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State Department
Annapolis Oct. 7th 1851

Hon: R. J. Brent
Atty Genl.

Sir,

I respectfully call your attention to, and request your legal opinion upon the following points, which are of much importance in the daily practice of this Department.

You will find, by the 33rd article of the old constitution, that the Governor was empowered to "grant reprieves or pardons for any crime, except in such cases where the law shall otherwise direct." Thus the Executive prerogative, in this respect was made subject to legislation. By article 58, you will find, penalties and forfeitures are likewise subjected to the regulation of the Legislature. In pursuance of this power, the Legislature has, from time to time, passed laws restricting the pardoning prerogative of the Governor, by limitations and conditions; and in other cases, extending his prerogative, in respect to the remission of fines and penalties &c. Thus, by the act of 1782 chap 42 Sec 3, the Governor is authorized to remit a fine, penalty, or forfeiture; provided, if the same be certain and not in the discretion of the Court, that then the case shall be stated in writing by the Court, and a recommendation (by the Court) be made for a remission & ^{when the fine &c.} is discretionary, then such recommendation is not necessary to empower the Executive to act.

By the New Constitution, Article 11. Sec 19, the power to grant pardons & reprieves & remit fines & forfeitures is given to the Governor unconditionally, & without reference to future Legislative action.

Does this provision of the New Constitution repeal all laws restrictive of the Executive power thus granted? or, do those laws continue in force by virtue of the 3rd article of the Declaration of rights? Does the restrictive portions of the acts referred to affect the general grant of Executive power contained in the article of the New Constitution above quoted?

Another point, The Governor's Authority (under the old form of Government) to grant conditional pardons, and to do other acts not specially contemplated by the aforesaid 33rd article of the old Constitution, was derived from acts of the Legislature enlarging his powers. For example, by the act of 1795, chap 82, Sec 2, he is authorized to commute, in cases of Capital Conviction &c. If the restrictive laws are virtually repealed by the New Constitution, are the enlarging acts affected. The materiality of this inquiry arises from this, that the New Constitution does not, in terms, confer the power to pardon upon condition. Your early attention to this will oblige me, as there are cases involving these principles, which await my action.

Very Respectfully,
G. O. Lovell

E. Louis Lovell