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THE ATTORNEY GENERAL'S OPINION REGARDING MILITARY COMMANDERS.

Washington, June 17, M.

The opinion of the Attorney General in regard to the powers of the Military Commanders is too elaborate for telegraph, and the reasoning too close for synopsis. The following *verbatim* extracts cover the conclusions:

I find it impossible under the provisions of this act to comprehend such an official as a Governor of one of these States appointed to office by one of these military commanders. Certainly he is not the Governor recognized by the laws of the State, elected by the people of the State, and clothed as such with the chief executive power. Nor is he appointed as a military Governor, for a State which has no lawful Governor, under the pressure of an existing necessity, to exercise powers at large. The intention, no doubt, was to appoint him to fill a vacancy occasioned by a military order, and to put him in the place of the removed Governor, to execute the functions of the office as provided by law. The law takes no cognizance of such an official, and he is clothed with no authority or color of authority.

What is true as to the Governor is equally true as to all other legislative, executive, and judicial officers of the State. If the military commander can oust one from his office, he can oust them all. If he can fill one vacancy he can fill all vacancies, and thus usurp all civil jurisdiction into his own hands, or the hands of those who hold their appointments from him and subject to his power of removal, and thus frustrate the very right secured to the people by this act, Certainly this act is rigorous enough in the power which it gives. With all its severity, the right of electing their own officers is still left with the people, and it must be preserved.

I must not be understood as fixing limits to the power of the military commander in case of an actual insurrection or riot. It may happen that an insurrection in one of these States may be so general and formidable as to require the temporary suspension of all civil government, and the establishment of martial law in its place. And the same thing may be true as to local disorder or riot in reference to the civil government of the city or place where it breaks out. Whatever power is necessary to meet such emergencies, the military commander may properly exercise. I confine myself to the proper authority of the military commander where peace and order prevail. When peace and order do prevail, it is not allowable to displace the civil officers and appoint others in their places under any idea that the military commander can better perform his duties and carry out the general purposes of the act by the agency of civil officers of his own choice rather than by the lawful incumbents. The act gives him no right to resort to such agency, but does give him the right to have "a sufficient military force" to enable him "to perform his duties and enforce his authority within the district to which he is assigned."

In the suppression of insurrection and riot, the military commander is wholly independent of the civil authority. So, too, in the trial and punishment of criminals and offenders, he may supersede the civil jurisdiction. His power is to be exercised in these special emergencies, and the means are put into his hands by which it is to be exercised, that is to say, "a sufficient military force to enable such officer to perform his duties and enforce his authority," and military tribunals of his own appointment to try and punish offenders. These are strictly military powers, to be executed by military authority, not by the civil authority or by civil officers appointed by him to perform ordinary civil duties.

If these emergencies do not happen, if civil order is preserved, and criminals are duly prosecuted by the regular criminal courts, the military power though present must remain passive. Its proper function is to preserve the peace, to act promptly when the peace is broken, and restore order. When that is done and the civil authority may again safely resume its functions, the military power becomes again passive, but on guard and watchful.

This, in my judgment, is the whole scope of the military power conferred by this act, and in arriving at this construction of the act, I have not found it necessary to resort to the strict construction which is allowable.

SUMMARY.

WHO ARE ENTITLED TO REGISTRATION.

1. The oath prescribed in the supplemental act defines all the qualifications required, and every person who can take that oath is entitled to have his name entered upon the list of voters.

2. The board of registration have no authority to administer any other oath to the person applying for registration than this prescribed oath; nor to administer any oath to any other person, touching the qualifications of the applicant, or the falsity of the oath so taken by him. The act to guard against the falsity in the oath, provides that, if false, the person taking it shall be tried and punished for perjury.

No provision is made for challenging the qualifications of the applicant, or entering upon any trial or investigation of his qualifications, either by witnesses or any other form of proof.

3. As to citizenship and residence.

The applicant for registration must be a citizen of the State and of the United States, and must be a resident of a county included in the election district. He may be registered if he has been such citizen for a period less than twelve months at the time he applies for registration, but he cannot vote at any election unless his citizenship has then extended to the full term of one year. As to such a person, the exact length of his citizenship should be noted opposite his name on the list, so that it may appear on the day of election, upon reference to the list, whether the full term has then been accomplished.

4. An unnaturalized person cannot take this oath, but an alien who has been naturalized can take it, and no other proof of naturalization can be required from him.

5. No one who is not twenty one years of age at the time of registration can take the oath, for he must swear that he has then attained that age.

6. No one who has been disfranchised for participation in any rebellion against the United States, or for felony committed against the laws of any State or of the United States, can safely take this oath.

The actual participation in a rebellion, or the actual commission of a felony, does not amount to disfranchisement. The sort of disfranchisement here meant, is that which is declared by law passed by competent authority, or which has been fixed upon the criminal by the sentence of the court which tried him for the crime.

No law of the United States has declared the penalty of disfranchisement for participation in rebellion alone. Nor is it known that any such law exists in either of these ten States, except perhaps Virginia, as to which State special instructions will be given.

7. As to disfranchisement arising from having held office, followed by participation in rebellion.

This is the most important part of the oath, and requires strict attention to arrive at its meaning. I deem it proper to give the exact words. The applicant must swear or affirm as follows:

"That I have never been a member of any State legislature, nor held any executive or judicial office in any State, and afterwards engaged in an insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof."

Two elements must concur in order to disqualify a person under these clauses: First, the office and official oath to support the Constitution of the United States; Second, engaging afterwards in rebellion. Both must exist to work disqualification, and must happen in the order of time mentioned.

A person who has held an office and taken an oath to support the Federal Constitution, and has not afterwards engaged in rebellion, is not disqualified. So, too, a person who has engaged in rebellion, but has not theretofore held an office and taken that oath, is not disqualified.

8. Officers of the United States.

As to these the language is without limitation. The person who has at any time prior to the rebellion held any office, civil or military, under the United States, and has taken an official oath to support the Constitution of the United States, is subject to disqualification.

9. Military officers of any State, prior to the rebellion, are not subject to disqualification.

10. Municipal officers, that is to say, officers of incoporated cities, towns, and villages, such as mayors, aldermen, town council, police, and other city or town officers, are not subject to disqualification.

11. Persons who have, prior to the rebellion, been members of the Congress of the United States, or members of the State Legislature, are subject to disqualification. But those who have been members of conventions framing or amending the Constitution of a State, prior to the rebellion, are not subject to disqualification.

12. All the executive or judicial officers of any State who took an oath to support the Constitution of the United States, are subject to disqualification, and in these I include county officers, as to whom I made a reservation in the opinion heretofore given. After full consideration I have arrived at the conclusion, that they are subject to disqualification, if they were required to take as a part of their official oath, the oath to support the Constitution of the United States.

13. Persons who exercised mere agencies or employments under State authority, are not disqualified; such as commissioners to lay out roads, commissioners of public works, visitors of State institutions, directors of State banks or other State institutions, examiners of banks, notaries public, commissioners to take acknowledgments of deeds, and lawyers.

ENGAGING IN REBELLION.

Having specified what offices held by any one prior to the rebellion, come within the meaning of the law, it is necessary next to set forth what subsequent conduct fixes upon such person the offence of engaging in rebellion. I repeat, that two things must exist as to any person, to disqualify him from voting: first, the office held prior to the rebellion, and, afterwards, participation in the rebellion.

14. An act to fix upon a person the offence of engaging in rebellion under this law, must be an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose. A person forced into the rebel service by conscription, or under a paramount authority which he could not safely disobey, and who would not have entered such service if left to the free exercise of his own will, cannot be held to the disqualified from voting.

15. Mere acts of charity, where the intent is to relieve the wants of the object of such charity, and not done in aid of the cause in which he may have been engaged, do not disqualify. But organized contributions of food and clothing for the general relief of persons engaged in the rebellion, and not merely of a sanitary character, but contributed to enable them to perform their unlawful object, may be classed with acts which do disqualify.

Forced contributions to the rebel cause, in the form of taxes or military assessments, which a person may be compelled to pay or contribute, do not disqualify. But voluntary contributions to the rebel cause, even such indirect contributions as arise from the voluntary loan of money to rebel authorities, or purchase of bonds or securities created to afford the means of carrying on the rebellion, will work disqualification.

16. All those who, in legislative or other official capacity, were engaged in the furtherance of the common unlawful purpose, where the duties of the office necessarily had relation to the support of the rebellion, such as members of the rebel conventions, congresses, and legislatures, diplomatic agents of the rebel confederacy, and other officials whose offices were created for the purpose of more effectually carrying on hostilities, or whose duties appertained to the support of the rebel cause, must be held to be disqualified.

But officers who, during the rebellion, discharged official duties not incident to war, but only such duties as belong even to a state of peace, and were necessary to the preservation of order and the administration of law, are not to be considered as thereby engaging in rebellion or as disqualified. Disloyal sentiments, opinions, or sympathies would not disqualify, but where a person has by speech or by writing, incited others to engage in rebellion, he must come under the disqualification.

17. The duties of the board appointed to superintend the elections. This board, having the custody of the list of registered voters in the district for which it is constituted, must see that the name of the person offering to vote is found upon the registration list, and if such proves to be the fact, it is the duty of the board to receive his vote. They cannot receive the vote of any person whose name is not upon the list, though he may be ready to take the registration oath, and although he may satisfy them that he was unable to have his name registered at the proper time, in consequence of absence, sickness, or other cause.

The board cannot enter into any inquiry as to the qualifications of any person whose name is not on the list, or as to the qualifications of any person whose name is on the list.

18. The mode of voting is provided in the act to be by ballot. The board will keep a record and poll-book of the election, showing the votes, list of voters, and the persons elected by a plurality of the votes cast at the election, and make returns of these to the commanding general of the district.

19. The board appointed for registration and for superintending the elections, must take the oath prescribed by the act of Congress, approved July 2, 1862, entitled, "An act to prescribe an oath of office."

I have the honor to be, with great respect.

HENRY STANBERY,
Attorney General.

From the Wilmington Journal.

GEN. SICKLE'S COURTS AND JURIES.

We learn from the Tarboro' Southerner, that the Court of Oyer and Terminer, held during the past week in Tarboro', adjourned without trying the negroes, John Taylor and Jim Knight, charged with the murder of Mr. Cutchin, on account of the ruling of the presiding Judge (Barnes) in regard to the effect of General Sickles' Order No. 32, in respect to the selection of jurors. The counsel for the prisoners, Judge Biggs and Mr. W. H. Johnson, asked the Court to instruct the Sheriff to summon all the citizens who were tax payers. This was declined, but the Sheriff was directed to summon from a jury list of tax payers prepared by the proper officers.

Upon the call of the case, the Sheriff returned that, as the County Court had not revised the jury list, since the order of General Sickles, he had summoned only white freeholders. The counsel for defence challenged the array and demanded a trial at this term or to be discharged. This point was fully argued by Judge Howard for the State, and Judge Biggs for the prisoners. The Judge overruled the challenge and suggested that he would continue the case, if an affidavit was made that it was doubtful whether a fair trial could be had from the present panel. The counsel for the prisoners insisted upon a trial, and that a venire should at once be formed from the tax payers, according to the order of General Sickles, and declined to ask for a continuance.