

Papers of the War Department: 1784-1800**Filling Vacancies During a Senate Recess****Document Information**

Date	May 7, 1799
Author Name	<u>James McHenry</u> (primary) Location: <u>War Department</u>
Recipient Name	<u>John Adams</u> (primary)
Summary	Relays correspondence with Charles Lee, the Attorney General, on the question of a legislative act authorizing the President to fill vacancies in office while the Senate is not in session. Provides a list of recommendations for officer vacancies.
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was determined to be 9.5%.

Prior to my taking any ultimate step relative to presenting the names of persons to officers, the battalion adjutant, Capt. [redacted] of Artillery and Engineers, in act for the better organization of the troops of the U.S. and for other purposes, passed the B. of [redacted] [redacted] I thought it advisable to submit to the adjutant general for his opinion the names [redacted] The enclosed is a copy of his answer.

The 1860s in general considered
"an office created during the session of the Senate"
and not filled by appointment, but by and with
the advice and consent of the Senate, as it
was happening during the session, which the
President cannot fill, during the recess, by the
power vested in him by the Constitution, but by
a legislative act of Congress. This legislative
act was passed on the 3rd March
1799 entitled "an act authorizing the President
of the U.S. to fill certain vacancies in the army
and navy for the expedition of the war."
The act authorized the President to fill
vacancies in the army and navy for the expedition
of the war.

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