

Albany Septem 21st 1813.

Sir,

Having returned from the duty of assembling the Militia for the Champlain frontier, I take the liberty of answering your letter of the 9th, more at large than was done in my last from Watford.

By the 70th section of the Militia law of 1809, the Commandant of a Brigade has the same power, with respect to calling forth the Militia, as is given to the Commander in Chief by the 68th section. In the case in which you have exercised that power I should have done the same had I been upon the spot; for, although some would give the constitution such a construction as to make the Militia an ideal force only, I entertain a very different opinion upon that subject, I insist that the purposes intended to be answered by Militia, & the spirit & meaning of the constitution & law, with respect to invasion, warrant their being called upon before an enemy strikes a blow & when

31 when there is only imminent danger of invasion. This is the construction which was given to the constitution by President Washington & his cabinet. It was accordingly expressed & sanctioned by Congress in the provisions of the Act passed 28th February 1795. If you could not order out Militia until an enemy had landed & committed some depredation, it would be equally out of your power to order out militia after the invading force had withdrawn, & of course where an enemy should pounce upon particular points of frontier & forthwith withdraw, the constitutional force for repelling invasion could not be exerted at all, & thus the very object of the constitution & laws would be wholly defeated. I have therefore no doubt of the legality & propriety of the course you have pursued upon the advance of the enemy into that part of the East River, opposite the County of Westchester, & as far as depends on me approve & confirm the same.

The Legislature having given the authority, the obligation to pay the expenses of the troops ~~and~~ is perfect, & there is no doubt provision will be made accordingly; but there is no existing power

to pay them at present. During the last winter I took the liberty of recommending to the Legislature, by a Message to the Assembly, to make provision for the pay of the Militia who might be called out in the seaboard on any emergency by State authority, pursuant to the Militia law of this State; but they took no notice of the recommendation. Of course it is out of my power to ^{direct} ~~direct~~ the payment of the troops, or of their expenses, until the Legislature shall make appropriations to meet the case. In the mean time permit me to recommend that the proper officers be directed to collect & arrange the necessary Volls, papers & vouchers to enable them to receive the pay & expenses, whenever it may be authorized. For that purpose I take the liberty of enclosing a book of regulations for the different departments — Instructions for forming requisitions for rations to cover the supplies of provisions which may have been made — a copy of the Contractor's contract, pay rolls, the forms of muster Rolls, pay Rolls, receipt Rolls & subsistence accounts of officers &c.

It is probable I may have it in my power to visit the Southern frontier, but as there is a Corps of the Militia amounting

2000 on its way to Niagara, another of 1500 on its way to Sackett's
Harbour, & a third of 2000 at or near Plattsburgh, it is impossible
for me to say when & how long it may be proper for me to be absent
from the seat of Government.

I am, Sir, Your
Obedt. Servt.

Daniel D. Tompkins

Brig. Genl.

J. Van Cortlandt Junr.