To The Hon. James G. Blaine, Speaker of the House of Representatives.

In compliance with the order of the House, passed February 13th, 1861, we submit the following as our answer to the question proposed.

In order to a correct determination of the question, as stated, it is necessary to understand the relation which subsists between the federal and State governments, and the constitutional powers and rights of each, so far as they are connected with the specific duties required by the Acts of Congress, and the particular official or personal acts prohibited in the several sections of the statutes of this State, which are referred to in the question submitted. We will therefore first proceed to state, as succinctly as possible, the general powers and rights of each government, bearing upon the question, that we may more fully understand the relation subsisting between them, and the obligations and duties of citizens, as such, to each.

The Constitutions of the United States and of this State were designed to be independent of each other, yet in harmony with each other. They provide for two separate governments, each an absolute sovereignty within its proper sphere. So far as the people have conferred power upon the general government, that government is supreme; and the residue of the power inherent in the people is reserved to the States. Each of these govern-
meats may therefore act within its appropriate sphere and adopt such legislation for the accomplishment of its own ends as is required or authorized by its own constitution. The allegiance of every citizen is therefore twofold; and his aid and assistance may be required by each government in a constitutional manner for its own protection and for the execution and enforcement of its own laws.

The right of each government to command the services of its citizens for its own ends is to be exercised in such a manner as to produce no collision between the two. The one cannot rightfully throw any impediment in the way of the constitutional action of the other. Each government having equal constitutional claims upon its citizens when acting within its own appropriate sphere, any citizen whose services are required by both at the same time and who is therefore unable to serve them both, may properly render his service to that government which first commands it. While he is either officially or actually serving the one in pursuance of its lawful commands, he cannot be withdrawn, for the time being, from such service for the purpose of rendering aid to the other. Thus, the citizen of a state when called upon by the sheriff to arise in the arrest of an offender against the laws of the state cannot be required while he is upon the track of a murderer or other felon amenable to such laws, to render similar services to the general govern-
ment at the bidding of its marshal. So too if he is actually in the service of the general government, he cannot be withdrawn from such service by the Sheriff of the county. Nor can a judicial or other officer of a State who is required by any constitutional law to perform official duties at certain fixed times and places and who is actually engaged in the performance of such duties, be required by any officer of the United States to lay aside his official functions to assist him in the arrest of a fugitive from justice or slavery. In such and similar cases the government which first begins to be served, acquires a jurisdiction over the services of the citizen which cannot be defeated by the command of the other. In all cases, however, where the citizen is not in the actual service of one government at the time when he is required by the other to aid in the enforcement of its laws, he is bound, whatever may be his official station or rank, to render such service in good faith and without delay; and when he is so required by the United States, no State can by its laws or its constitution even absolve him from the duty of such performance. The Constitution of the United States and all the federal statutes, which are authorized by it, are paramount not only to the statutes but to the constitution of every State; and when the latter are found to be in conflict with the former, or are directly calculated to impede or obstruct their execution, they are manifestly void.

No State is required by the federal Constitution
or can be required by any law of Congress to furnish judicial courts, ministerial officers or prisons for the use of the general government; and wherever a State does so, it is as matter of courtesy and not of right. The State may, if it sees fit, prohibit the courts which it creates, the ministerial officers it appoint, and the prisons and other buildings which it erects or owns, from being used for the enforcement of the federal statutes, or for the detention or punishment of persons charged with or convicted in the federal courts of offenses against the general government. A statute of the State, therefore, which merely prohibits the official action of its officers and the use of its prisons and other buildings belonging to it from being applied to the execution and enforcement of the federal laws, or the detention and punishment of offenders against such laws, is constitutional. The Legislature of the State, as well as Congress, may exercise all the power necessary for the enforcement of its constitutional enactments and the protection or security of the rights of its citizens, including all such persons as are temporarily resident within its borders. But when either government goes beyond the pale of its constitutionally prescribed limits, and invades the rights granted to the one or belonging to the other, such action is wholly unauthorized by the Constitution of either.

In view of the general principles which have been stated, we will proceed to examine the several sections of the Revised Statutes referred to in the question proposed. The first, (section 20 of Chapter 79) provides that the Court
Attorney, "when he is informed that any person has been arrested in his county, and is claimed as a fugitive slave under the provisions of any Act of Congress, shall immediately repair to the place of his custody; render him all necessary legal assistance in his defence; and summon such witnesses as he deems necessary therefor; and their fees and all other necessary legal expenses therein shall be paid by the State." Unlike the fugitive slave Act, referred to in the question, this section is a statute of humanity, and was intended solely for the protection of personal liberty. In its appropriation of money, and in its spirit, it is not unlike another statute found in the same volume, Chap. 134, Sec. 14, by which all persons indicted for a crime punishable by death, or imprisonment in the State prison for life, are aided by the State in making their defence. Such legislation is not confined to our State alone. The slave State of Virginia has a statute by which, whenever the title to the freedom of one claimed as a slave is to be tried in her courts, legal protection and counsel are to be furnished at the expense of the State. We are not aware of any provision in the Constitution of the United States, or of this State, or in the laws of either, which restrain the legislature from providing "legal assistance" to any person whose life or liberty is in issue, or at stake.

The next section of our statutes, referred to in the question, is that of Chap. 80, Sec. 37, which provides, that "the Keepers of the several jails in this State shall receive and safely keep all prisoners committed under the authority of the United States, except persons claimed as fugitive slaves, until dis-
charged by law, under the penalties provided by law for the safe keeping of prisoners under the laws of this State." The law of
courts only impelled to the passage of this section, and the
same constitutional and legal rights which would have
justified the Legislature in refusing a passage to the
entire section, justifies the exception which it contains.
Because the Legislature thought proper to incorporate this
single exception relating to fugitives slaves, the gen-
eral government has no ground of complaint. This
section, notwithstanding this exception, is constitu-
tional.

In regard to section 53, of the same Chapter 8, there
is more doubt, but before proceeding to an examina-
tion of this section, we will examine the only other section
referred to in the question submitted, viz: Section 4 of Chap-
ter 132. This section provides that judges of municipal
and police courts and justices of the peace shall not take
cognizance of any case relating to a person claimed as a fugitive slave, nor aid in his arrest, detention or surrender,
under a penalty not exceeding one thousand dollars or impris-
onnement less than one year." The only doubt vis-
 regard to the constitutionality of this section arises from
the words, "nor aid in his arrest, detention or surrender," as
used therein. Were these words intended to apply to the
official action of such magistrates, and do they so apply;
or were they designed to prohibit all other action?
The Chapter containing this provision is entitled, "Election of
municipal and police judges and proceedings of
magistrates in criminal cases." and the section cited relates to the jurisdiction of such magistrates. Magistrates may be said, in one sense, to aid in the arrest, detention or surrender of a fugitive slave, when they issue a warrant therefor, or sit in the trial of the case, or give a certificate for such surrender. If the present Acts of Congress do not require such official action of these magistrates, still Congress may pass an Act conferring such jurisdiction at any time; and it was competent for the State legislature to guard against such action. The words following as they do, in the same sentence, a direct prohibition on the part of the magistrates, named, of any cognizance of any case relating to a person claimed as a fugitive slave, may properly be regarded only as an amplification of what is before stated by a further reference to the particular effect which would result from an assumption of such prohibited jurisdiction. The whole prohibited action, may for the reason stated, be regarded as referring only to official acts, and especially so, since, as we have seen, an entire prohibition of all private personal action would be clearly unconstitutional. When a statute is from its language fairly susceptible of two meanings, the one constitutional and the other not, that which is consistent with the Constitution must be preferred. No part of the section under examination necessarily applies to the unofficial, individual acts of the magistrates therein named, and it cannot therefore be said to be repugnant to, or in contravention of, the Constitution of the United States, or to the Acts of Congress which have been referred to. It is therefore
constitutional.

In relation to section 53, Chapter 80, before mentioned, there can be no doubt that when taken in its literal sense, it is in direct conflict with the Act of Congress passed in 1850 commonly known as the fugitive slave Act. The latter expressly makes it the duty of all persons, when required by a United States marshal under circumstances which authorize him to call for it, to render personal aid in the execution and enforcement of that Act. The section of our own statute now before us, in words expressly prohibits such aid. It provides, that "no sheriff, deputy sheriff, coroner, constable, jailor, justice of the peace or other officer of this State shall arrest or detain or aid in doing in any prison or building belonging to this State, or to any county, or town, any person on account of any claim on him as a fugitive slave." If the section stopped here, perhaps it might be regarded as applying only to the official acts of such officers as are particularly named in it, and other State officers. But it proceeds further and in a distinct and separate sentence provides, that "any of said officers violating any of the aforesaid provisions or aiding or abetting any person claiming, arresting, or detaining any person as a fugitive slave, shall forfeit a sum not exceeding one thousand dollars for each offense, to the use of the county where it is committed, or be imprisoned less than one year in the county jail." This part of the section directly prohibits the very acts which the persons holding the offices therein named or referred to, as well
as all other citizens, are required as individuals to perform
when called upon by virtue of the federal statute, just cited.
Is there not then a necessary and real conflict between the
two statutes, or is it only apparent? To decide this question
we must, first, ascertain whether the federal statute is con-
stitutional, and if it is, secondly, whether it is fairly sus-
ceptible of any construction which is in harmony with that
statute.

In regard to the fugitive slave Act, when we con-
sider that the question of its constitutionality appropriately be-
ongs to the federal courts, whatever might have been our
own individual opinions as an original undecided ques-
tion, we are bound by the authoritative decisions of the
Supreme Court of the United States to regard that question
as settled. That this Act in all its details is constitu-
tional has now become the well established law of the federal
Courts, Sec. 21 Howard's U.S. Sup. Court Rep. p. 376. However
much we may feel humbled as citizens when we perceive
that under the harsh provisions of that statute a man or a
woman and her posterity may, in effect, be made slaves
deforever with less legal protection and ceremony than is per-
mitted under our State laws to establish the title to the
smallest article of property; and however much we may
regret the existence of such provisions in the federal constitu-
tion as constrain the highest judicial tribunal in the nation
to decide that such a statute, with all its harshness, is con-
stitutional; still sitting as we do only to declare the law
as it is, we are not authorized to disregard the weight-
of judicial authority especially when such authority comes from the tribunal to which the decision of the question in the last resort belongs. We must therefore in the discussion of the question before us assume that the fugitive slave Act is constitutional.

Our next inquiry then is, can our own statute in the section under consideration fairly receive a construction in harmony with the requirements of the fugitive slave Acts? Does it leave the citizens of this State and the general government, who are designated therein when not acting officially, free and unrestrained in the performance of such duties as may be legally and constitutionally required of them in the execution of that statute? If it does not and its proper construction or effect is to prevent or obstruct the execution and enforcement of Act, or to prohibit certain particular persons from the performance of such duties under all circumstances, then our statute must be declared unconstitutional. It is said that this entire section may be regarded as prohibiting only official acts. The first clause of this section, if it apply only to official acts, so fully covers all the acts which any of the officers mentioned therein can be expected to perform, that it is difficult to perceive what other official acts are left below within the special application of the second clause. And when we consider that some of the officers named in this section are elsewhere prohibited from acting officially in any case relating to a fugitive slave, and that others cannot legally be called upon under the federal statutes to perform any
such acts; and further that the statute of 1855, Chap. 182, sections 273, from which the section in question was copied, contained immediately following the designation of the various officers upon whom the statute was to operate, the words "in his official capacity," and that these words, so direct and necessary to describe the nature of the acts prohibited, are entirely omitted in both parts of the section as it now stands, we do not see how it can reasonably be inferred that the statute as amended was not designed to prevent all such persons as hold the official positions mentioned therein from renderring any act as individuals or private citizens in the execution or enforcement of the fugitive slave Act. He also suggests that the words, "any person arresting, or detaining any person as a fugitive slave," as used in the last clause of the section now under consideration, naturally refer to the claim, arrest and detention mentioned or referred to in the first clause; and the words "aiding or abetting," as applied to the person claiming, arresting or detaining such fugitive, are such as usually relate to the commission of some crime rather than to any official action. It may therefore be presumed that the Legislature intended to prohibit some action to which the first clause did not apply. The principal purpose of the first clause seems to be the protection of our prisons and buildings against the use prohibited, and of the latter to prevent aid of any kind to the claimant or person arresting or detaining the alleged fugitive slave.

For the reasons stated and others which might be mentioned and are referred to by other members of the Court, we
I deem the language of this statute too plain and unequivocal in its meaning to authorize us fairly to come to any other conclusion than that the section, at least in its latter clause, does prohibit, under all circumstances, not only the official but the individual action of the persons holding the offices which it refers to and thereby makes the individual or private acts of such persons, performed for the enforcement of the Acts of Congress relating to fugitive slaves, a crime. We are therefore unavoidably and irresistibly brought to the conclusion that this section is repugnant to and in contravention of the fugitive slave Act of 1850 and is unconstitutional.

February 21, 1861.

Daniel Goodnow