

of delegates. This method of amendment was not only difficult but expensive.

The Constitution of 1857 remedied this defect by providing for not only the "convention method" but also the "legislative method" of amendment. The convention method was made popular by placing the initiative in constitutional reforms with the people. The Constitution provides that the question, "Shall there be a Convention to revise the Constitution, and amend the same?" shall be submitted to the people every ten years.¹ Thus far the people have always answered this question in the negative.

The legislative method as outlined in the Constitution of 1857 is as follows:

Any amendment or amendments to this Constitution may be proposed in either House of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice; and if, in the General Assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people in such manner, and at such time as the General Assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the General Assembly voting thereon, such amendment or amendments shall become a part of the Constitution of this State.²

¹ Article X, sec. 3.

² Article X, sec. 1.

All of the amendments which have been made to the Constitution of Iowa have come through this legislative method. In 1868 five sections of the Constitution were amended to make them harmonize with the Fifteenth Amendment to the Constitution of the United States.¹ These amendments removed all but one of the disabilities imposed upon the black man in Iowa, namely, that of ineligibility to sit in the House of Representatives. This political inequality was removed by an amendment in 1880.²

In 1882 the prohibitory amendment was ratified by the people, but was declared unconstitutional by the Supreme Court in the following year.³ In 1884 four amendments were ratified by the people, (1) designating the day for the general State election as "the Tuesday next after the first Monday in November," (2) giving the General Assembly power to divide the State into the necessary judicial districts for district court purposes, or reorganize the number of the districts, (3) fixing a minimum and maximum number of grand jurors and giving the legislature power to provide for holding criminals without the intervention of the grand jury, (4) amending Section 13 of Article V to give each county a county attorney in place of a district attorney.⁴

AMENDMENT FOR BIENNIAL ELECTIONS

On January 19, 1898, Senator Titus, of Muscatine, offered a joint resolution proposing to amend the Constitution so as

¹ Horack's *Constitutional Amendments in the Commonwealth of Iowa*, p. 31.

² Horack's *Constitutional Amendments in the Commonwealth of Iowa*, p. 31.

³ Koehler & Lange vs. Hill, 60 Iowa, 543.

⁴ Horack's *Constitutional Amendments in the Commonwealth of Iowa*, p. 33.

to provide for biennial elections. This resolution was referred to the Committee on Constitutional Amendments and Suffrage, who reported a substitute for the same on January 28, which was read a first and second time and placed on file. On February 8, Senator Titus moved that the resolution be recommitted, which motion carried. On February 18, the Committee on Constitutional Amendments and Suffrage reported the joint resolution back to the Senate under the title of *Substitute For Substitute For Joint Resolution No. 1*. The resolution was made a special order for February 24, when it passed the Senate by a vote of 43 to 2—five Senators absent or not voting. On the same day the following entry was made in the *House Journal*:¹—

Mr. Speaker—I am directed to inform your honorable body that the Senate has passed the following joint resolution, in which the concurrence of the House is asked:

Substitute for joint resolution No. 1, a bill for an act to amend the constitution providing for biennial elections.

GEO. A. NEWMAN, Secretary.

On the same day the resolution was read a first and second time in the House and referred to the House Committee on Constitutional Amendments. The committee reported the resolution back to the House on March 14 “with the recommendation that the same do pass.” The resolution was made a special order for Friday, March 18, at 2:30 P. M., when it was read a third time and passed by a vote of 76 to 4—nineteen members absent or not voting.²

The resolution as it passed the Twenty-seventh General

¹ *House Journal*, 1898, p. 509.

² *House Journal*, 1898, p. 783.

Assembly provided, in conformity with the Constitution of the State, that it be "referred to the legislature, to be chosen at the next general election for members of the general assembly, and that the secretary of state cause the same to be published for three months previous to the day of such election as provided by law."¹ The Twenty-eighth General Assembly convened Monday, January 8, 1900, and on January 10, the following entry was made in the *Senate Journal*:—

By Senator Titus, Joint Resolution No. 1, proposing to amend the constitution of the state of Iowa so as to provide for biennial elections.

Read a first and second time and referred to Committee on Constitutional Amendments and Suffrage.

The committee recommended its passage on January 20, and on the same day it was read a third time and passed by a vote of 42 to 1—seven Senators absent or not voting. This resolution was read a first and second time in the House on January 23, 1900, and referred to the Committee on Constitutional Amendments. The committee reported it favorably on January 30, and it was read a third time and passed February 1, 1900, by a vote of 84 to 7—nine members absent or not voting.

In November, 1900, the proposed amendment was submitted to the people for ratification, and was adopted by a vote of 186,105 for, and 155,506 against.²

By the provisions of the amendment "the terms of office of the judges of the supreme court which would otherwise

¹ *Senate Journal*, 1898, p. 423.

² See *Iowa Official Register*, 1901, p. 362, for vote on amendment by counties.

expire in odd numbered years, and all other elective state, county and township officers whose terms of office would otherwise expire in the year one thousand nine hundred and one, and members of the general assembly whose successors would otherwise be chosen at the general election in the year one thousand nine hundred and one, are hereby extended one year and until their successors are elected and qualified."¹

The general election for State, county, and township officers was held in November, 1900. Candidates were presented for all elective offices just as if no amendment relative to elections were before the people; for in truth no one knew whether the biennial election amendment would become a law.

In Washington County, Marsh W. Bailey was elected County Attorney on November 6, 1900. His term of office, according to section 1060 of the Code, was to commence on the first Monday of January following his election. The incumbent, S. W. Brookhart, whose term of office expired on the first Monday in January, 1901, claimed the right to continue to hold his office by virtue of the provisions of the new amendment. Mr. Bailey brought suit in the District Court to test his right to the office. The lower court decided in his favor, but from this decision the defendant appealed to the Supreme Court of the State.

The Supreme Court in its decision quoted the proposed amendment at length, recited the various steps in the process of adopting the joint resolution in the House and Senate of the Twenty-seventh and Twenty-eighth General Assemblies, pointed out that the resolution which passed

¹ *Laws of the Twenty-eighth General Assembly, Joint Resolution, No. 1, p. 157.*

the Senate was entitled "Substitute for Substitute for Joint Resolution No. 1," that the entry on the *House Journal* refers to "Substitute for Joint Resolution No. 1,"¹ and that the resolution was not entered in full on the *House Journal*, but was referred to by name and title only. Reviewing these points the court said: "Under these facts two questions are presented for our consideration: First. Was the amendment proposed and adopted in conformity with the requirements of our constitution? Second. Does such amendment, if it is a part of the constitution, extend the term of office of defendant?"²

From the viewpoint of constitutional law only the first question is of interest in this connection. In construing section 1 of Article X of the Constitution, the court decided that the provision that "such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon" requires an entry in full in the journals of both House and Senate. The court held, therefore, that "the proposed amendment, not having been entered upon the journal of the house of the Twenty-Seventh General Assembly, was not proposed and adopted as required by our constitution, and has not become a part thereof."³

The movement for biennial elections, however, did not die. The Twenty-ninth General Assembly convened January 13, 1902, and on January 31 Senator Harper, of Ottumwa, introduced "Joint Resolution No. 5, Proposing to amend the constitution of the state of Iowa, so as to

¹ See above, page 289.

² 113 Iowa, 253.

³ 113 Iowa, 258.

provide for biennial elections."¹ This resolution contained the same general provisions of the original "Titus amendment" with such changes as were necessary to make it explicit as to when and how the proposed amendment was to go into effect. On February 11, the resolution was reported back to the Senate by the Committee on Constitutional Amendments and Suffrage to which it had been referred, with the recommendation that it pass. It came up as a special order on February 14. By unanimous consent two slight verbal changes were made, and upon motion the resolution was referred to the Committee on Judiciary. This committee reported the resolution, recommending its passage, on February 26. It was made a special order for February 27 at ten o'clock A. M., when the bill was read a third time and passed by a vote of 40 to 5—five Senators absent or not voting.

The journal of the House for February 6, 1902, shows that Representative Wise introduced (by request) "House joint resolution No. 2, proposing to amend the constitution of the state of Iowa so as to provide for biennial elections."² This resolution is identical with Senate Joint Resolution No. 5 referred to above. It was read a first and second time and referred to the Committee on Constitutional Amendments. This committee recommended its passage and it was made a special order for March 19. The full text of the proposed amendment was again printed in full, and now referred to as "Senate Joint Resolution No. 5."³

¹ *Senate Journal*, 1902, p. 147.

² *House Journal*, 1902, p. 206.

³ *House Journal*, 1902, p. 815.

The vote on the resolution was 74 to 16—ten members absent or not voting.

The Thirtieth General Assembly convened January 11, 1904, and on January 29 the following entry was made in the *Senate Journal*: "By Senator Harper, Senate Joint Resolution No. 1, proposing to amend the constitution of the State of Iowa so as to provide for biennial elections." The text of the resolution was not printed at time of entry, but simply referred to by name and title.¹ It was read a first and second time and referred to the Committee on Constitutional Amendments and Suffrage. This committee reported the resolution on February 10, recommending its passage. On February 11, Senator Harper called up the resolution and it was read a third time and passed by a vote of 46 to 2—two Senators absent or not voting. The full text of the proposed amendment appears in the *Senate Journal* at its final passage.²

The Senate's message to the House transmitting the joint resolution to provide for biennial elections was received by the House on February 11, and the text appears in full in the *House Journal* under that date.³ The resolution was read a first and second time in the House on February 12 and referred to the Committee on Constitutional Amendments. This committee reported the resolution back to the House on February 19, recommending its passage. It was called up February 24, read a third time, and passed by a vote of 70 to 10—twenty members absent or not

¹ *Senate Journal*, 1904, p. 91.

² *Senate Journal*, 1904, p. 179.

³ *House Journal*, 1904, p. 225.

voting. Five members had it entered upon the journal of the House that had they been present when the vote was taken they would have voted "aye."

The joint resolution having received a constitutional majority in two successive General Assemblies, it was submitted to the people at the general election in 1904. The official count shows 198,974 votes in favor of the proposed amendment, and 176,251 votes against it.¹ Thus it passed by a majority of but 22,723, while the head of the ticket of the Republican party was elected by a majority of 121,549. That comparatively little interest was taken by the people at large in the proposed amendment is clearly shown by the following facts. In the State of Iowa there were cast for presidential electors, by all parties 485,703 votes and for the head of the State ticket (Secretary of State), by all parties 482,337 votes; while there were cast on the biennial election amendment both for and against only 375,225 votes, or 107,112 votes less than that cast by all parties for the head of the State ticket. Again, comparing the vote on the biennial election amendment in 1900 with the vote for President and the head of the State ticket, in 1900 there were cast in Iowa 530,355 votes for presidential electors by all parties, and 528,325 votes by all parties for the head of the State ticket; while on the biennial election amendment there were cast for and against a total of but 341,611 votes, or 186,714 votes less than that cast by all parties for the head of the State ticket. The amendment carried in 1900 by a majority of but 30,599, while the head of the State ticket of the Republican party was

¹ *Iowa Official Register*, 1905, p. 378.

elected by a majority of 83,317. Thus it will be seen that, while the majority in favor of the amendment in 1900 was 7,876 more than in 1904, there were, however, 12,869 more votes cast in favor of the amendment in 1904, and 20,745 more votes cast against it in 1904 than in 1900, making a total of 33,614 more votes cast for and against the amendment in 1904 than in 1900.

The validity of this amendment has already been called into question and at this writing the arguments in the case have already been presented before the Supreme Court of the State. The lower court, from which the appeal was taken, sustained the validity of the amendment and the higher court's decision is awaited with much interest and speculation.

The following is the text of the amendment to the Constitution of Iowa providing for biennial elections:—

Be it resolved by the General Assembly of the State of Iowa:

That the following amendment to the constitution of the state of Iowa be and the same is hereby proposed:

Add as section 16, to article 12 of the constitution, the following:

SEC. 16. The first general election after the adoption of this amendment shall be held on the Tuesday next after the first Monday in November in the year one thousand nine hundred and six, and general elections shall be held biennially thereafter. In the year one thousand nine hundred and six there shall be elected a governor, lieutenant-governor, secretary of state, auditor of state, treasurer of state, attorney general, two judges of the supreme court, the successors of the judges of the district court whose terms of office expire on December 31st, one thousand nine hundred and six, state senators who would otherwise be chosen in the year one thousand nine hundred and five, and members of the house of representatives. The terms of office of the judges of the supreme court which would

otherwise expire on December 31st, in odd numbered years, and all other elective state, county and township officers whose terms of office would otherwise expire in January in the year one thousand nine hundred and six, and members of the general assembly whose successors would otherwise be chosen at the general election in the year one thousand nine hundred and five, are hereby extended one year and until their successors are elected and qualified. The terms of offices of senators whose successors would otherwise be chosen in the year one thousand nine hundred and seven are hereby extended one year and until their successors are elected and qualified. The general assembly shall make such changes in the law governing the time of election and term of office of all other elective officers as shall be necessary to make the time of their election and terms of office conform to this amendment, and shall provide which of the judges of the supreme court shall serve as chief justice. The general assembly shall meet in regular session on the second Monday in January, in the year one thousand nine hundred and six, and also on the second Monday in January in the year one thousand nine hundred and seven, and biennially thereafter.

Be it further resolved, That this resolution and the foregoing amendments to the constitution of the state of Iowa, having been adopted by the Twenty-ninth General Assembly, in manner and form, and by the majority required by the constitution of the state of Iowa, and the statutes thereof, shall be submitted for ratification or rejection by the electors of the state of Iowa at the general election for state officers to be held in November, 1904.¹

THE TEMPLE AMENDMENT

Two constitutional amendments were submitted to the people of Iowa at the general election in 1904. The one, considered above, originated in the Senate; the other, the so-called "Temple amendment," originated in the House. This was a joint resolution to amend sections 34, 35, and

¹ *Laws of Iowa*, 1904, p. 207.

36 of Article III of the Constitution fixing the basis of representation in the State legislature. The object of this amendment was to give each county in the State at least one Representative regardless of its population.¹ This proposed amendment was referred to the Thirtieth General Assembly by its immediate predecessor, where it passed both houses by the requisite majorities. It was referred to the people at the same time as the biennial election amendment. The two amendments, however, were submitted separately, as required by section 2 of Article X of the Constitution. There were cast in favor of the Temple amendment 171,385 votes, and against it 165,076 votes. Thus it was adopted by the small majority of 6,309 votes.

The following is the text of the Temple amendment as adopted by the people in November, 1904.

Be it resolved by the General Assembly of the State of Iowa:

That the following amendment to the constitution of the state of Iowa be and the same is hereby proposed:

That sections thirty-four (34) thirty-five (35) and thirty-six (36) of article three (3) of the constitution of the state of Iowa, be repealed and the following be adopted in lieu thereof:

Number of senators. Section 34. The senate shall be composed of fifty members to be elected from the several senatorial districts, established by law and at the next session of the general assembly held following the taking of the state and national census, they shall be apportioned among the several counties or districts of the state, according to population as shown by the last preceding census.

Number of representatives—districts. Sec. 35. The house of representatives shall consist of not more than one hundred and eight

¹ See *House Journal*, 1902, p. 11, for text of amendment. For a full discussion of *Assembly Districting and Apportionment in Iowa*, see *Iowa Journal of History and Politics* for October, 1904.

members. The ratio of representation shall be determined by dividing the whole number of the population of the state as shown by the last preceding state or national census, by the whole number of counties then existing or organized, but each county shall constitute one representative district and be entitled to one representative, but each county having a population in excess of the ratio number, as herein provided of three-fifths or more of such ratio number shall be entitled to one additional representative, but said addition shall extend only to the nine counties having the greatest population.

Ratio and apportionment. Sec. 36. The general assembly shall, at the first regular session held following the adoption of this amendment, and at each succeeding regular session held next after the taking of such census, fix the ratio of representation, and apportion the additional representatives, as hereinbefore required.

Be it further resolved:—That this resolution and the foregoing amendment to the constitution of the state of Iowa, having been adopted by the 29th General Assembly, in manner and form, and by the majority required by the constitution of the state of Iowa, and the statutes thereof, shall be submitted for ratification or rejection, by the electors of the state of Iowa, at the general election for state officers to be held in November, 1904.¹

The validity of this amendment has not yet been called in question. But it had a narrow escape from meeting the fate of the first biennial election amendment, for it had already been sent to the Governor when it was discovered that it was not in the same form as the resolution which had passed the Twenty-ninth General Assembly. It was, however, recalled from the Governor in time to put it into the proper form.

FRANK EDWARD HORACK

THE STATE UNIVERSITY OF IOWA
IOWA CITY

¹ *Laws of Iowa*, 1904, p. 208.