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Easton, Rufus.
DLC copy.
JAMES WILKINSON,
GOVERNOR OF THE TERRITORY OF LOUISIANA,

To all who shall see these presents, greeting:—

KNOW YE, that reposing special trust and confidence in the integrity, dilligence, and abilities of James Lowry Donaldson, esquire, I do hereby appoint him to the office of district attorney, in and for the district of St. Louis, and do authorise and empower him, generally, to execute and fulfil the functions of the said office; and more especially, it shall be his duty to attend the general court, or court of oyer and terminer, and the courts of general quarter sessions of the peace, to be from time to time held within the said district, and to conduct all prosecutions for crimes and offences cognizable within the said courts; and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining, from and after the date hereof, during my pleasure.

IN TESTIMONY WHEREOF, I have caused the seal of the said territory to be hereunto affixed. Given under my hand, at the town of St. Louis, this 20th day of October, 1805.

JA: WILKINSON.

By the governor,

JOSEPH BROWN,
Secretary to the Territory.
JUDGE EASTON'S

OPINION ON THE ABOVE COMMISSION:

THE powers of the governor, with regard to civil appointments, are contained in the fifth section of the law of Congress "further providing for the government of the district of Louisiana," passed March 3d, 1803, which says, "that for the more convenient distribution of justice, the prevention of crimes and injuries, and execution of process civil and criminal, the governor shall proceed from time to time, as circumstances may require, to lay out those parts of the territory, in which the Indian title shall have been extinguished, into districts, subject to such alteration as may be found necessary; and he shall appoint thereto, such magistrates and other civil officers as he may deem necessary, whose several powers and authorities shall be regulated and defined by law. Unquestionably the governor has power and authority to appoint all district officers, coming within the purview or description of this section, of the act of Congress, which according to legal understanding in any state of the Union, would mean county officers, such as justices of the peace, sheriffs, coroners, &c. and yet these officers have no authority to act under their respective commissions, until their powers and duties are defined by law. What powers and authorities are given by law to a district attorney? There are none; unless we take the words of the commission for a law, to wit: "And more especially, it shall be the duty of the said attorney, to attend the general court, or court of ayer and terminer, and courts of general quarter sessions of the peace for the said district, and to conduct all proceed-


utions for crimes and offences, cognizable in the said courts."
If the governor has power to enact laws in this manner, there can be no necessity for a legislature. I take it for granted, that by the laws passed by the governor and judges of the Indiana territory, it was their intention to provide for the appointment of an attorney general, giving him powers to appoint deputies, and yet this intention is only to be gained from the act "regulating the fees of the several officers and persons therein named," which provides a salary and perquisites for such officers. Is there any fees provided for a district attorney? Does such an appointment exist, or can an office be created except by the statute laws of a state or nation? Is the public prosecutor on behalf of the United States or any state, a district or county officer? Indeed, in some of the states, where the superior courts are ambarbatory by special statutes for that purpose, there are states attorneys for counties; and under the general government, and in some states there are district attorneys; but I believe it has not been customary for those district attorneys to appear before the supreme court of the state or United States to prosecute; although one of them resides in the district where the supreme court of the United States hold their sessions. If district attorneys should be appointed to the several districts, by the governor, (as to possess such an authority he must appoint them either for the more convenient distribution of justice; the prevention of crimes and injuries; or for the execution of process civil and criminal)—the district attorney of St. Charles, or St. Genevieve, might claim the right of doing the public business arising in their respective districts, although brought into the general court for decision. I believe it to have been the intention of the national legislature, at the time the law was passed for the government of this territory, to give the governor authority only, to appoint three description of officers independent of the legislature of the territory;
to wit:—officers for the distribution of justice, such as magistrates—officers for the prevention of crimes and injuries, being technically speaking, peace officers—and officers for the execution of process criminal and civil; meaning ministerial officers, sheriffs, coroners, &c. I am also of opinion that no executive under an American government possesses any other prerogatives than such as are secured to him by law, or by the constitution; and that all others devolve upon the immediate representatives of the people, the legislative body. By what authority can the executive of this territory, appoint officers not recognized by the laws of Congress or the territory? Can he appoint a territorial treasurer, auditor, attorney general, surveyor general, before it is ascertained by law whether the legislature will provide for such appointments; or whether it is expedient for the territory to establish such offices—or can he appoint a district officer not coming within the description of those provided for by the 5th section of the law of Congress, for the government of this territory, such as auctioneers, commissioners of roads, sealers of weights and measures, &c. I conceive not, and am therefore of opinion that the commission of Mr. Donaldson as attorney for the district of St. Louis, ought not to be acknowledged or received by this court.

October 28th, 1805.