

State of Maryland
Executive Department
Annapolis April 25th 1862

To Genl. Pickens, Brig & General,
Gentlemen:

Your communication of the 14th Inst. was handed to me a few days ago by the Adjutant General, and I avail myself of the earliest opportunity I have since had of replying to it.

Adverting to the fact that you were hitherto appointed and commissioned by Gov. Hicks as Major Generals in the Militia of the State, and that the Senate to whom the nominations were sent failed to act upon them, you ask my opinion upon the effect of that non action, at the same time referring me to extracts which you quote from the Constitution and laws of the State, from which your own opinion as expressed in your letter is, that your appointments as Major Generals did not require the confirmation of the Senate and their non action does not affect (you) us.

The reasoning by which you appear to have arrived at that conclusion by the tenor of your letter would seem to be as follows—referring to the act of Congress of 1792 devolving upon the several States the duty of appointing the officers of the Militia in their respective States, you refer to the act of the Legislature of Maryland providing for the discharge of that duty, which declares "that the Governor & Council shall appoint the proper officers"

You then refer to the act of 1836 ch. 197 section 13 altering the Constitution of the State and abolishing the Council to the Governor, and which you quote as providing "that the whole executive power of the Government of the State shall be vested exclusively in the Governor"—And hence you argue that after that act "the appointing and commissioning of a Major General, which before 1836 was vested in the Governor & Council, became thereafter exclusively vested in the Governor"

And this you think was not altered by the Constitution of 1851—because although that Constitution expressly declares that "all Civil and Military officers whose appointment is not otherwise provided for therein" shall be made by the Governor "by and with the advice and consent of the Senate," yet this you suggest, does not reach the case of a Major General, because, as you argue, the Constitution also excepts from the effect of that clause those officers where "a different mode of appointment is prescribed by the law creating the office"—And the appointment of Major General being provided for by the law creating the office, you seem to place particular stress upon that part as bringing it within the proviso of that clause of the Constitution and as leaving that appointment exclusively in the hands of the Governor—

It will, I think, occur to you upon a further reflection on this point of your argument that if your reasoning