Letter of resignation, Attorney General's office, Austin. Oct. 28, 1867 ... [Signed] William Alexander.

LETTER OF RESIGNATION.

Attorney General's Office, Austin, Oct. 28, 1867.

General —A few weeks since several of the gentlemen who have since been appointed to the principal offices of the present Provisional Government of Texas, together with other citizens, signed a petition, drawn up by myself, to Brevet Maj. Gen. Griffin (who to the sincere regret of all really loyal men is now no more,) asking him, in substance, to declare by a Military Order, all pretended legislation done in Texas and dating from and after February 1st, 1861, (the date of the so called Ordinance of Secession,) to be what the law holds it to be—null and void from the beginning. You are respectfully referred to that petition, which must to be on file either in your office or at the headquarters of the 5th Military District, for the matters it presents and the names of the signers.

On being subsequently appointed to the office of Attorney General, I, with the other officers appointed at the same time, in pursuance of the order of appointment, took the U. S. test oath together with the oath of office prescribed by the accepted constitution of Texas of 1845. The same oath appears to have been taken by all the recently appointed officers of the Provisional Government.

There can be no question as to what State constitution and laws we were sworn to support. The phrase “since the adoption of this constitution by the Congress of the United States” settles beyond a doubt that we did not qualify to the rebel State constitution of Texas, for it substitutes tes “since the second day of March, A. D. 1861,” for the words cited; nor to the rejected State constitution of 1866, which, had we inserted “since the *rejection* ,” &c., instead of “adoption” might with propriety be regarded as the instrument to which we made oath.

Having taken a solemn oath, from which I have not been released, to perform the duties of my office agreeably to the only “adopted,” or accepted constitution of Texas, and the laws enacted in pursuance thereof, (all relating to African slavery having been previously annulled by the 13th amendment to the United States constitution and by laws to carry the same into effect,) I cannot conform to the requirements of the Proclamation of the Executive of Texas, dated on the 25th inst., but only this day received, which though in my conception not free from ambiguity in its language, has been verbally explained in your presence and before the heads of the departments of the Provisional Government as being designed to declare the constitution and statutes of 1866, subject

to certain exceptions, to be “rules for the government of the people of Texas and the officers of the civil government,” or, in other 2 words, our body of municipal law.

Holding, as I do, that the rejected constitution of 1866 and the laws based thereon are neither in force *proprio vigore* , nor by virtue of the Military Reconstruction Act and its supplements, nor yet by Major Gen. Sheridan's Order assuming command, I regard the Proclamation of the 25th inst., as requiring me to do what is inconsistent with my oath of office as well as with my settled convictions of law.

It is respectfully and earnestly submitted that the Proclamation, as explained, promulgates errors fraught with danger to the loyal people of Texas, white and colored, and eminently prejudicial to the national cause, which I deem it to be my official to briefly point out.

Laws, organic or otherwise, in the United States, may be unconstitutional on one or both of two independent grounds; because made *against or without the authority of the national constitution* , or because made under the authority of the supreme law of the land and yet intrinsically in conflict therewith. All rebel constitutions and laws are unconstitutional and null and void *ab initio* for the first of these reasons, and very many of them for the second in addition.

If, indeed, as I hold, the constitution and laws of the United States have continued without cessation to be the supreme law of the land, the friends, (citizens) not to speak of the “public enemies” of the United States, could not, without the authority of the United States government, make any law within our national limits. Any pretended law they might so enact would, to borrow the language of the Chief Justice Marshall, be “incompatible” with the constitution of the United States; would necessarily be unconstitutional. If, on so unimportant a subject as defining the times for the sessions of a court, because passed against the authority and without the consent of the national government which, by the constitution, can only permit admitted States and lawfully organized Territories to legislate, it would be unconstitutional. In contemplation of law all hostile and unauthorized legislation done in Texas from and after February 1st, 1861, is unconstitutional, and no decision can be cited showing that an eclectic system can now be introduced under which we can say that one pretended law *so made* is valid, and another void on account of its provisions.

If, on the other hand, the rebel view be correct and the Constitution &c., &c., of the United States were not the supreme law of the land in Texas from Feb. 1st, 1861, until the date of the surrender of Gen. E. Kirby Smith, valid laws might have been made here, all of which would remain in force after the Constitution, &c., &c., of the United States had “again resumed their sway,” except such as might be incompatible therewith on account of their contents. Still, there seems to be no authority to show that a State Constitution made without the authority of Congress, after Gen. E. Kirby Smith's

surrender, which that body subsequently by the Military Reconstruction Act provided should never be laid before it for acceptance, but that a new one should be formed by the action of registered voters and presented, can supplant an accepted Constitution and the laws passed in pursuance of the same.

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According to the theory of government generally adopted, in a Republic the government is regarded as being a collection of agencies of the sovereign people, who furnish to their agents or officers a constitution and laws as their power of attorney beyond which they cannot go. Congress (our collection of legislative agents for national purposes) has not the power to validate a State Constitution or laws made by a people within our limits, hostile to, or not authorized by, the national government. Not having the power to do so, it could not confer such power upon Major-Gen. Sheridan as it did not itself possess.

If these propositions be correct, the Military Reconstruction Act and the Order cited ought to be construed in accordance with them.

To do so, we have only to regard the word “governments” as employed in the Act and in the Order in signifying “the bodies of administrators who rule,” (see Encyc. Britt. vol. 10, p. 731,) the persons claiming to be and acting as civil officers—nothing more, and not as also including the rejected constitutions of the rebel States with the laws based thereupon.

To hold otherwise would be to assume that Major-Gen. Sheridan, when he used the phrase “provisions of law,” did not mean as his language clearly imports, to refer to valid existing laws, but on the contrary intended to validate pretended law: or, in other words, that in his order assuming command he took upon himself to do what his known character precludes him from being charged with,—to reject the accepted constitution of Texas of 1845 and to accept the rejected constitution of 1866—to doubly repeal and overrule legislation enacted at different periods by the Congress of the United States.

I am firmly convinced that that officer, who during his command of the 5th Military District gained a reputation for administrative ability scarce surpassed by his achievements in the field, undertook to do nothing of the sort. Hence, I beg leave to protest against his being charged with having put the rejected constitution and “laws” (so-called) of 1866 upon us. Indeed, the character of those “laws” is such that he could not have done so. Not less than 83 of such of them as claim to be *public and general* in their nature, are either directly or indirectly hostile to the United States Government, or, to its loyal citizens, 24 being leveled at the freedmen; while about 200 of such as are styled *special* confer magnificent rewards upon those who had been prominent in upholding the rebellion.

Major-Gen. Sheridan did not validate rebel judgments and sales under execution had against loyal men, (some of them bearing arms under him at the time,) *because they were in the service of their country.* He did nothing to put down the friends and build up the enemies of the United States; to make loyalty odious and treason respectable in this State. True, notwithstanding the Military Reconstruction Act we did not have a Military Government established, but instead, a rebel civil government organized under a constitution not accepted, and administering rebel laws, was continued and upheld; but this was done against the earnest and reiterated remonstrances of 4 the commander of the 5th Military District.

Now, since he at last was permitted to place appointees of his own in power, if rebel laws are to be administered by them, what has the United States Government, what have the people of Texas in the true political sense of the term—the registered voters, white and colored, who did not make and who have never sanctioned such laws, gained by the change? Had the rebels been victorious in the field what could they have won beyond the establishment of their laws? When they have lost, must the result be the same?

I am averse to occupying your time and attention farther, or, in this connection, I would trace the progress that has been and is insidiously made by disloyal Judges, by means of these pretended laws, towards a judicial justification of the rebellion; and would also give my reasons for believing that the administration of ex-Gov. Throckmorton was regarded an impediment to reconstruction, partly, at least, because it executed rebel laws in their spirit.

Having taken the position of Attorney General expressly to aid in the enforcement of our accepted constitution and unquestionably valid laws; and the *programme* having, against my protest, been altered and a rejected constitution with disloyal "laws" substituted, I conceive myself to be under no obligations to continue in office to assist in the administration of a body of municipal law which, in my belief has not been, and could not be sanctioned by the Military Reconstruction Act nor by General Order No. 1 of Major-Gen. Sheridan.

Not having changed the views to which I subscribed before being appointed, I cannot abandon them now without doing wrong—occupying a false position, and appearing to be actuated not by principle, but by a mere vulgar desire for office.

Sincerely convinced of the correctness of the opinions set forth, which however objectionable to rebels, it must be cenceded, would, if carried out, work on prejudice to any loyal man or to the United States government, I beg leave to transmit through yourself, to the Commander of the Fifth

Military District, this my resignation, to take effect as soon as a successor can be appointed and qualified, so that I can deliver over to him the books and papers of the office. I remain,

Very respectfully, Your ob't serv't, William Alexander.

Brevet Major-Gen. J. J. Reynolds, U. S. A., Commanding the District of Texas.