

### THE ELECTION OF FRANCIS GEHON IN 1839

The history of the election of Delegates to Congress from the Territory of Iowa furnishes an incident that proves as interesting upon careful examination as it is confusing to the casual student of early Iowa politics. This is the election of Francis Gehon in August of 1839—an election which, though conforming to all the steps and forms required, and sanctioned by the proclamation of the Governor and validated by his certificate of election, was, nevertheless, extra-legal and had no more effect upon the incumbency of the office of Delegate to Congress than if it never had occurred.

The Organic Act of the Territory of Iowa, approved on June 12, 1838, provided "That a delegate to the House of Representatives of the United States to serve for the term of two years, may be elected by the voters qualified to elect members of the Legislative Assembly." It also provided "That the first election shall be held at such time and place or places, and be conducted in such manner as the Governor shall appoint and direct."<sup>1</sup> In accordance with this latter provision, Governor Lucas, on August 15, 1838, issued a proclamation directing that an election for members of the Legislative Assembly and for Delegate to Congress be held on the second Monday in September next ensuing. On the tenth of September, 1838, the election took place. Members of the first Legislative Assembly were chosen; and William W. Chapman, a Democrat, was elected as Delegate to Congress for a term of two years.

<sup>1</sup> Shambaugh's *Documentary History of Iowa*, Vol. I, p. 114.

The session of the First Legislative Assembly, which convened November 12, 1838, was a stormy one. The relations between the Governor and the Assembly were anything but amicable; Governor Lucas and Secretary Conway were at loggerheads throughout the session; and the Assembly and Secretary Conway, after indulging in a heated and undignified altercation over supplies, united in an alliance against Governor Lucas which nearly resulted in the removal of the latter.<sup>1</sup>

Among the acts passed by this Legislative Assembly was "An Act providing for and regulating General elections in this Territory", approved on January 25, 1839. In the first section of this act, making provision for the election of Delegate to Congress, there is considerable discrepancy in punctuation, wording, and meaning between the original law as signed by Governor Lucas and the printed law as prepared and published by Secretary Conway. It was the wording of this section in the original law as signed by the Governor which was directly responsible for the extra-legal election of Francis Gehon. The first section of the act, according to the printed laws as prepared by Secretary Conway contained the following words:—

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That an election for members of the House of Representatives, and for county officers, shall take place on the first Monday in August next, and on the same day in every year thereafter. An election for delegate to Congress, for members of the Council, and County Recorder, shall take place on the first Monday

<sup>1</sup> The origin and history of these controversies are fully related in Parish's *Robert Lucas*, chapters XVII-XXII.

in August, eighteen hundred and forty, and on the same day in every second year thereafter.<sup>1</sup>

This, however, according to the statement of Governor Lucas in his annual message to the Assembly on November 5, 1839, was not the wording of the bill as passed by the Legislative Assembly and as signed by the Governor. In speaking of the delinquencies and errors of the Secretary, who was required by law to superintend the printing of the acts and resolutions of the Legislative Assembly and to correct the same by the enrolled bills in his office, Governor Lucas says:—

I discover a very important interpolation in the printed copy, that changes metearly the meaning of the law. The original enrolled bill signed by the presiding Officers of both branches of the Legislative Assembly, approved by the Executive, and deposited in the Secretary's office, in the clause relating to Delegate to Congress, reads as followes: "An election for Delegate to Congress, for members of the Council, and County recorder, shall take place on the first Monday in August next — and forty, and on the same day on every second year thereafter". The printed copy is made to read "An election for Delegate to Congress for members of the Council, and County Recorder, shall take place on the first Monday of August, *Eighteen hundred* and forty, and on the same day in every second year thereafter" Thus we find the word "*next*" when it occurs after the word "*August*" in the original enrolled bill omitted, and the words [*Eighteen hundred*] that are not in the original roll interpolated in the printed copy.<sup>2</sup>

This wording might be and evidently was construed by some to authorize the election of a Delegate to Congress, if not members of the Council and County Recorders, at the

<sup>1</sup> *Laws of the Territory of Iowa, 1838-1839*, p. 185.

<sup>2</sup> Shambaugh's *Executive Journal of Iowa, 1838-1841*, p. 184.

general election of 1839, together with the Representatives and county officers other than the Recorder. The reason for mentioning the members of the Council, Delegate to Congress, and County Recorders in a separate clause is found in the fact that the term of these officers was two years while that of the Representatives and county officers, other than Recorder, was one year.<sup>1</sup>

Upon examination of the printed laws of 1838-1839, it will be noted that the certificate of Secretary Conway is dated July 23, 1839, nearly four months after the adjournment of the session and less than two weeks before the day set for the election, August 5 (the first Monday in August, 1839). It is possible, moreover, that several days may have elapsed between the date of certification and the date of distribution of the completed volumes. Thus the original wording of the act was the only wording known to the voters until the election was fairly upon them.

Meanwhile Congress had passed an act, approved March 3, 1839, amending the Organic Act of the Territory. The second section of this act declared:—

That the term of service of the present delegate for said Territory of Iowa shall expire on the twenty-seventh day of October, eighteen hundred and forty; and the qualified electors of said Territory may elect a Delegate to serve from the said twenty-seventh day of October to the fourth day of March thereafter, at such time and place as shall be prescribed by law by the Legislative Assembly, and thereafter a delegate shall be elected, at such time and place as the Legislative Assembly may direct, to serve for a Congress, as members of the House of Representatives are now elected.<sup>2</sup>

<sup>1</sup> The three county supervisors were elected for three years, but their terms of service overlapped, thus necessitating annual election.

<sup>2</sup> Shambaugh's *Documentary History of Iowa*, Vol. I, p. 118.

In spite of this very definite statement by Congress, in spite of the provision of the Organic Act giving the Delegate a term of two years, and in spite of the, to say the least, uncertain wording of the original act of the Legislative Assembly, it appears that at the general election which occurred on August 5, 1839, votes for Delegate to Congress were cast and returns thereof officially made to the Secretary in ten counties of the Territory. The following document in Secretary Conway's handwriting in the Archives at Des Moines is the official record of the election:—

Secretary's Office Iowa Territory<sup>1</sup>

I hereby certify that that within is a correct general abstract of votes given for Delegate to Congress in the several counties in said Territory as taken from the abstracts officially returned to me and now on file in this office and opened this day in the presence of the Governor and Marshal according to Law

Given under my hand at Burlington

This first day of October 1839.

WM B CONWAY Secretary of the  
Territory of Iowa.

I hereby certify the forgoing to be correct  
Given under my hand at Burlington this first  
day of October A D 1839

FRANCIS GEHON Marshal by  
JOHN L. DUNLAP Deputy M--

General abstract of votes officially returned to the office of the Secretary of the Territory at Burlington for Delegate to Congress of the United States from the Territory of Iowa at an Election held in the several Counties in said Territory on the first Monday of August One thousand Eight hundred and Thirty nine

To wit:

<sup>1</sup> Punctuation and capitalization are given as found in the original manuscript.

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NAMES OF COUNTIES	Francis Gehon.....	W. W. Chapman.....	Jonathan Beeson.....	Joseph M. Robertson..	Gilbert O. R. Mitchell	Jabez A. Burchard Jr.	Abner Beard.....	Samuel Summers.....	Thomas C. Fads.....
Lee County . . . . .	1		1						
Van Buren . . . . .	6								
Des Moines . . . . .	4								
Henry & Jefferson	None								
Louisa & Washington	none								
Muscatine and Johnson . .	51	12							
Scott and Clinton . . . .	143	4		13	3	1	3	9	1
Cedar Jones & Linn									
Jackson . . . . .	259	3							
Du Buque & Clayton . . .	379	5							
<i>Total</i> . . . . .	843	24	1	13	3	1	3	9	1

A study of the above abstract seems to indicate that Francis Gehon, whose duties as Marshal of the Territory took him into all quarters, had carried the campaign into at least six or seven counties and that otherwise no canvass had been made. It would seem that in seven counties the thought of an election for Delegate to Congress in the middle of the term of William W. Chapman did not occur as reasonable to a single individual. In the remaining ten counties appearing in the abstract the absurdly small number of votes cast for candidates other than Gehon makes it appear probable that even these were cast by a few scattered supporters of Chapman and others, who had perhaps been impressed with the dangers or possibilities for their candidate in case such an election were declared legal.

The insignificance of the vote for Delegate to Congress in

1839 is shown by a comparison of the total number of votes cast (898) with the total number of votes cast for Delegate in the preceding and following years, it being 4502 in 1838 and 7573 in 1840. Nor would anyone have contended that the twenty-four votes cast for the incumbent in office, William W. Chapman, were an indication of the number of supporters he retained out of the 1490 who voted for him in the preceding year.

However, Governor Lucas, evidently considering the election legal, did not go back of the abstract of votes officially returned from the districts to the Secretary; and on October 1, 1839, he issued a proclamation declaring that Francis Gehon had been elected as Delegate to Congress, basing his decision upon the above abstract.<sup>1</sup> On the following day he issued to Gehon a formal certificate of election<sup>2</sup> in these words:—

*To all to whom these presents may Come Greeting.*

I Robert Lucas, Governor of the Territory of Iowa, do hereby certify: that Francis Gehon Esqur. was duly elected a delegate from the Territory of Iowa, to the House of Representatives of the United States, at a General Election, held in the said Territory of Iowa, on the first Monday in August A D 1839.— He having received the greatest number of votes, of any person; for Delegate to Congress, at said Election, as appeared by the abstracts of votes, duly returned to the office of the Secretary of the Territory, and this day canvass[ed], in my presence, in pursuance to the statutes in such case made and provided.

In testimony whereof, I hereunto subscribe my name,  
L. S. and Cause the Great Seal, of the Territory of Iowa, to be

<sup>1</sup> Shambaugh's *Executive Journal of Iowa, 1838-1841*, p. 159.

<sup>2</sup> Shambaugh's *Executive Journal of Iowa, 1838-1841*, p. 160.

affixed to these Presents. Done at the City of Burlington, in the Territ[o]ry of Iowa, this first day of October, in the year of Our Lord, One thousand eight hundred and thirty nine—and of the Independence of the United States of America, the sixth fourth

(Signed)

ROBERT LUCAS

It should be noted that this proclamation of October 1, 1839, seems to be the first participation of Governor Lucas in the matter. There is no evidence to show that he issued any proclamation prior to August 5, announcing the election or stating the officers to be chosen.

The discrepancy between the original law and the printed law did not come to light until July 23, at the earliest; and no reference to such a discrepancy is to be found in the newspaper columns or in the writings of Lucas or Conway prior to the election. In the proclamation of October 1, Governor Lucas refers to the "manuscript" roll of the act "as it was originally approved, and deposited in the office of the Secretary of the Territory" as his authority for considering the election valid, and his definite public contrast of the two wordings was not made until November 5, 1839, in his message to the Second Legislative Assembly.

No evidence has been forthcoming to indicate that campaigns were conducted or votes cast at this election for members of the Council or for County Recorders. This would seem to further strengthen the view that the votes for Delegate were cast in response to a vigorous campaign by Francis Gehon.

Little newspaper comment upon this election is discoverable. Perhaps the most important reference is the following extract from the *Hawk-Eye and Iowa Patriot*:—



Another Proclamation.—The Governor has issued his Proclamation declaring *Francis Gehon, Esq Delegate to Congress from the Territory of Iowa!!* Said Gehon having received 843 votes, W. W. Chapman 24, and Joseph M. Robinson<sup>1</sup> 13 at the last August election. In the late election our fellow-citizens in the southern part of the Territory thought it unnecessary to vote for a Delegate inasmuch as Congress did, at the late session, pass a special act declaring Mr. Chapman entitled to his seat for two years. The Governor's Proclamation is issued in accordance to a law of the last session of our Legislature. We presume—as will then be fashionable—Mr. Gehon will contest his election at the next meeting of Cong., and we shall see which is the strongest the Congressional or the Territorial.<sup>2</sup>

Such is the story of the election. Its sequel seems to have faded from the pages of recorded history, if perchance it was ever written there. However, negative conclusions at least may be stated. In the first place Francis Gehon did not take his seat in the United States Congress. William W. Chapman continued to serve as Delegate for the Territory of Iowa until the close of the term allotted by act of Congress—namely the twenty-seventh of October, 1840, when he was succeeded by Augustus Cæsar Dodge who had been elected at the general election in October, 1840. Nor does the *Congressional Globe* for the session of 1839, give any indication that there was any question as to the eligibility of William W. Chapman. If Francis Gehon contested his seat, the contest seems not to have assumed proportions sufficient to attract the attention of the House, which was at that time intensely excited over the contest of the seats of certain members from New Jersey.

<sup>1</sup> Should be "Robertson"

<sup>2</sup> *Hawk-Eye and Iowa Patriot*, Vol. I, No. 19, October 10, 1839.

Yet it is possible that Gehon did make some effort to push his claims at Washington. When trouble became imminent with Missouri over border difficulties in the last part of 1839, Governor Lucas, Chief Justice Charles Mason, and Judge Joseph Williams signed and sent to Francis Gehon, Marshal of the Territory, a communication urging him to give his official attention to affairs on the border. A reply from Gehon, headed, "Steam Boat Rapids Nov<sup>r</sup> 3<sup>rd</sup> 1839", stated that he had received the communication "at the S. B landing when on my way to the east."<sup>1</sup> He therefore sent his deputy, George A. Hendry, to the border, who acted as Marshal through the ensuing difficulties. The trip east was at that time a matter of several weeks' duration and would have terminated shortly before the convening of Congress. To assume that this was the object of his trip "east" would be wholly unwarranted, but the fact is given for what it may be worth.

The election of Francis Gehon came to naught, in spite of election returns and executive proclamation and certification, because it was in violation of the Organic Act of the Territory, in conflict with a later amendment of that act by Congress, and contrary to the printed statutes of the Territory of Iowa.

LOUIS PELZER

THE STATE HISTORICAL SOCIETY OF IOWA  
IOWA CITY

<sup>1</sup> This letter is found among the letters and papers of Robert Lucas.