# THE HISTORY OF LIQUOR LEGISLATION IN IOWA 1846-1861

In a former paper[1] an effort was made by the writer to trace briefly the history of liquor legislation in Iowa prior to the organization of State government in 1846. In this paper it is his purpose to resume the narrative and carry it down to the year 1861. This date is chosen as a line of division for the reason that during the four years from 1861 to 1865 very little attention was given to the liquor question, affairs of National consequence occupying the minds of the people.

Since statutes are for the most part enacted to meet some actual need or in response to some wide spread desire on the part of the people, any account of liquor legislation in Iowa would be incomplete without some consideration of the conditions which have given rise to that legislation. Therefore, a considerable part of this paper will be concerned with the movements behind such laws as were enacted from time to time.

## THE LOCAL OPTION LAW OF 1847

The temperance movement, which had given evidence of considerable strength during the earlier years of the Territorial period, seems to have lost much of its vitality during the later years when the matter of Statehood was the all-absorbing topic of public interest. Even the local temperance societies, which in their united efforts had exerted such potent influence in securing liquor legislation, seem to have ceased their activities to a great extent during these later years of the Territorial period.

[1] THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. V, No. 2, p. 193.

It is obvious that the law enacted by the First General Assembly of the State of Iowa can not be accounted for on the grounds of any widely expressed desire on the part of the people of the State. Moreover, it is surprising that a law so radically opposed to the precedents of Territorial legislation should have been passed at this time, since the principle of local option which it embodied had received but little consideration during Territorial days.

On February 15, 1847, "An Act providing that the legal voters in each township [shall] determine at the township elections, whether the County Commissioners shall grant license for retailing intoxicating liquors in their respective counties or not",[2] was approved by the Governor. As the title indicates, a vote was to be taken at the annual township election, on the question of "license" or "no license." The vote was to be by ballot and a majority of all the votes cast in each county was required. According to the returns from these elections the County Commissioners were to determine whether or not licenses to sell intoxicating liquors should be granted in their respective counties during the ensuing year.

The results of the April (1847) elections were awaited with interest, both by the advocates of local option and by those who would have preferred a prohibitory law. That the matter was considered important is indicated by the following extract from an article entitled, *Appeal to the Voters of Iowa:*—

> On the first Monday in April will be submitted to your decision at the ballot box, one of the most momentous questions on which you were ever called to act. . . . It is the question whether you will by your vote authorize the retailing of intoxicating drinks, and thereby give a legal sanction to the business, and become responsible individually for all the consequences that result therefrom.[3]

[2] *Laws of Iowa,* 1846-47, p. 62.

[3] *The Bloomington Herald,* Vol. I, No. 46, Friday, April 2, 1847.

The election was held on April 5, 1847, and the results were such as to satisfy even the most ardent supporter of the temperance cause. Every county in the State decided against license except Keokuk County.[4] The vote is a certain indication that the people were keenly interested in the temperance question, even though that question had for several years been forced into the background by more pressing problems. Retail dealers in intoxicating liquors were now compelled to close their shops, and either engage in other business or remove from the State. Thus the immediate result of the law of 1847 was all that could be desired by the advocates of the cause of temperance.

In addition to this local option law the sale of intoxicating liquor was, at this same session of the General Assembly as well as at many succeeding sessions, touched upon incidentally in acts incorporating towns and cities; but since these instances are merely provisions permitting the local authorities to regulate the liquor traffic in their respective corporations, it will not be necessary to consider them in this connection. Their provisions are practically uniform and add nothing of importance to the history of liquor legislation.

### THE SONS OF TEMPERANCE

Early in the year 1847 the beginning of a movement, which was soon to spread over the State and take the place of the local temperance societies, is seen in the organization of lodges or fraternal societies known as "Sons of Temperance". The order was National in its scope, and had already been instituted in other States as early as 1844— the year in which the first meeting of the National division was held. By the summer of 1847 there were in the United

[4] *The Iowa Standard* (Iowa City), New Series, Vol. I, No. 42, Wednesday, April 21, 1847.

States, besides the National division, twenty-two grand or State divisions, and over thirteen hundred subordinate divisions,[5] with a total membership of 100,000 as compared with 10,000 in 1845. And by the summer of 1848 the membership in the United States had increased to 220,000, showing a growth of 120,000 in one year.[6]

The expressed objects of the order were: "(1) A Universal Temperance Reformation. (2) A Brotherhood in Love, Purity and Fidelity. (3) The pecuniary relief of sick Brethren. (4) The encouragement of Morality. (5) The diffusion of Good Will to all mankind." The following is the pledge taken by the members: "No brother shall *make, buy, sell, or use as a beverage,* any Spirituous or Malt Liquors, Wine or Cider."[7]

In Iowa, as has been indicated, the order of the "Sons of Temperance" seems to have had its origin soon after the organization of State government in 1846. A grand division was organized on February 1, 1848, and a report in March of the same year shows that there were twenty-four subordinate divisions.[8]

As was the case in the Nation at large, the order in the State of Iowa had, during its earlier years, a flourishing existence. By 1850 there were nearly eighty local organizations in as many different towns.[9] The influence of the order in moulding public opinion was undoubtedly very great. The efficiency of its organization and the community of interests between the various lodges resulted in more united and effective efforts than had been possible

[5] *Keokuk Register,* Vol. I, No. 7, Saturday, July 10, 1847.

[6] *Keokuk Register,* Vol. I, No. 51, Thursday, May 11, 1848.

[7] *Keokuk Register,* Vol. I, No. 6, Saturday, July 3, 1847.

[8] *Journal of the Proceedings of the Grand Division of the Sons of Temperance, of the State of Iowa,* 1848-1850, p. 14.

[9] *Journal of the Proceedings of the Grand Division of the Sons of Temperance, of the State of Iowa,* 1848-1850, p. 14.

with the scattered and independent temperance societies of Territorial days. It is an interesting fact, however, that the active existence of the "Sons of Temperance" in Iowa is confined almost entirely to the period of the first State Constitution. By the year 1854 a decline in the energy of the order is noticeable, and by 1857 it seems to have been largely merged in another order known as the "Good Templars."

### THE LICENSE LAW OF 1849

The local option law of 1847, which at the outset had been so promising, was soon discovered to be inadequate and unsatisfactory. The liquor dealers, who at first had been compelled to close their shops, soon found it possible to carry on their business secretly; while in many instances liquor was sold openly. Thus the first experiment in allowing the people to decide whether or not liquor should be sold, was a failure.

The General Assembly, at its second regular session, evidently realizing the failure of the legislation of 1847 passed "An Act regulating grocery license"[10] which was approved January 13, 1849. This act was practically a return to the policy pursued by the Territorial legislature. The granting of licenses to sell intoxicating liquors was left to the discretion of the Board of County Commissioners. Anyone desiring a grocery license was forced to make application to this Board, "who shall issue their warrant, directing the person so applying to pay into the county treasury a sum not exceeding one hundred and twenty-five, nor less than fifty dollars, as the case may be, in the discretion of the board, and obtain the treasurer's receipt for the same, and upon the presentation of such receipt the board shall grant to such applicant a license to keep a

[10] *Laws of Iowa*, 1848-49, p. 80.

grocery in said county for the term of one year." Furthermore it was provided that the Commissioners might, if they chose, refuse to grant a license to anyone, and the penalty for selling without a license was fixed at fifty to one hundred and fifty dollars for each offense. There was, however, this proviso: "That no provision of this act shall be so construed as to interfere with or in any way to abridge the powers and privileges granted to cities or incorporated towns within this State."

This law was not of a sufficiently radical nature to call forth a very decided approval or opposition. It was simply a return to a condition to which a majority of the people were accustomed. There was, to be sure, some difference of opinion in regard to the use made of the power given to the County Commissioners, and in regard to the granting of licenses in general.

A Muscatine newspaper comments upon the power which the act placed in the hands of the County Commissioners, and complains that "instead of using that power which has been placed in their hands by the Legislature, to an advantage which would prevent drunkenness and licenciousness in our midst, they took a course that will be the means of encouraging grog shops to contaminate the now quiet and peaceable town of Muscatine, and be instrumental in making many homes miserable and unhappy."[11] This tirade was occasioned by the fact that a man by the name of Stein had been granted a license by the County Commissioners after having been refused one by the town trustees. The editor considered such a course of procedure as a violation of the proviso above noted.[12]

[11] *Muscatine Journal*, Vol. I, No. 12, Saturday, July 28, 1849.

[12] The Supreme Court of Iowa rendered a decision on this point in the case of *The State v. Neeper* (3 Greene 337), in which it was held that the general license law of 1849 did not in any way interfere with special privileges which had been granted to towns or cities.

Another paper, published at the same place, takes a different view of the matter of granting licenses. Evidently the town trustees of Muscatine had refused to grant grocery licenses, for the editor remarks that "While refusing licenses altogether, we have had no less than three retail liquor establishments all the time—and the Treasury has received the sum of *ten dollars* in fines! What have we gained by the course pursued? Nothing! Worse than nothing! Instead of proving any benefit, it has been productive of evil."[13]

There were at this time two leading views as to the best method of dealing with the liquor problem. Some held that the traffic should be absolutely prohibited, thus withdrawing the support of legality and absolving the State from responsibility for the evil results of intemperance. On the other hand, there were those who believed that, since prohibition had thus far failed to prohibit, a license system with adequate penalties was preferable. They contended that no more liquor was sold under a license law than under prohibition, and that the sale of licenses was a fruitful source of revenue. In this connection it might be added that the question of license or prohibition has throughout been the chief bone of contention in the history of the temperance movement in this State.

### PROVISIONS OF THE CODE OF 1851

The Code of Iowa which was approved by an act of the General Assembly on February 5, 1851,[14] contains a chapter on *The Sale of Intoxicating Liquors*,[15] which was to a certain extent prohibitory. The law declared that "The

[13] *Iowa Democratic Enquirer* (Bloomington), Vol. II, No. 44, Thursday, May 16, 1850. This paper clung to the name Bloomington, even though the town had been called Muscatine for nearly a year.

[14] *Laws of Iowa*, 1850-51, p. 230.

[15] *Code of Iowa*, 1851, p. 144.

people of this state will hereafter take no share in the profits of retailing liquors, but the traffic in those commodities as articles of merchandise is not prohibited.'' Another clause, however, contained this provision: ''The retail of intoxicating liquors in the manner which is commonly denominated 'by the glass' or 'by the dram' is hereby prohibited, and the sale of liquors in any quantity with a view to their being drank on or about the premises is a selling by the dram within the meaning of this section.''

It may be readily observed that, as far as the suppression of intemperance is concerned, this law was of little value. Evasion of its provisions was a comparatively easy matter, since the sale of liquors as merchandise was not prohibited. Indeed it may be said that the traffic was practically without restraint, and as much liquor was sold and consumed as at any previous time. The only difference was that the State received no share of the proceeds.[16]

### MOVEMENT TOWARD PROHIBITION

The law of 1851 was unsatisfactory both to those who favored prohibition and to those who opposed it, since it neither effectually prohibited nor gave the State the benefit of revenue from the sale of licenses. And so there followed a struggle between the two opposing groups to secure legislation more in keeping with their respective views.

The winter of 1850-1851 may be said to mark the beginning of petitions to the legislature for the enactment of liquor laws. There had, before this time, been a few scattering petitions from local communities and organizations, but they had not expressed a sufficiently united desire to be

[16] Decisions of the Supreme Court of Iowa, interpreting certain provisions of this law and upholding its constitutionality are to be found in the cases of *Our House No. 2 v. The State* (4 Greene 172), and *Zumhoff v. The State* (4 Greene 526).

of much influence. However, the petitions sent in during this winter denote a more united and determined effort.

One of these petitions deserves especial attention. It had been circulated widely throughout every county in the State by the various temperance organizations and was signed by many thousands of people. The petition reads as follows:—

> *To the Honorable, the General Assembly of the State of Iowa.* The undersigned your fellow citizens and constituents, in the exercise of their Constitutional right to Petition, earnestly ask of your Honorable body the repeal of all existing License Laws authorizing the sale of Spirituous Liquors within this State, and the enactment of a Law prohibiting entirely, under adequate penalties, the traffic in intoxicating drinks as a beverage.[17]

To this was added in writing in many cases: "to be submitted to the people for their approval."

Many other petitions of a similar nature were sent to the legislature at this time from individuals, organizations, and communities. There were also a few counter petitions remonstrating against the enactment of prohibitory legislation. The answer of the General Assembly was an approval of the law contained in the Code of 1851, which of course was a disappointment to the friends of prihibition. "Drinking is on the increase in this region", said a writer in *The Sunbeam,* the newly established organ of the State Temperance Society, "and the friends of Temperance are somewhat discouraged, *because* their previous efforts have not been attended with better results." He suggested that the best way to reach the desired object was "to start the Temperance Car on the platform of the temperance law in the *State of Maine.*"[18]

From this time until the enactment of the prohibitory

[17] Public Archives, Office of the Secretary of State, Des Moines.

[18] *The Sunbeam* (Keokuk), Vol. I, No. 2, Monday, January 16, 1852.

law in 1855, the "Maine Law" became the slogan of the prohibition advocates, and the securing of a similar statute for Iowa was the goal of their ambition.

The famous "Maine Law", which had since its enactment served as a model for prohibitory legislation, was approved by Governor Hubbard, of Maine, on June 2, 1851. The law was drafted by General Neal Dow, Mayor of Portland and a well-known temperance leader, after a careful comparison of all previous legislation by the various States on the subject of intoxicating liquors. The law "prohibited the manufacture of intoxicants, and their sale except by agents authorized by towns to sell for medicinal and mechanical purposes only; provided for the punishment of first offenses by fines, subsequent offenses by fines and imprisonment; made clerks, servants, and agents equally guilty with their principals; and made it the duty of selectmen of towns and mayors or aldermen of cities to prosecute violation of the law upon the information of competent persons."[19]

Undaunted by the failure of their first great attempt, the advocates of prohibition for Iowa rallied again during the winter of 1852-1853 and literally flooded the Fourth General Assembly with petitions for a prohibitory law. It was almost a repetition of the days of John Quincy Adams and the anti-slavery petitions in Congress. Moreover the fate of the petitions for prohibition was very similar to that of those against slavery: they were either laid upon the table or referred to some committee and little heed paid to them.[20]

Perhaps the effect of the petitions was neutralized by the

[19] *The Liquor Problem in Its Legislative Aspects,* by Frederic H. Wines and John Koren, p. 25.

[20] See *Journal of the Senate* and *Journal of the House of Representatives,* 1852-53.

attitude of Governor Hempstead toward the liquor problem. In his first biennial message, transmitted December 7, 1852, he took a decided stand in favor of license as opposed to prohibitive measures. It was his opinion "that a judicious license system, placed under the control of the local authorities, could be made more efficient for good than other legislation."[21] The outcome of it all was that the General Assembly passed no law whatever on the subject; and so for a second time the petitions of the Prohibitionists failed to bring about the desired result.

The determination of the temperance leaders is evidenced by the manner in which they arose from their second defeat and proceeded on an even more vigorous campaign. Efforts were made to raise a fund for carrying on the work more effectively. Subscription lists, called "The Tuthill Proposition" and "The Friend Proposition", were circulated among the friends of the cause. The former was an appeal for "fifty persons appropriating Ten Dollars each"; while the latter called for "one hundred persons appropriating Five Dollars each."[22] The response to these "propositions" seems to have been fairly liberal.

In the midst of the lamentations over existing conditions, and the agitation for a "Maine Law", a refreshingly sane note was sounded by the editor of *The Sunbeam*, the official temperance paper. He called attention to the fact that although the existing liquor law was acknowledged to be far from effectual, nevertheless its provisions should be enforced and the friends of temperance would do well to bear this in mind. "With what encouragement," said he, "could we approach the legislature, and demand of them, the passage of a more stringent law with the fact staring

[21] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, p. 439.

[22] *The Sunbeam* (Keokuk), Vol. II, No. 11, July 1, 1853.

us in the face, that the statute we now have, has not been put in force!"[23] This was valuable and much needed advice; since in their desire to secure a prohibitory law the people paid very little attention to the execution of the statute they already had, except to bewail its lack of beneficial results. They seemed to forget that a law cannot enforce itself.

A State Temperance Convention, which seems to have been largely attended, met at Iowa City on December 21, 1853. Joseph Williams, Chief Justice of the Supreme Court, was the presiding officer. The resolutions adopted at this time embrace an endorsement of the movement for a prohibitory law, and a determination to vote "for no man to make and execute our laws who is not decidedly and unequivocally in favor of the passage and enforcement of a law prohibiting the sale of intoxicating liquors as a beverage." Furthermore, every person was urged to use "all honorable and lawful means" to ensure the enforcement of the existing law until a more stringent one could be enacted.[24]

At this convention also, a tribute was paid to Robert Lucas, the first Governor of the Territory of Iowa, who died February 6, 1853. He had, during his service as Governor and in the years which followed, taken an active interest in the temperance cause and he had been one of the most influential leaders in securing legislation on the subject.

The plan adopted by the citizens of Mount Pleasant for regulating the liquor traffic in their own community furnishes a unique and interesting episode in the movement toward prohibition. By means of a general contribution all the liquor then on hand in the town was purchased and

[23] *The Sunbeam* (Keokuk), Vol. II, No. 13, August 1, 1853.

[24] *The Sunbeam* (Keokuk), Vol. II, No. 23, January 2, 1854.

placed at the disposal of a few physicians, who were to have control of the manner in which it should be used and of the purposes for which it should be dispensed. Moreover, the account of the affair states that "a compact has been entered into to prevent the introduction of intoxicating drinks for the future."[25]

During the year 1854 temperance lecturers were particularly active throughout the State. Numerous "temperance meetings" were held from time to time, especially in the eastern counties, and in many communities societies known as the "Maine Law League" were organized. Every effort was being made to bring an irresistible influence to bear upon the legislature at its next session.

### TEMPERANCE AND POLITICS

Temperance leaders had, since the earliest Territorial days, been decidedly opposed to any introduction of the temperance question into politics. Efforts to use temperance organizations in securing the election of members to offices in the community, or for any other political purpose, had been heartily condemned by press and public. And this was an idea to which the people clung for many years. As late as 1853 an editor voiced the attitude, taken by a great many people, in the following words:—

> As a citizen, and as the head of a family, we feel the deepest solicitude in the universal and permanent success of the temperance cause—but as a voter we shall ever feel impelled to resist any attempt to make such an organization pander to the necessities of any political party whatever. Such a combination could only be degrading to the one, while it would be disastrous to the other. We have lived long enough in politics to know that any party which ties itself to any ism, or seeks to draw to itself any particular set of outsiders, is bound to go overboard at the ballot box.[26]

[25] *Burlington Daily Telegraph*, Vol. III, No. 192, Saturday, January 28, 1854.

[26] *Burlington Daily Telegraph*, Vol. III, No. 77, Friday, September 9, 1853.

Again he declared emphatically:—

> To erect it [the cause of temperance] into a distinct organization for political as well as moral purpose, would be to array against it many of its own friends, as well as the masses of all parties.[27]

Certain resolutions, however, adopted by the State Temperance Convention (mentioned above), which met at Iowa City, December 21, 1853, indicate that a majority of the leaders had, by this time, come to view the connection of the temperance question with politics in a very different light. They had come to realize that to secure the legislation they desired, they must elect men to the legislature who were pledged to support their principles, or, at least, that there must be some special inducement to vote for such a law. The only way to secure this result was to force the matter into politics, and make the temperance question an article in their political creed. Accordingly the members of the convention, as has been stated, declared that they would vote for no man for the position of a legislator who was not committed to the support of a prohibitory law. Furthermore, they adopted the following resolution which clearly defines the position assumed:—

> *Resolved,* That as above intimated, we do not contemplate the organization of any third or separate party, but only and simply the enactment and enforcement of stringent prohibitory liquor laws; but if the political organizations of the day turn a deaf ear to our petitions and remonstrances, and attempt to force upon us rulers and law makers who are opposed to the legal enactments and enforcements before referred to, we will, relying on the justice of our cause, rally round the standard of the truth, and do battle for the right, in a separate and distinct organization.[28]

This ultimatum on the part of the Prohibitionists had an immediate result. The two leading political parties, the Whigs and the Democrats, were about evenly matched in

[27] *Burlington Daily Telegraph,* Vol. III, No. 159, Tuesday, December 20, 1853.

[28] *The Sunbeam* (Keokuk), Vol. II, No. 23, January 2, 1854.

the State at this time, and it was realized that the election of 1854 would be a battle royal. Consequently each party was anxious to attract to its standard every possible vote. The Whigs, more shrewd at this sort of a game than their opponents, were quick to see the opportunity presented in the declaration of the temperance leaders to bind closely to themselves a large number of votes which otherwise they might have lost. The Whig State Convention which assembled at Iowa City on February 22, 1854, placed the following plank in their platform:—

> *Resolved,* That we believe the people of this State are prepared for, and their interests require, the passage of a law prohibiting the manufacture and sale of ardent spirits within the State as a beverage.[29]

In the campaign of 1854 the Whigs chose James W. Grimes as their candidate for Governor; and the Democrats nominated Curtis Bates. Efforts were made by the temperance people to discover the attitude which, if elected, these candidates would assume toward the enactment of a prohibitory law. The following letter to the Rev. Henry Clay Dean clearly indicates the position taken by Grimes in regard to the matter:—

> I have received your letter of the 28th of February, in which you addressed to me the following question: "Should you be elected, will you veto, or approve, such a law, consistent with the constitution of the State, as may be enacted by the State Legislature, for the prohibition of the sale of ardent spirits as a beverage?" And I hasten to reply, most unequivocally, that I should certainly approve such an act.
>
> It has ever been a principle of the Whig party that the Executive veto should be exercised only for the greatest constitutional reasons, all reasons of expediency should be determined by the legislative department of the Government. And should I be so fortunate

[29] Fairall's *Manual of Iowa Politics,* Vol. I, Pt. I, p. 38.

as to be elected, I should endeavor to avoid encroachment in the remotest degree upon the prerogative of that department.[30]

The attitude of the Prohibitionists toward Grimes and Bates is perhaps best summed up in the following extract from an editorial:—

CANDIDATES FOR THE OFFICE OF GOVERNOR.—CURTIS BATES, Esq., of Fort Des Moines, as a *Democratic* nominee for Governor, is personally an *amiable and temperate man.* He has replied to the letter of Rev. Henry Clay Dean that "*within the limitation therein named, he would not veto a prohibitory law;*" that is, a constitutional law. Mr. Bates, as far as is known, has never identified himself with any organization of temperance, in Iowa.

JAMES W. GRIMES, Esq., of Burlington, the Whig nominee for Governor, so far as relates to the *veto* power has replied, in his circular, that "he will not veto either a prohibitory or a license law, if enacted, in case of his election." But his course in the Legislature of 1852-3, as well as his reply to the committee of the State Temperance Convention, alike show, his *decided preference for a prohibitory law for the entire State.* Besides, Mr. Grimes has been for several years, a member of the most prominent order of Temperance. He has been therefore, *committed to the total abstinence cause,* as a man; and that too, *before his nomination for Governor of the State.*[31]

The election was held on the first Monday in August, and James W. Grimes was elected Governor by a narrow margin. It is undoubtedly a fact that his success was due, in some measure, to the stand taken on the temperance question by the party which he represented, as well as by his own personal attitude toward prohibition; since these circumstances secured for him the hearty support of the temperance faction.

It was not alone in the race for the governorship that the Prohibitionists made their influence felt. The candi-

[30] Salter's *Life of James W. Grimes,* p. 50.

[31] *Iowa State Journal, and Sunbeam* (Iowa City), Vol. III, No. 23, July 27, 1854.

dates for United States Representative from the second Congressional District were James Thorington and Stephen Hempstead (whose term as Governor expired that year). Thorington, the Whig nominee, had the advantage of the leaning of the temperance men toward his party and his own previous record as a friend of the cause. Hempstead, the Democratic candidate, on the other hand, had incurred the dislike of the prohibition advocates both by recommending a license law, and by his continued opposition to a prohibitory enactment. Thorington was elected by a majority of about fifteen hundred votes, much to the delight of the Prohibitionists, as is indicated by the following comment in the official temperance organ:—

> From all that has been heard, a majority of the next Legislature, the Governor Elect, and the Representative of the Second Congressional district, . . . . are decidedly in favor of *the Maine Law,* or of prohibiting the sale and manufacture of intoxicating liquors, as a beverage. By whatever legitimate means, this triumph of temperance principles has been achieved, it is a glorious victory for Iowa. . . . . Especial gratification is felt in the defeat of Governor Hempstead, by many Democrats, Whigs and Free Soilers, from the ground which he so unblushingly took in the canvass, that the Maine Law was unconstitutional, carrying everywhere the proposition or idea, that any such law was sumptuary in its character, prescribing what men should drink and eat and the like.[32]

Thus it is evident that the first appearance of prohibition as a political issue in Iowa caused considerable disturbance, and resulted very favorably for the friends of the cause. Since 1854 the temperance question has been an ever-present factor in Iowa politics, varying in prominence and importance as the periodic waves of reform have swept over the State, and causing much anxiety to party leaders.

[32] *Iowa State Journal, and Sunbeam* (Iowa City), Vol. III, No. 25, September 1, 1854.

THE PROHIBITORY LAW OF 1855

The General Assembly met for its fifth session on December 4, 1854; and almost immediately petitions for a prohibitory law began to pour in. This time, instead of being laid on the table, they were, in both houses, referred to a select committee appointed for that purpose.

Governor Hempstead, in his second and last biennial message, took the opportunity to make a final recommendation in favor of a license law. He stated his belief that such a law would have the desired effect of checking intemperance, and at the same time would provide a source of revenue for cities, towns, or counties. On the other hand, he claimed that a prohibitory law would not only fail to remedy the evil, but was "an unnecessary infringement upon the natural and constitutional rights of the citizen." In conclusion, he said that "Although this question has been thrust into the political arena, and made to figure extensively in our elections, yet, as guardians and representatives of constitutional supremacy, and the rights of citizens under that government, you will carefully examine the subject which has thus been presented, and make such provisions as may seem to you the best calculated to promote the public good."[33]

The recommendation of the retiring Governor, however, had very little weight with the legislature, a majority of the members of which were of the opposing party. More attention was paid to the following statement, made by Governor Grimes in his inaugural address which was delivered December 9, 1854: "There is a strong public sentiment in favor of a radical change of the present laws regulating the manufacture and sale of intoxicating liquors.

[33] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, pp. 461, 462.

Every friend of humanity earnestly desires that something may be done to dry up the streams of bitterness that this traffic now pours over the land. I have no doubt that a prohibitory law may be enacted, that will avoid all constitutional objections, and meet the approval of a vast majority of the people of the State.''[34]

On December 13, 1854, Amos Witter, of Scott County, introduced in the House of Representatives a bill entitled ''An Act for the suppresion of intemperance.''[35] It was adopted by the House on January 10, 1855, by a vote of thirty-five to thirty-two,[36] and on the following day was sent to the Senate. After receiving several amendments, it passed the Senate by a vote of twenty-three to eight on January 15,[37] and was returned to the House, where the amendments were concurred in and the bill finally passed by a vote of fifty-four to eleven, on January 18.[38] The act was then presented to the Governor and received his approval on January 22, 1855.[39]

The long desired prohibitory law had been enacted and the efforts of the Prohibitionists were crowned with success—as far as action by the legislature was concerned. But the struggle was not ended. The last section of the law contained the provision that the law should be submitted to a vote of the people and if approved by them should go into effect on July 1 of that year.

In its other provisions the law was very similar to the ''Maine Law'', upon which it was largely modelled. The manufacture or sale of intoxicating liquors as a beverage

[34] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 10.

[35] *Journal of the House of Representatives*, 1854-55, p. 59.

[36] *Journal of the House of Representatives*, 1854-55, p. 229.

[37] *Journal of the Senate*, 1854-55, p. 201.

[38] *Journal of the House of Representatives*, 1854-55, p. 330.

[39] *Laws of Iowa*, 1854-55, p. 70.

was absolutely prohibited with the two exceptions—that home-made cider and wine might be sold in quantities of "not less than five gallons" and that liquor might be imported in the original packages in accordance with the laws of the United States in regard to the matter.

The County Judges in each county were required to appoint "some suitable person or persons, not more than two in number, residents of said county, but not both residents of the same township, to act as agent or agents of such county, for the purchase of intoxicating liquor, and for the sale thereof within such county, for medicinal, mechanical and sacramental purposes only." These agents were to keep a record of all liquors sold by them and the purposes for which it was purchased. The whole control of the matter was placed in the hands of the County Judges.

A graduated penalty for violation of this law was imposed according to the number of offenses of which the individual had been convicted. Any building in which intoxicating liquors might be manufactured or sold was declared a nuisance and might be abated as the law provided. Section nine provided that if any three persons should bring information before a Justice of the Peace that they had reason to believe that liquor was being kept for illegal purposes at any place within the county, "said Justice shall, (upon finding probable cause for such information), issue his warrant of search, directed to any peace officer in said county, describing, as particularly as may be, the liquor and the place described in said information, and the person named or described in said information as the owner or keeper of said liquor, and commanding the said officer to search thoroughly said place, and to seize the said liquor, with the vessels containing it, and to keep the same securely until final action be had thereon." Furthermore, the Justice of the Peace was given the authority to

summon any person thus informed against, before himself, to "show cause if any they have, why said liquor, together with the vessels in which it is contained, should not be forfeited."

There were besides many minor provisions, concerned largely with the manner in which trials for violations of the law should be conducted, and with the disposition of civil cases which might arise in connection with the illegal sale of liquor. The law is an unusually long one and seems to have received careful preparation.[40] As an example of a prohibitory law, it was sufficiently stringent to satisfy its most ardent admirers.

### THE CAMPAIGN FOR PROHIBITION

The period which intervened between January 22, 1855, the date of the approval of the law by Governor Grimes, and the time of the April elections, was a period of great anxiety for the champions of prohibition. Their pet law had passed the General Assembly, but it had yet to be submitted to the vote of the people of the State, and the result was by no means certain.

The provision for submitting the law to the people caused a great deal of discussion, not only in the General Assembly before the final vote had been taken, but by the public at large after the law had passed. Many held that the provision was unconstitutional and that it would invalidate the remainder of the law. Others, however, maintained that while there was no specific provision in the Constitution for such procedure, it was not in violation of that instrument. Still another group claimed that the provision was not unconstitutional, but that it was unnecessary, since section twenty-seven of article four of the Constitution provided for the putting of laws into effect. "Whether

[40] *Laws of Iowa*, 1854-55, pp. 58-70.

the vote in April next be for or against the liquor law'', said a writer who held this opinion, ''we shall have it in full force at the farthest, whenever the other acts of a public nature, passed at the recent session of the General Assembly, are 'printed, bound and distributed to all the organized counties in the State.' ''[41]

These were busy days in the prohibition camp. The all-important consideration was to secure every possible vote, for it was the opinion of the majority that the fate of the law depended on the result of the April elections. On March 1, 1855, delegates from forty counties met in convention at Muscatine ''for the purpose of taking into consideration the adoption of some plan to secure the vote of the Prohibitory Law, submitted for their approval or election [rejection] at the next April election.''[42] Conventions of a similar nature were held in many counties and plans made for a systematic canvass of the votes. The following resolutions, adopted at one of these county conventions, indicates the thoroughness with which this canvass was made in some localities:—

> *Resolved,* That this Convention recommend that each Township by the proper persons so organize that proper persons be appointed in each School District, whose duty it shall be to see that every voter be got to the polls; and to effectually prevent any voting on the part of those not entitled to a vote, and that they, together with the Township Committee, be earnest, and zealous and energetic in laboring in every possible manner *honorably,* to promote the object desired.[43]

On the other hand, the law aroused a storm of opposition and violent criticism. It was charged that it would put a premium on falsehood and perjury in evading its provisions; that its element of compulsion was a violation of the

[41] *The Demoine Courier* (Ottumwa), Vol. VII, No. 2, February 22, 1855.

[42] *Dubuque Daily Observer,* Vol. I, No. 211, Wednesday, March 14, 1855.

[43] *The Morning Glory* (Keokuk), Vol. I, No. 67, Tuesday, March 20, 1855.

natural rights of citizens; that its provision for search and seizure was unwarrantable and unconstitutional; that it placed too much power in the hands of one man, the County Judge; and that it favored the rich and bore heavily upon the poor.

The liquor dealers and the friends of a license system were as determined to bring about the defeat of the law as were the Prohibitionists to secure its approval. At an "Anti-Iowa Liquor Law meeting" held at the Dubuque brewery on March 19, the law was declared to be "unconstitutional, pernicious to freedom and against human reason." Moreover, those attending announced that they were "determined to use legal means to prevent the enforcement of such a law."[44] During the days and weeks immediately preceding the election many newspapers published addresses, supposedly prepared by the liquor dealers, calling upon the citizens to vote against the prohibitory law. And so the struggle waged on.

### THE VOTE ON THE PROHIBITORY LAW

When the second day of April, 1855, came, the citizens gathered at the polls to vote, not only for such officers as were to be chosen at that time, but also to ballot either "For the Prohibitory Liquor Law" or "Against the Prohibitory Liquor Law."

The result of the election was a triumph for prohibition; for 25,555 votes were cast in favor of the law, as opposed to 22,645 against it, thus giving a majority of 2,910 for the law.[45] It is interesting to note that of the sixty-six counties which participated in this election, thirty-three declared in favor of the law, thirty-two against it, and in one county the result was a tie. Thus if the result had been determined

[44] *Dubuque Daily Observer*, Vol. I, No. 217, Wednesday, March 21, 1855.

[45] *Iowa Official Register*, 1889, pp. 207, 208.

by the number of counties for or against prohibition, instead of by the total number of votes, the law would have been approved by a very small margin. Lee County cast the largest number of votes in favor of the law, while Dubuque County was in the lead in the opposition.

### TESTING THE CONSTITUTIONALITY OF THE LAW

The chief point of interest after the approval of the law by the people was whether or not it would be upheld by the courts. As has been suggested, the law had, from the beginning, been attacked on the grounds that it was unconstitutional, and it was with no little anxiety that the friends of the measure awaited a decision of the question. The opportunity came at the December term of the Supreme Court, in connection with certain cases for violation of the law in which appeals had been taken from the county courts. The opinion of the Court, as rendered in the case of *Santo et al. v. The State of Iowa* (2 Iowa 265), was to the effect that the law was constitutional, and so the fears of the Prohibitionists were dispelled. Chief Justice George G. Wright, however, rendered a dissenting opinion, and this facts lends an added interest to the decision.

The point of law upon which Chief Justice Wright disagreed with his associates was in regard to the delegation of legislative power involved in the section of the act which provided for the submission of the statute to a vote of the people. The two Associate Justices, William G. Woodward and Norman W. Isbell, held that even in case the disputed provision was in itself unconstitutional, it did not invalidate the remainder of the law, for the reason that the act was complete without that section. Furthermore, they contended that the provision itself was not unconstitutional. They admitted that the General Assembly "cannot legally submit to the people the proposition whether

an Act should become a law or not''; but contended that in this case there had been ''no distinct submission to the people of the question 'whether this act shall or shall not become a law' . . . . It is not provided that if the vote be against it, it shall not become a law, or that it shall not take effect.'' It was their opinion that the legislature, in inserting this provision, had ''designed to ascertain the moral sentiment of the people of the State on the subject of 'prohibition,' in order, first, that if the community should be in favor of that policy the law might have the aid of the power of that public moral sentiment; and, secondly, that, if the public voice should be against the policy, this might be certainly ascertained, and the law repealed.''

Chief Justice Wright, in his dissenting opinion, however, took a different view of the matter. He maintained that the section submitting the law to a vote of the people was a vital part of the act; that the section itself was unconstitutional; and that it did therefore invalidate the remainder of the law. He based his argument largely on an interpretation of the purpose of the provision. He did not agree with his associates that the object was merely to ascertain public sentiment, for he insisted that ''to say that it was the legislative will that this law was to take effect, and become a rule of action, whatever the result of this election, to my mind would most palpably violate that intention, as gathered from the law itself, and circumstances contemporaneous with its passage. To so hold, would be to say that this section means nothing—is a blank—that the legislature provided for all the trouble, expense and form of an election for no end or purpose. If so, then it was a deliberate fraud upon the people, and one which I do not believe was intended or thought of.'' And so he contended that since the existence of the law was made to depend upon

the vote of the people, the legislature had "called in the aid of a power not provided for nor contemplated by the constitution to assist in its enactment," and consequently the law was unconstitutional.

THE NON-ENFORCEMENT OF THE PROHIBITORY LAW

The prohibitory law went into effect on the first day of July, 1855, and its supporters were confident that in a very short time every vestige of the liquor traffic would be swept from the State. But this optimistic expectation was not to be so easily realized. The great difficulty in this case, as in many other instances of reform legislation, was that those who had clamored most loudly for the passage of a prohibitory law simply folded their hands and paid little heed to its enforcement.

The immediate result was that the liquor dealers generally closed their shops and seemingly acquiesced in the new order of things. But this acquiescence was only temporary. Even in those counties in which the Prohibitionists had polled the largest vote, violations of the law soon became numerous. Moreover, there were few arrests or convictions for such violations. Within a month after the law was put into effect, the following article appeared in a paper published at Muscatine, a town where a strong prohibition sentiment had ever existed:—

> Complaints of the violation of the law of Prohibition are as common as of the intense heat of the weather. They are talked about on all the street corners of the city, and cases of direct and flagrant violation freely spoken of. That liquor is kept for sale, and sold, in this city by individuals who are not legally authorized to traffic in the article, is a well known fact; that liquor is brought into this city, in jugs, flasks, and men's stomachs, contrary to law, is known to all; that liquor is sold at our wharf by unauthorized persons, is known by all.[46]

[46] *Daily Journal* (Muscatine), Vol. I, No. 28, Monday, July 30, 1855.

Conservative persons were agreed that the law was not accomplishing the desired result, largely on account of a lack of interest in its enforcement. They urged that the merits or demerits of the law could only be determined by a rigid enforcement. It was a defect of the law that its enforcement was entrusted too largely to the general public. No set of officers was made responsible for the carrying out of its provisions, except as violations of the law were brought to their attention by information filed by a certain number of citizens. The unfortunate state of affairs caused by this lack of adequate provisions for enforcement is revealed in the following account of an incident which occurred in Burlington:—

> Upon information that the "American House," in Burlington was selling liquors in violation of the law, the Constables entered the place and found considerable liquors stored in barrels. Being unable to remove the barrels because of their weight, they called for assistance from the crowd gathered about. No one offered to help, except the informers. With considerable difficulty they succeeded in removing the barrels to another building.
>
> When a law is so odious in its features that not one in a hundred of our citizens will aid in its execution, it is certainly time to enquire whether both public and private morality would not be more certainly promoted by the adoption of a different policy.[47]

Thus it is evident that the law for which the Prohibitionists had labored so long and of which they expected so much was in its application not altogether successful. Viewed in the light of history, its failure must be attributed not only to defects in the law itself, but also to a lack of support by its friends. A reaction soon became manifest, and by the winter of 1856 it had assumed sufficient proportions to exert no small influence.

[47] *Daily Iowa State Gazette* (Burlington), Vol. I, No. 190, Thursday, February 7, 1856.

THE PROHIBITORY LAW AMENDED

The sixth regular session of the General Assembly having convened on December 1, 1856, it was not long before the failure of the prohibitory law was recorded in the passage of "An Act supplementary and amendatory to an act entitled an act for the suppression of intemperance, approved January 22d, 1855."[48] This amendatory act received the Governor's approval on January 28, 1857. It removed many of the minor defects which had been incorporated in the original law. The county grocery was abolished and the sale of intoxicating liquors provided for in the following manner:—

> Any citizen of the State and resident of the county in which he may be at the time, except hotel keepers, keepers of saloons, eating houses, grocery keepers, and confectioners, are hereby permitted to buy and sell intoxicating liquors for mechanical, medicinal, culinary and sacramental purposes only: *Provided,* he shall first procure the certificate of twelve citizens of the township in which he resides, that he is of good moral character and a citizen of the county and State, and shall give bond in the penal sum of not less than one thousand dollars, with two good and sufficient securities, to be approved by the county judge, that he will conform to the provisions of this act and the act to which this is amendatory.

These persons, having been authorized to sell liquors for the specified purposes, were required to keep the same account and record of all liquor bought or sold by them as had been required of the county agents. Furthermore, it was made a special duty of all peace officers to see that the law was enforced, the act declaring that "any peace officer failing to comply with the provisions of this section, shall be guilty of a misdemeanor, and pay a fine of not less than ten nor more than fifty dollars, and a conviction shall work a forfeiture of his office." Common carriers were forbidden under severe penalties to import into the State any

[48] *Laws of Iowa,* 1856-57, pp. 231-234.

intoxicating liquors for persons not authorized to sell such liquor. And finally, intoxicating liquor was defined as follows:—

Wherever the words "intoxicating liquors" occur in this act, or the act to which this is amendatory, the same shall be construed to mean all spirituous, malt, and vinous liquors: *Provided,* that nothing in this act shall be so construed as to forbid the manufacture of cider from apples, or wine from grapes, currants or other fruits, grown or gathered by the manufacturer.

### THE LICENSE LAW OF 1857

During the same session of the General Assembly at which the foregoing amendment was passed, another liquor law of a radically different nature was enacted. The failure of the prohibitory law to bring about the desired result had greatly increased the strength of the friends of a license system, and as a consequence there were numerous petitions praying for the repeal of the prohibitory law and the enactment of a license law. The following petition, circulated widely throughout the State during the winter of 1856 reveals the general character of this new group of petitions:—

*To the Honorable Senate and House of Representatives.* Your petitioners, citizens, residents and voters of Clayton County, Iowa, beg leave to represent to your honorable body that the so-called "Prohibitory Liquor Law," in their humble opinion, is an unjust and unwise act, odious to a large body of the people, detrimental to agricultural and manufacturing interests of the state, utterly failing in its purposes, and contrary to the spirit of our institutions.

They beg leave, also, to submit, as the result of their experience in the matter, that a judicious License System would not only quiet almost every complaint of both the friends and opponents of the present law, but at the same time yield a handsome revenue to the State.

Your petitioners, therefore, would pray your honorable body to repeal the laws in force on this subject, and enact in their place, a

general license law, with such restrictions, fines and license fees, as may be deemed just and proper.[49]

There were, however, in addition to these petitions for a license law, numerous remonstrances against the repeal of the prohibitory law. As a consequence the legislature assumed a middle ground, and passed "An Act to license and regulate the sale of malt, spirituous and vinous liquors, in the State of Iowa",[50] which was approved January 29, 1857. At first glance this would seem to be a complete surrender to the wishes of the friends of a license measure, but in reality it was a compromise between the two systems of license and prohibition, and at the same time a resort to the principle of local option. The wide difference of opinion on this question, and the factions into which this difference had divided the citizens of the State, evidently convinced the members of the legislature that the wisest plan was to endeavor to please both parties and then leave the matter in the hands of the people.

Generally speaking this law was very similar to the license law of 1849, which has been discussed above. Application for a license must be made to the County Judge instead of to the Board of County Commissioners, and the price of a license was higher as was also the penalty for violation of the law, but otherwise there was very little difference in the general provisions. There were, however, several special provisions which give to the law its unique character. The first of these provisions was contained in section seventeen and reads in part as follows:—

The county judge of any county shall upon the petition of one hundred of the legal voters in said county, order a vote to be taken at any election therein, upon the question of licensing the sale of spirituous or vinous liquors as in this act provided, and if a majori-

[49] Public Archives, Office of the Secretary of State, Des Moines.

[50] *Laws of Iowa*, 1856-57, pp. 379-384.

ty of the legal voters in any county shall vote in favor thereof, then the proper officers shall proceed to issue license for such sale as herein provided. . . . *Provided,* That the question of license under this act shall be submitted to the voters of any county but once in any year.

Another unique feature of the statute was that the prohibitory law was not thereby repealed. Both acts were declared in force. In those counties where the vote was in favor of license, the license law was to have sway, while the counties which declared against license were to be governed by the prohibitory law. Thus local option was applied with regulations to fit either contingency. It is presumed that in case no election was called for, it was intended that the prohibitory law was to continue in force.

In section sixteen of the law it was especially provided that "Nothing contained in this act or an act entitled 'an act for the suppression of intemperance,' approved January 22d, 1855, or any other act heretofore passed, shall be held to prohibit the manufacture of beer, ale, wine or cider."

But the license law of 1857 was not enforced, being declared unconstitutional by the Supreme Court in December, 1857, in the famous case of *Geebrick v. The State of Iowa* (5 Iowa 491). It was held to be null and void, in the first place, because it gave the power of legislation to a body in which that power was not vested by the Constitution. The grounds for this decision as stated in the opinion of the Court were as follows:—

The position seems to us too clear to admit of any doubt, that if the act of January 29, 1857, receives its vitality and force from a vote of the people, such vote is an exercise of legislative power, and the law is unconstitutional and void. . . . It attempts to abrogate the uniform operation, and consequently, the force and validity, of a law general in its nature, and intended to secure the entire prohibition of the sale of intoxicating liquors in the state, and to pro-

vide for licensing the sale thereof, in any county of the state desiring the change, not by virtue of an act of the legislature passed into a law, according to the form of the constitution, but by the vote of a majority of the people of such county expressed at the polls.

We cannot be mistaken in interpreting this act, and the proceedings authorized by it, to be in effect, the repeal of one law, and the enactment of another, by a vote of the people. . . . Whatever may be the result of the vote, and even without such vote, it receives its vital force in this case, from something outside of the will of the legislature.

Another charge brought against the validity of the law was that it violated the sixth section of the Bill of Rights in the Constitution, which declared that "All laws of a general nature shall have a uniform operation." On this point the Court held: —

It is not, in our opinion, a sufficient compliance with the requisition of the constitution, that under the provisions of the act of the 29th of January, 1857, the question of licensing the sale of spirituous liquors, is to be submitted to the vote of the qualified electors of all the counties of the state. . . . We cannot undertake to determine, nor can it, under any circumstances, be foreseen, that the result of the vote will be uniform in all the counties of the state, either in favor of license or against it. . . . Unanimity of sentiment, either one way or the other, can hardly be reckoned upon.

Finally, it was the opinion of the Court that in this case the provision for submitting the act to a vote of the people in the various counties was a vital part of the act; that the law could have no existence without such submission; and that, therefore, the entire act was unconstitutional.

### THE WINE BEER AND CIDER CLAUSE

The license act having been declared unconstitutional by the Supreme Court, the prohibitory law of 1855, with the amendment of 1857, continued in force. In 1858, as a concession to the large German element in the State, the law

was so amended as to permit "the manufacture and sale of beer, cider from apples or wine from grapes, currants or other fruits grown in this State."[51] It has been observed that in the prohibitory law of 1855 and in the amendment of 1857, the manufacture of homemade wine and cider had been permitted, and that in the license act of 1857, beer was included in this permission. But the latter act was declared null and void, and so the prohibitory law was amended in 1858 as above stated. The prohibitory law of 1855, as amended in 1857 and 1858, was embodied in chapter sixty-four of the *Revision of 1860*.

## CONCLUSION

During the years from 1846 to 1861 five liquor laws were enacted. The most important of these was the prohibitory law of 1855, about which were centered the hopes and efforts of the temperance party; but it failed to accomplish the purposes for which it was enacted because it was not properly enforced.

Prohibition seemed to fall into disfavor; and so great was the dissatisfaction with the prohibitory law that in 1859 the Democratic party declared in its platform that "the Maine liquor law is inconsistent with the spirit of a free people, and unjust and burdensome in its operations; it has vexed and harrassed the citizen, burdened the counties with expense and litigation, and proven wholly useless in the suppression of intemperance."[52]

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[51] *Laws of Iowa*, 1858, p. 283.

[52] Fairall's *Manual of Iowa Politics*, Vol. I, Pt. I, p. 53.