

Brentsville, Va. November 12th 1842
Box 1 Folder 3
Governors Executive Papers – John M. Gregory
To the Governor of the Commonwealth of Virginia
(This letter very hard to read)

Dear Sir,

The undersigned respectfully represents that at the last Nov. term held for the County of Prince William. The court proceeded to nominate to your Excellency three persons named in the commission of the peace for said County one of whom there nominated being approved by the Governor & is to be commissioned to execute the office of Sheriff in said County. Your memorialist further represents that a certain Thomas Nelson the undersigned and Stuart G. Thornton were the three Justices in the Commission of the Peace who were nominated by the Court and according to the usage of the Commonwealth if there was no valid objection to the first named Justices in said nomination would receive the Commission as Sheriff. Your memorialist is however advises & believes that there are objections of a grade character against the said Nelson being commissioned as Sheriff which he will briefly detail leaving the decision of the question to your Excellency on a full knowledge of facts about which it is proper your memorialist should state there is no controversy. It appears then from the records of this County Court Office of Prince William County. That said Thomas Nelson was appointed Justice of the Peace for said County and on the 3rd day of November 1823 qualified as such 1822 clerk's certificate – And that he was commissioned by the Governor of Virginia as County Surveyor of said County and qualified as such on the 16th day of September 1831. Now your memorialist is advised that the office of Justice of the Peace and County Surveyor are incompatible offices; and that for one person to hold & enjoy both at the same time is prohibited by the Law & the constitution of the Commonwealth. And that by statutory enactment the legislature has declared that the necessities of an office in compatible with another office held by the several individuals in a vacation of the first office. Your memorialist therefore insist that said Nelson by accepting the office of County Surveyor vacated the office of Justice of the Peace and is not now and was not when recommended by the Court a Justice of the Peace __ __, and as such entitled to be nominated or commissioned as High Sheriff for the County of Prince William. Your memorialist does not propose to address an argument in support of his views to the Executive department of the Commonwealth as he considers that to be entirely necessary. But he begs __ as matter of conscience to refer to some authority as con----- of his opinions. 1st article 3rd __ of the constitution of the state declares that the legislative executive & judiciary department of the government shall be separate and distinct __ that neither exercises the powers properly belonging to the others. Nor shall any person exercise the powers of more than one of those at the same time. Now your memorialist insists that the office of County Surveyor is firmly ex---tion in its character. That he executes orders of ---y under the discretion of the County Court, is answerable to said Court of which he is a member, under acts in _____ to said court, and that the offices of Justice of the Peace & County Surveyor are incompatible one being judicial and the other Executive and the latter being in subordinated to the former. And that if this be true the law of 1822 vacated the commission of justice of the peace as __ as said Nelson accepted the office of County Surveyor. The County Surveyor holds his commission from the executive of the Commonwealth and keeps an office __ your memorialist would further remark that the General Court of Virginia has decided that office of deputy clerk and Justice of the Peace to be incompatible and your memorialist cannot but think the __ of the County Surveyor a much strange case. See Comm. Vs Shenard(?) 4th __ p. 643. Comm. Vs Tate 3rd __ p. 802. Amory vs Justices of Gloucester __. The June term 1826. Your memorialist has __ his duty to present these objections to the said Nelson being commissioned as High Sheriff for the County of Prince William having __ to the wisdom of the executive to settle the question according to its view of the laws & the constitution of the Commonwealth.

R. Foster
Nov 12, 1842