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

**Date:** December 21, 1847

**Location:** O-SpahrB-1965-2

### **Contact:**

Archives & Special Collections  
Waidner-Spahr Library  
Dickinson College  
P.O. Box 1773  
Carlisle, PA 17013

717-245-1399

[archives@dickinson.edu](mailto:archives@dickinson.edu)

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Washington Decr. 21. 1847

My Dear Sir

We fortunately have no conference tonight - and I am able therefore to take on home 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. It has or is meant by laws consistent with the Constitution in respect to appointments? - There are a class of officers who have never been appointed by the Executive - for example the Constables in the different counties - and also the Clerks of the County Commissioners. These officers if they may be so called are not regarded as the officers of the State - but as <sup>the first</sup> ministerial agents - who are employed



to enable the Judicial part to perform its func-  
tions & preserve the peace - and the clerks of the  
Lottery commissioners - and Insolvent Com<sup>rs</sup> &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 down-  
giving it to the <sup>same</sup> courts or <sup>com<sup>rs</sup></sup> ~~com<sup>rs</sup>~~  
~~would~~ evidently be a law <sup>be</sup> consistent with the  
Constitution. For they are not state officers. But  
would a law depriving the Governor of the  
power to appoint state officers <sup>be</sup> consistent  
with the Constitution? Who else could appoint  
them? Hardly the Legislature? - For the sake of right  
reasons that the Executive, Legislature and  
Judicial powers should be separate - but  
when it was supposed necessary to reserve the  
power to the Legislature as in the case of the  
Treasurer, it was reserved. Certainly the appoint-  
ment 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 mean  
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  
and carefully weighed. I doubt the power very much.



And as I doubt an other ground whether it is  
a proper case for a professional <sup>opinion</sup> your opinion  
is not required by the Commons to point out their  
legal duty. It is <sup>intended</sup> for the Legislature - to assist in  
guiding their action. - Now the Legislature  
have not asked it. - The Attorney General is their  
officer & adviser. Why should you intrude (for  
so the word) your opinion unasked for?  
It is entirely respectful to them as it presupposes  
your opinion is to have influence. If the  
Law was perfect, then it would be afterwards  
a proper case for a professional opinion  
to enable the Commons 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? - When 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  
voluntarily go in wrestling power from  
the Governor for whom you have voted?  
Why should you bring upon yourself the deep  
and unpardonable ~~contumacious~~ hostility



of the whole body of your political friends  
from the highest to the lowest? - For why up-  
on 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 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 every  
thing that concerns you - and with much  
love to all

Most affly -

J. Mason Complete Esq.

R. B. Tacey

Durington Street

Bolton

Washington Dec. 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 powers in the Governor, and vests in him the appointment of all officers otherwise not 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, if they may be so called are not regarded as the officers of this state, but the first as ministerial agents, who are necessary

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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 should 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 mean 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.

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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 actions. Now the Legislature have not asked it. The Attorney General is their officer and advisor. 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 expedience out 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 for the Governor for whom you have voted? Why should you bring upon yourself the deep and unquenchable hostility

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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 if these matters before you give an opinion. Rely upon 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,  
R. B. Taney

J. Mason Campbell Esqr.  
Lexington Street  
Baltimore