Executive one - and I think you had best consider it well before you express an opinion. I do not mea to express an opinion in this letter - for I have not the constitution of Maryland at hand - and if I had I have not time to consider it. But I mean to suggest difficulties to be considered & separately weighted. I doubt the power very much. Indeed I doubt on other grounds whether it is a proper case for a professional opinion, Your opinion is not required by the commrs. to point out their legal duty. It is intended for the Legislature to assist in guiding their action. Now the Legislature have not asked it. The Attorney General is their officer and adviser. Why should you intrude (pardon the word) your opinion unasked for? Is it entirely respectful to them as it presupposes your opinion is to have influence. If the law was passed, then it would be afterwards a proper case for a professional opinion to enable the commrs. to decide whether they could lawfully act under it.

Again - as no professional duty requires you to give an opinion for the Legislature, why should you do it? Where there is no duty in the way, considerations of expediency ought to be regarded. Why should you put an opinion in the house to be badgered & abused and be called by hard names? Why should you volunteer to aid in wresting power from the Governor for whom you have voted? Why should you bring upon yourself the deep and unquenchable hostility of the whole body of your political friends from the highest to the lowest? For rely upon it if the measure is attempted it will produce vehement excitement.

I do not believe it will even be supported by Whigs enough to carry it. Think gravely of these matters before you give an opinion. Rely upon it (it) is a step that may prove most serious and injurious to you - And you are under no obligation of duty to take it - but ought I think to abstain from it.

I have written a long letter - without time to think much - and if there is anything too energetic in my language impute it to the haste in which I write - the fatigue I have undergone in court this morning and the deep interest I feel in everything that concerns you - and with much

love to all

most affy

J. Mason Campbell Esqr.

R. B. Taney

Lexington Street
Baltimore