

THE DEFALCATION OF SUPERINTENDENT  
JAMES D. EADS

By an act of Congress approved on September 4, 1841, there was set apart for "each new state that shall hereafter be admitted into the Union, . . . . five hundred thousand acres of land." The funds derived from the sale of this immense area were to be applied, within the intent of the act, to the construction of "drainage systems, roads, railways, bridges, and canals."<sup>1</sup> This disposition of the public lands was made by virtue of what is known in governmental ethics as the right of primal ownership of the soil.

This doctrine was evidently ignored in an "ordinance" appended to the constitution for the proposed State of Iowa drafted in the fall of 1844. In this ordinance several propositions were made to Congress relative to a partial disposal of the public lands within Iowa, which propositions should be binding upon the people of the State, providing they received the consent of Congress. Among other things the ordinance proposed the setting apart by the United States of the sixteenth section of land or its equivalent in every township for school purposes, and that five per cent of the net proceeds of all sales of public lands lying within the proposed limits of Iowa should be granted to the State, the purpose for which such per centum was to be used not being stated.<sup>2</sup>

In an act of Congress approved on March 3, 1845, providing for the admission of Iowa and Florida, it was de-

<sup>1</sup> 5 *United States Statutes at Large* 453-455.

<sup>2</sup> *Journal of the Iowa Constitutional Convention*, 1844, p. 207.

clared that this ordinance was not to "be deemed or taken to have any effect or validity, or to be recognized as in any manner obligatory upon the Government of the United States."<sup>3</sup>

By an act supplemental to the above and of the same date Congress proposed a substitute for this ordinance and requested its acceptance or rejection by the Iowa legislature. This substitute approved the proposition of the rejected ordinance relative to setting apart the sixteenth section or its equivalent for the use and support of common schools. But it definitely directed "that five per cent of the net proceeds of sales of all public lands lying within the said State, which have been, or shall be sold by Congress, from and after the admission of said State, . . . shall be appropriated for making public roads and canals within the said State, as the legislature may direct." There was also the further proviso that the "foregoing propositions herein offered are on the condition that the legislature of the said State, . . . shall never interfere with the primary disposal of the soil within the same by the United States . . . and that no tax shall be imposed on lands the property of the United States."<sup>4</sup> No action was taken at this time by the Iowa legislature upon this proposed substitute.

In the late spring of 1846 a constitutional convention met in Iowa City to draft a second constitution for submission to Congress. This constitution stipulated in section two of article ten that not only should the proceeds derived from the sale of public lands granted expressly by Congress for the support of common schools be devoted to that purpose, but also that the five hundred thousand acre grant of September 4, 1841, and "such per cent. as may be granted by

<sup>3</sup> 5 *United States Statutes at Large* 742, 743.

<sup>4</sup> 5 *United States Statutes at Large* 789, 790.

Congress on the sale of lands in this State, shall be and remain a perpetual fund, . . . . inviolably appropriated to the support of common schools throughout the State."<sup>5</sup> By "such per cent" was plainly meant the five per cent which Congress had previously directed should be used for the building of roads and canals. Congress, by an act approved on December 28, 1846, unconditionally accepted the proposed constitution, including this section relative to school lands.<sup>6</sup> The inference was plain that Congress by such action had sanctioned the provision for the support of schools although it was directly at variance with the previous supplemental act of March 3, 1845.

Such at least was the view taken by the General Assembly of Iowa, which on February 25, 1847, two months after the admission of Iowa into the Union, passed an act which provided that it should be the duty of the State Superintendent of Public Instruction to receive the five per cent fund accruing to the State of Iowa from the sale of public lands within the limits of the State.<sup>7</sup> Accordingly this official — Mr. Thomas H. Benton, Jr., — applied to the proper United States officer for the fund then due. The application was denied, the denial being based upon the claim that this fund could only be paid for the construction of roads and canals as directed by the supplemental act of March 3, 1845.<sup>8</sup>

This denial, however, did not cause the General Assembly of Iowa to assume an attitude different from that expressed in the State Constitution. Instead, it passed an act, approved on January 15, 1849, which, while accepting the

<sup>5</sup> The Iowa State Constitution of 1846, Article X, Section 2; *Journal of the Iowa Constitutional Convention*, 1846, p. xv.

<sup>6</sup> *9 United States Statutes at Large* 117.

<sup>7</sup> *Laws of Iowa, 1846-1847*, p. 163.

<sup>8</sup> *Report of the Superintendent of Public Instruction*, 1850, p. 36.

Congressional proposals of March 3, 1845, did so with a reservation that the five per cent of the net proceeds of public land sales should be applied to the support of common schools and not to the building of roads and canals.<sup>9</sup> Later, through the influence of the Iowa delegation in Congress, that body passed a declaratory act assenting to such an application of what had now become known as "the five per cent fund".<sup>10</sup> Thus was laid the basis of the permanent support fund of the common schools of Iowa.

Provision for the receipt and disposal of the fund was later embodied in the *Code of 1851*. The fund was to be paid into the hands of the State Superintendent of Public Instruction and by him "disposed of according to law". It was to be apportioned to the various organized counties by this official in much the same manner as it is at the present time. This was to be done early enough in the year that it might be transmitted to the school fund commissioners and by them apportioned to the respective districts annually upon the first day of March.<sup>11</sup>

Owing to the rapid settlement of Iowa the sales of public lands increased at a rapid pace during the early fifties, thus causing this particular fund to increase by leaps and bounds from year to year. The fund being payable to the State Superintendent of Public Instruction, it would seem that the office was becoming one of very great financial responsibility, demanding for its occupant a person of considerable business acumen. Such was the rapidly increasing importance of the office when the campaign for nomination and election to fill the approaching vacancy in the office of Superintendent opened in January, 1854.<sup>12</sup>

<sup>9</sup> *Laws of Iowa, 1847-1848*, pp. 121, 122.

<sup>10</sup> *9 United States Statutes at Large* 349.

<sup>11</sup> *Code of 1851*, Secs. 1056, 1080, 1098.

<sup>12</sup> Owing to the election of the Superintendent on the first Monday in April, the nominating convention was customarily held some time during January.

Under the operation of the existing statutory law and the *Code of 1851* the office of State Superintendent of Public Instruction was filled by a supposedly non-partisan triennial election, held upon the first Monday in April.<sup>13</sup> This made necessary a nomination and preëlection campaign during the winter. Although it had been sought to divorce the office from partisan politics the attempt had failed, the campaign having developed as much partisan bitterness as the regular election later in the year.

Pursuant to a call, a Democratic State Convention met at Iowa City on January 9, 1854, to place in nomination a candidate for Superintendent of Public Instruction. Much interest unexpectedly developed in this office as an opportunity for party preferment. As a result five names were presented to the convention for its consideration and ultimate choice. Among these names was that of Dr. James D. Eads of Fort Madison. No choice was made upon the first ballot, but the second resulted in giving Dr. Eads more than the necessary majority.<sup>14</sup> Thereupon he was declared the party nominee.

The Whigs at their convention failed to place a candidate in the field, since no man could be induced to accept the nomination. Shortly thereafter the Rev. Isaac I. Stewart of Mt. Pleasant announced himself as an independent candidate. To him was thrown the support not only of the Whigs but of the temperance faction as well.<sup>15</sup> The latter was now developing considerable political strength and was particularly vehement in its opposition to the Democratic nominee.

The preëlection campaign was characterized by no small

<sup>13</sup> *Code of 1851*, Sec. 1076.

<sup>14</sup> Upon the second ballot Dr. Eads received 102 votes out of a total of 195.—*The Weekly Miners' Express* (Dubuque), Vol. XIII, No. 18, January 18, 1854.

<sup>15</sup> *The Weekly Miners' Express* (Dubuque), Vol. XIII, No. 18, January 18, 1854.

amount of personal abuse of the candidates by the partisan press. Rev. Isaac I. Stewart was branded by the Democratic press as unfit for the office, since his work had been largely that of a minister of the gospel.<sup>16</sup> His ability and integrity seemed to be otherwise unimpeachable. The Whig press rejoined that this could not be a vulnerable point since the Democracy's candidate, Dr. Eads, had followed the same calling for a time.<sup>17</sup>

The Democratic press lauded Eads as a man "amply qualified" for the position by reason of "his scientific endowments", "his moral rectitude as a man", "his ability, fluency, and refinement as a speaker", and his possessing "in a rare degree" the ability to guard "well the finances of the School Fund".<sup>18</sup> Upon the other hand, the Whig press assailed him as "the most unsuitable man in the ranks of Democracy for the position", "one of the most reckless men that has ever been thrust before the people of Iowa as a candidate for a public office", one who would "make his office subservient to party and personal interests",<sup>19</sup> a man wholly without culture and "grossly deficient in the knowledge of his mother tongue",<sup>20</sup> and who was an aggravated violator of the law, giving aid to the rumseller in his nefarious work, and, worst of all, was himself a drunkard.<sup>21</sup>

<sup>16</sup> *The Muscatine Journal*, Vol. V, No. 41, March 10, 1854; and *The Weekly Miners' Express* (Dubuque), Vol. XIII, No. 29, April 5, 1854.

<sup>17</sup> Dr. Eads had at one time been a minister in the Campbellite or Christian Church. See *The Des Moines Courier* (Ottumwa), Vol. VI, No. 11, March 23, 1854; *The Fairfield Ledger*, Vol. IV, No. 4, January 12, 1854; and *The Muscatine Journal*, Vol. V, No. 44, March 31, 1854.

<sup>18</sup> *The Weekly Miners' Express* (Dubuque), Vol. XIII, No. 27, March 22, 1854.

<sup>19</sup> *The Fairfield Ledger*, Vol. IV, No. 14, March 23, 1854.

<sup>20</sup> *The Daily Gate City* (Keokuk), Vol. III, No. 33, April 9, 1856; and *The Washington Press* (Washington, Iowa), Vol. I, No. 11, April 9, 1856.

<sup>21</sup> *The Fairfield Ledger*, Vol. IV, No. 14, March 23, 1854.

Despite the shafts of sarcasm, ridicule, and denunciation hurled at him by the Whig press of the State, the official election returns, certified by the Board of State Canvassers, indicated that Dr. Eads had been elected by a safe majority of 3,931 votes over the Rev. Isaac I. Stewart.<sup>22</sup> Dr. Eads and his partisan supporters accepted this large majority as an expression of full confidence in himself and in his ability and fitness for the office.

For nearly a year following his induction into office all apparently went well with Dr. Eads in the discharge of his official duties. Then trouble began to loom up. The rapid settlement of Iowa and the consequent heavy sales of the public lands produced an unforeseen increase in the receipts from the five per cent fund.<sup>23</sup> At the time of its creation the office of State Superintendent had not been thought of as one likely to be greatly burdened with either the care of public moneys or the sale of public lands.<sup>24</sup> Possibly thinking that no great financial responsibility would rest upon this official his bond had been fixed at only twenty-five thousand dollars.<sup>25</sup>

In August, 1855, Governor Grimes was officially informed that the sum of \$226,873.86 lay in the United States Treasury awaiting the order of the properly certified State officer.<sup>26</sup> This was the five per cent due the State upon the

<sup>22</sup> The returns upon the election as certified by the State Board of Canvassers were: James D. Eads, 17,393; Isaac I. Stewart, 13,462; George Shedd, 71; scattering, 53; total vote, 30,979.— Department of Public Archives, Des Moines, Iowa.

<sup>23</sup> The receipts in this fund for the sale of lands in 1853 were \$54,341.59. In 1854 they had increased to \$226,873.86.

<sup>24</sup> Message of Governor Grimes to special session of the Fifth General Assembly, July 3, 1856.— Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 20.

<sup>25</sup> *Code of 1851*, Sec. 1077.

<sup>26</sup> Letter of Governor Grimes to the President of the Senate, December 11, 1856.— *Appendix to House Journal*, 1856-1857, p. 704.

sale of public lands from January 1 to December 31, 1854. Upon September 18th the Governor notified Superintendent Eads of this fact, mentioning also that he would expect him to furnish a new bond in the sum of \$250,000 by November 1, 1855.<sup>27</sup> Dr. Eads by letter replied that the new bond would be furnished by the time specified. It was not furnished, however, until December 18, 1855. Thereupon Dr. Eads was given a certificate enabling him to draw the money from the United States Treasury.

The State laws, as interpreted by the Governor, required that the five per cent fund should be apportioned to the county school fund commissioners on the twenty-fifth day of January in each year.<sup>28</sup> From reports received by Governor Grimes such an apportionment of the part of the fund in question had not been made as late as March 26, 1856. The Governor therefore wrote to Dr. Eads inquiring why the apportionment had not been made in accordance with the law, adding that the State would suffer great loss if this money were permitted to lie unproductive until the ensuing twenty-fifth of January.

The dilatory handling of the school fund upon the part of the State Superintendent caused Governor Grimes in his message to the special session of the General Assembly on July 3, 1856, to recommend that the State Superintendent of Public Instruction be at once divested "of all control over and responsibility for the school money and school lands", adding that it "was designed that he should have charge of the instruction of the State and not of the money of the State."<sup>29</sup>

<sup>27</sup> As to the authority of the Governor to require such a bond consult the *Code of 1851*, Sec. 418; and *Laws of Iowa*, 1854, p. 158.

<sup>28</sup> *Code of 1851*, Sec. 1080.

<sup>29</sup> Governor Grimes in his special session message of July 3, 1856.—Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 20.



Following the consideration of the Governor's message Senator Hamilton on July 7th offered a resolution calling upon the State Superintendent for accurate and detailed information as to what disposition he had made of the five per cent fund supposedly received by him and apparently not apportioned.<sup>30</sup> This resolution was complied with on July 11th by a special report from Superintendent Eads.<sup>31</sup>

According to this report Superintendent Eads had received in January, 1855, the sum of \$54,341.59, due on the five per cent fund for 1853. This was apportioned to the several fund commissioners on the first of March thereafter, but had not all been claimed. Later, the unclaimed portion had been loaned by him and secured by mortgage on real estate as required by law.

In March, 1856, he had received from the general government the sum of \$226,800.86. Of this amount he had loaned to individuals on real estate security a total of \$84,300, and had transmitted to school fund commissioners a total of \$92,500, leaving a balance on hand of \$50,450.86, according to his report.<sup>32</sup> He had from time to time made deposits totalling \$50,000 with banking firms of Iowa City, further sums aggregating \$35,000 had been deposited with Fort Madison bankers, and an additional amount of \$50,000 with the State Treasurer — M. L. Morris. This latter alleged deposit was at once emphatically denied by Treasurer Morris as ever having been made.<sup>33</sup>

<sup>30</sup> *Senate Journal* (Special Session), 1856, p. 21; *The Daily Capitol Reporter* (Iowa City), Vol. I, No. 108, July 7, 1856.

<sup>31</sup> *Senate Journal* (Special Session), 1856, Appendix, pp. 1-18.

<sup>32</sup> The amount loaned to individuals, transmitted to fund commissioners, and remaining on hand as a balance, totals — according to Dr. Eads's report — \$227,250.86. He had received \$226,800.86, thus showing an unaccounted for discrepancy of \$450.

<sup>33</sup> Treasurer Morris's letter of denial, to be found in the *Senate Journal* (Special Session), 1856, p. 65, is as follows:

“Sir — By a report of the Superintendent of Public Instruction, made to the

When called to account by the Senate in the same resolution as to the source of his authority to loan any of the fund, Eads cited in defense the provision of the Code which stated that the Superintendent of Public Instruction should dispose of said fund "according to law". Since the law provided that the fund should be loaned he had done so with a portion. To substantiate his position he appealed to the Attorney General, who informed him that the "law requires the school fund to be loaned. This five per cent. fund being a part of the school fund, is to be disposed of according to law; and as the law places it in the hands of the Superintendent, he is the person to loan it."<sup>34</sup> This he considered as fully sustaining him in his contention of a legal right to lend the fund. To further justify his action he maintained that it was far less expensive for the State Superintendent to loan the fund and collect the interest thereon than it would be to have it done by a large number of fund commissioners who would later have to report their actions back to the State Superintendent for approval and possible re-adjustment.<sup>35</sup>

Upon motion, the communication of the Superintendent was referred to the Senate Committee on Ways and Means. Mr. Preston, chairman of this committee, reported on the same day, July 11th, a resolution which was adopted, calling upon the Superintendent for detailed information concerning the loans made by him from school moneys — to

Senate, it appears that said officer has *deposited* \$50,000 with the State Treasurer. Now all I have to say in answer to the above allegation, is, that no such deposit has been made in this office during my administration.

Yours, truly,

M. L. MORRIS,  
State Treasurer."

— *Senate Journal* (Special Session), 1856, p. 65.

<sup>34</sup> *The Report of the Superintendent of Public Instruction*, 1856, p. 17. The letter of Attorney General D. C. Cloud is here given in full.

<sup>35</sup> *Senate Journal* (Special Session), 1856, Appendix, p. 3.

whom made, for what security, the rate of interest, the term of each loan, as well as the time and terms of each bank deposit, etc.<sup>36</sup>

This resolution was superseded by the adoption of another upon the following day. This latter resolution, introduced by Mr. Hamilton, provided for an investigation by the Committee on Ways and Means of "the books, accounts, vouchers, securities, and moneys, in the office of the Superintendent of Public Instruction, and of the State Treasurer",<sup>37</sup> and for a report of its findings to the Senate.

Upon July 14th, while the committee was conducting the investigation preparatory to the issuance of its report, Mr. Coolbaugh introduced a bill forbidding the further loaning of the school funds by the State Superintendent of Public Instruction.<sup>38</sup> The measure passed both houses on the same day and on July 15th was presented to and approved by the Governor. An act the purpose of which was to prevent the Superintendent from acquiring any more school moneys was passed later, but for some reason did not reach the Governor and hence failed to become a law. Thus did the General Assembly seek to safeguard the school fund of the State from further mismanagement.

Coincidental with the approval by Governor Grimes of the bill forbidding further loans, the Committee on Ways and Means reported to the Senate the result of its investigation.<sup>39</sup> This report was filed only after a "careful examination" had been made of the papers, books, and vouchers of the offices investigated.

The report was published as an appendix to the *Senate Journal* for the special session and occupies nearly nine

<sup>36</sup> *Senate Journal* (Special Session), 1856, pp. 56, 59.

<sup>37</sup> *Senate Journal* (Special Session), 1856, p. 66.

<sup>38</sup> *Senate Journal* (Special Session), 1856, pp. 82, 83, 84; and *Laws of Iowa* (Special Session), 1856, p. 95.

<sup>39</sup> *Senate Journal* (Special Session), 1856, p. 85.

printed pages setting forth in some detail the purported loans, deposits, and apportionments of school fund money made by the Superintendent.<sup>40</sup> The findings of the committee may be summarized as follows:

1st. No deposit of \$50,000 had been made with the State Treasurer as stated by the Superintendent in his special report of July 11th.<sup>41</sup>

2nd. The Superintendent received from the general government in January, 1855, as the proceeds of public land sales for 1853 the sum of \$54,341.59. Of this sum \$32,041.59 had been apportioned to the various counties, according to the receipts of school fund commissioners on file in the Superintendent's office. This left as unaccounted for the sum of \$22,300, which the Superintendent claimed had also been apportioned to counties but "no vouchers or other evidence were shown . . . that such sums had been paid over to the Fund Commissioners in the counties named."<sup>42</sup>

3rd. Superintendent Eads also received on March 10, 1856, the sum of \$226,800.87<sup>43</sup> as the proceeds of land sales in 1854. From this amount there had been paid to fund commissioners a total of only \$15,500 as shown by proper vouchers on file in the office of the Superintendent.<sup>44</sup> There

<sup>40</sup> *Report of the Committee of Ways and Means, in relation to the State Treasurer, and Superintendent of Public Instruction in the Senate Journal (Special Session), 1856, Appendix, pp. 19-26.*

<sup>41</sup> See sworn statement by Treasurer M. L. Morris in the *Senate Journal (Special Session), 1856, Appendix, p. 26.*

<sup>42</sup> *Senate Journal (Special Session), 1856, Appendix, pp. 20, 21.*

<sup>43</sup> There seems to be no concord of statement concerning the exact amount received at this time from the United States government. Each investigating agent seemed to accept a different amount, and in fact the sums as stated in different parts of this same report do not agree exactly with each other.

<sup>44</sup> Vouchers on file exhibited payments as having been made to county school fund commissioners as follows: Des Moines County, \$5000; Wapello County, \$5000; Johnson County, \$5000; Benton County, \$500; total, \$15,500.—*Senate Journal (Special Session), 1856, Appendix, p. 21.*

had been loaned to various individuals on five years credit at ten per cent interest and purporting to be secured by mortgages on real estate an aggregate amount of \$61,310, and there was left in cash in the hands of the Superintendent the sum of \$73,945.81. Of this amount \$32,525.81 was on deposit in banks, while \$41,420 was supposedly in the possession of the Superintendent neither loaned, deposited, nor apportioned. This gave an aggregate amount accounted for in a proper manner of \$150,755.81, and left \$76,044.75<sup>45</sup> unaccounted for by vouchers. Of this sum the Superintendent claimed to have sent to the Fund Commissioners \$72,000, but there was no evidence to prove that he had done so.<sup>46</sup>

Perhaps the further conclusions of the committee can be best and most clearly stated in its own language:

Assuming that the statements made to your committee by the Superintendent . . . . are true, it evinces a carelessness on his part in the discharge of the duties pertaining to his office, which your committee feel it their duty to reprehend in the strongest manner . . . . and indicates in their opinion an unfitness on his part to manage so large a fund, that must seem apparent to all.

Your committee also feel it their duty to call the attention of the Senate to . . . . the assumption of authority by that officer, . . . . in the absence of any positive enactment of law, in the loaning out, on a long credit, and with a recklessness in respect to security, which no private individual would for a moment tolerate, a large portion of the fund arising from . . . . the proceeds of the sales of the public lands. If it was the duty of that officer to apportion the amount of the fund in January, 1855, when it amounted to only \$54,341.59, as he seems to have acknowledged by his act in distributing it as he did on the 1st of March, 1855, your committee cannot conceive why he should not have considered [it] equally his duty to distribute the fund coming into his hands in March, 1856, when it amounted to \$226,800.56.<sup>47</sup>

<sup>45</sup> This amount should properly be \$76,045.06.

<sup>46</sup> *Senate Journal* (Special Session), 1856, Appendix, p. 23.

<sup>47</sup> *Senate Journal* (Special Session), 1856, Appendix, pp. 23, 24.

Moreover, the distribution of the fund by the Superintendent was palpably unequal as shown by his own reports. This in itself seemed to the committee to reflect seriously upon his honesty in the management of the fund. Of the \$54,341.59 supposedly apportioned by him on March 25, 1855, the sum of \$20,700.59 was sent to Lee County alone, according to his own verbal statement, while to Dubuque and Des Moines counties went only \$2,000 each, "and more than half of the organized counties of the State did not receive any." The same thing happened to the fund received on March 10, 1856 — \$226,800.86. Of this sum "the Superintendent claims to have distributed some \$92,500 among thirteen different counties, though your committee . . . found vouchers for only \$15,500 so apportioned, but of the sum claimed to have been distributed by him, Lee County is again made to receive \$30,000 while Dubuque, Mahaska and other populous counties received nothing."<sup>48</sup> The committee further said:

So flagrant a violation of fairness and equality in the apportionment of the School fund . . . demonstrates . . . the utter incapacity of the present Superintendent of Public Instruction to manage the School fund. . . .

Your committee would therefore recommend that the law authorizing the Superintendent to receive the fund now due the State from the General Government, accruing on the sales of the proceeds of the public lands for the fiscal year, ending June 30, 1856, be repealed.<sup>49</sup>

This report indicates that of \$281,142.45 of the five per cent fund received by Superintendent Eads fully \$98,344.75 was unaccounted for by proper vouchers of any kind, the only evidence of its distribution being the verbal assurance of the Superintendent himself. At the same time, a report so adverse to Dr. Eads can not be charged to party enmity

<sup>48</sup> *Senate Journal* (Special Session), 1856, Appendix, pp. 24, 25.

<sup>49</sup> *Senate Journal* (Special Session), 1856, Appendix, p. 25.

since the committee was "composed of both political parties" and made "a unanimous and decided report",<sup>50</sup> one "which demonstrated the most careless and reckless management that could well be conceived."<sup>51</sup>

As a matter of course Eads did not permit a report of this nature to be given publicity without its being challenged; for on July 29, 1856, he issued from West Point, Iowa, a statement entitled—"A CARD—To the Public".<sup>52</sup> In this "card" he protested that all moneys loaned by him were on real estate security, the property in all cases being worth from fifty to five hundred per cent more than the money loaned. Furthermore, in all cases of doubtful value or title the land was first duly appraised or the title examined before the loan was made upon it; and loans were made only to the very best men in the State belonging to both political parties.

Concerning the charge that no provision of law authorized him to loan the school fund, he rejoined that he "had taken the opinion of the best legal gentlemen of the State, with that of the Attorney General of the State, all of whom agreed that the Superintendent of Public Instruction was the only person who had any right to loan this particular fund . . . . If I have secured the money loaned, . . . . as above referred to, the fund is safe, and the people not wronged", adding that he "had not loaned one cent of the public funds" in his own name.

The committee report was received and read, but no corrective legislative action was taken inasmuch as the only recommendation of the committee looking toward such an end had already been enacted into law by the General As-

<sup>50</sup> *The Washington Press* (Washington, Iowa), Vol. I, No. 17, August 13, 1856.

<sup>51</sup> *The Des Moines Valley Whig* (Keokuk), Vol. X, No. 48, July 30, 1856.

<sup>52</sup> This "card" was published in full in *The Daily Capitol Reporter* (Iowa City), Vol. I, No. 133, August 15, 1856.

sembly in an act directing that the Superintendent should no longer be the receiver of school moneys. Through failure to reach the Governor, however, this act had, as noted, failed to become a law.<sup>53</sup>

All might now have gone well with Superintendent Eads if his non-compliance with certain laws of the special session had not precipitated a second conflict with Governor Grimes. Eads in submitting his biennial report to the Sixth General Assembly on December 1, 1856, saw fit to attack the official conduct of the Governor.<sup>54</sup> The direct cause of the unhappy misunderstanding was a joint resolution passed at the special session of the Fifth General Assembly and approved by the Governor on July 15, 1856.<sup>55</sup> This resolution authorized the borrowing of one hundred thousand dollars by the State from the school fund and appointed the Governor as the agent for that purpose.

Governor Grimes at once asked for the full amount of the loan, but received only forty thousand dollars of that amount. Upon October 26th he by letter requested Eads to pay over to him the remainder — sixty thousand dollars — in order to meet an unlooked for exigency. To this request Governor Grimes stated that he never received a reply, verbal or written.<sup>56</sup>

Dr. Eads received word in the late fall of 1856 that \$185,000 was then in Washington awaiting delivery to the properly certified State officer.<sup>57</sup> According to his report

<sup>53</sup> This bill was Senate File No. 32.— *Senate Journal* (Special Session), 1856, pp. 86, 89.

<sup>54</sup> *Report of the Superintendent of Public Instruction*, 1856, pp. 18, 19.

<sup>55</sup> *Laws of Iowa* (Special Session), 1856, p. 100, Joint Resolution No. 9.

<sup>56</sup> *House Journal*, 1856-1857, Appendix, pp. 708, 709; and *Report of the Superintendent of Public Instruction*, 1856, p. 49.

<sup>57</sup> The correct amount awaiting a properly certified call was \$185,785.32.— *Shambaugh's Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 29; and *The Washington Press* (Washington, Iowa), Vol. I, No. 32, December 10, 1856.



he, out of respect to the Governor, asked for the latter's certificate permitting him to draw the fund. The Governor replied that he would issue the certificate if Dr. Eads would file an additional bond in the penal sum of \$200,000. Such a bond was secured and personally presented to the Governor in Burlington. Yet, said Eads, the Governor refused the certificate unless the Superintendent would pledge the payment to him of sixty thousand dollars from the amount to be received and agree to hold the remainder subject to the action of the General Assembly at the approaching regular session. These conditions were thought by Eads to be unreasonable, and hence were refused by him, whereupon the Governor declined to give the certificate desired.<sup>58</sup> In referring to this episode Eads said:

Thus terminated the interview. By the hindrance and improper interference of the Executive Department with the duties assigned to the Superintendent, the School Fund of the State is now daily suffering loss at the rate of eighteen thousand five hundred dollars per annum in interest, or over one thousand five hundred dollars per month! Whether this was the result of a corrupt combination on the part of the Governor and others desiring to obtain the control and use of this fund for personal aggrandizement is for the General Assembly to determine by investigation, or *pass over in silence*.<sup>59</sup>

On account of this arraignment of the Governor the Senate, on December 10th, passed a resolution calling upon that officer for a statement of his transactions with the Superintendent of Public Instruction.<sup>60</sup> To this the Governor replied on the following day in a message not only incorporating all his correspondence with the Superintendent touching upon the point at issue, but explaining in some detail what had actuated him in the course pursued.<sup>61</sup>

<sup>58</sup> *Report of the Superintendent of Public Instruction*, 1856, p. 18.

<sup>59</sup> *Report of the Superintendent of Public Instruction*, 1856, pp. 18, 19.

<sup>60</sup> *Senate Journal*, 1856-1857, pp. 60, 64.

<sup>61</sup> *House Journal*, 1856-1857, Appendix, pp. 704-713, especially pp. 709, 710.

Governor Grimes came directly to the point by stating that Superintendent Eads had called upon him in Burlington but, he said, it "is wholly untrue that he asked for a certificate . . . . It is equally untrue that I informed him that if he would file an additional bond acceptable to me, to the amount of \$200,000 or to any other amount, that I would so certify."

The Governor as directly and more caustically added concerning the tender of a bond made at the time of this call by Dr. Eads that it "is unqualifiedly false that I declared that the bond was acceptable to me . . . . I at once objected to it and refused to approve it. . . . No allusion was made to the sixty thousand dollars except that . . . . I put to him the question why he had not paid to me that amount or answered my letter."

The reasons for refusal to accept the bond as stated by the Governor to Eads at the time of refusal and later repeated in his special message to the Senate were: (1) The General Assembly had indicated a desire that the Superintendent be given the custody of no more public moneys. (2) The Superintendent had failed to properly distribute the five per cent fund. (3) He had loaned the fund as he saw fit and without authority of law. (4) The Governor knew that the last report of the Superintendent to the legislature concerning the apportionment and distribution of the fund to the county school fund commissioners was false. (5) The Superintendent had violated the law enacted to prevent the loaning of the school fund by that official.<sup>62</sup>

<sup>62</sup> "According to the report of the committee on Ways and Means, of the Senate, submitted at the extra session, there had then been loaned to individuals, \$61,310.00; according to the Superintendent's recent report there has therefore, since that time been loaned by him, to individuals, \$91,030.00, and in direct contravention of the law aforesaid."—Letter of Governor Grimes to the President of the Senate, December 11, 1856, in *House Journal*, 1857, Appendix, pp. 709-713.

The Governor's regular biennial message of December 2nd and the special message of December 11th were productive of a large amount of legislation touching upon the receipt and management of the school funds, mostly corrective in aim. These measures may be summarized as follows:

(1) The Superintendent was relieved of the control of school moneys and school lands.<sup>63</sup> (2) All school funds were hereafter to be paid to the State Treasurer.<sup>64</sup> (3) Provision was made for the selection of a joint committee of members from both houses to investigate and report particularly concerning the loans made by the Superintendent from the school funds.<sup>65</sup> (4) James D. Eads was specifically required by name to pay over to the State Treasurer all school "monies now in his hands, which may have been, or which shall be paid to him" by school fund commissioners.<sup>66</sup> (5) The Attorney General was directed to investigate violations of section 2618 of the Code by any officer entrusted with school fund management and, if such violations were found, to institute proceedings in the manner prescribed by law.<sup>67</sup> (6) Provision was made for the appointment by the Governor of an agent or agents "to investigate the character and availability of all pretended loans of school money made by the superintendent of public instruction".<sup>68</sup>

The next move upon the part of Governor Grimes was

<sup>63</sup> *Laws of Iowa*, 1856-1857, pp. 1, 297.

<sup>64</sup> *Laws of Iowa*, 1856-1857, pp. 5, 8, 297.

<sup>65</sup> The members of this committee upon the part of the Senate were Senators Coolbaugh, Saunders, and Trimble. Upon the part of the House they were Representatives Cloud, Hardie of Dubuque, Davis, Van Valkenburg, and Kirkpatrick.—*Senate Journal*, 1856-1857, p. 90; and *House Journal*, 1856-1857, p. 101.

<sup>66</sup> *Laws of Iowa*, 1856-1857, p. 297.

<sup>67</sup> *Laws of Iowa*, 1856-1857, p. 463.

<sup>68</sup> *Laws of Iowa*, 1856-1857, pp. 243, 244.

quite as startling to the people at large as to Eads himself. Alarmed at developments in the conduct of the Superintendent, Joseph Van Valkenburg, one of the sureties, on January 12, 1857, petitioned the Governor to be released from further liability on Eads's bond.<sup>69</sup> In accordance with certain provisions of law Mr. Van Valkenburg petitioned that Eads be summoned to appear before the Governor and show cause why he should not be required to furnish new security upon his official bond and release the petitioner from liability thereon.

Eads was so notified but failed to appear. Upon the conclusion of the hearing it was ordered that he furnish a new bond to be filed for approval on or before January 26, 1857. This he also failed to do.<sup>70</sup> "By his non-compliance with the order, Dr. Eads ceased under the law to be a public officer of the State."<sup>71</sup> Thereupon, on February 5th, Governor Grimes appointed Dr. J. C. Stone of Iowa City as Superintendent to fill the vacancy thus created.<sup>72</sup> Dr. Eads, however, refused to surrender the office and for some

<sup>69</sup> The reasons stated by Mr. Van Valkenburg for requesting his release were: (1) Dr. Eads had loaned the school fund without the security required by law; (2) he had loaned money of the school fund contrary to law; (3) he had loaned school fund money which the legislature had prohibited him to loan; and (4) he had acted in violation of the law governing his duty as Superintendent of Public Instruction.—Petition in the Department of Public Archives, Des Moines, Iowa; and *Muscatine Daily Journal*, Vol. II, No. 189, March 20, 1857.

<sup>70</sup> Governor Grimes had notified Dr. Eads to furnish an additional bond of \$50,000. Dr. Eads in his letter addressed "To the People of Iowa" writes that "after consultation with my friends, I determined not to give any such bond, as all agreed that it was *unreasonable* and *exorbitant*, from the fact that he had before demanded and received from me, bonds to the amount of THREE HUNDRED THOUSAND DOLLARS."—*The Iowa Democratic Enquirer* (Muscatine), Vol. IX, No. 35, April 2, 1857; and *The Daily Express and Herald* (Dubuque), April 28, 1857.

<sup>71</sup> *The Muscatine Daily Journal*, Vol. II, No. 189, March 20, 1857.

<sup>72</sup> *The Iowa Democratic Enquirer* (Muscatine), Vol. IX, No. 35, April 2, 1857; *The Daily Express and Herald* (Dubuque), April 28, 1857; and *The Iowa City Republican*, February 5, 1857.

unexplained reason was able to maintain his official position until the end of the term for which he was elected.<sup>73</sup>

At the suggestion of friends, on March 7, 1857, Eads issued a defensive statement through the public press.<sup>74</sup> He bitterly attacked Governor Grimes for requiring the new bond, accusing him of plotting to obtain a Superintendent who would be the pliant tool of the Governor so "that they [the Governor and his political associates] may complete the work already begun, cover up their iniquity, and get possession of the school lands remaining yet unsold. . . ."<sup>75</sup> I shall not permit or recognize his [Dr. Stone's] authority, as his appointment is made without authority of law."<sup>76</sup> With this public statement the unhappy incident of the removal came to a close.

By virtue of "An Act concerning school monies," approved on January 28, 1857, Governor Grimes appointed Mr. J. M. Beck of Fort Madison, Iowa, as State agent "to investigate the character and availability of all pretended

<sup>73</sup> *Report of the Superintendent of Public Instruction*, 1857, p. 30; *The Iowa Democratic Enquirer* (Muscatine), Vol. IX, No. 35, April 2, 1857; and *The Daily Express and Herald* (Dubuque), April 28, 1857.

<sup>74</sup> *The Iowa Democratic Enquirer* (Muscatine), Vol. IX, No. 35, April 2, 1857; and *The Daily Express and Herald* (Dubuque), April 28, 1857.

<sup>75</sup> Dr. Eads wrote concerning Governor Grimes and his associates that "Having seen the hand-writing on the wall, of a fast coming verdict of popular condemnation upon their high handed acts of usurpation, fraud, and robbery of the School funds; and being well convinced that the next Superintendent elect will be a democrat, while their power is passing away, and the people are becoming aroused to their villainy, that horde of bloated vampires who have been fattening upon the spoils of the treasury are exceedingly anxious to get the office out of my hands for one of their pliant tools".—*The Iowa Democratic Enquirer* (Muscatine), Vol. IX, No. 35, April 2, 1857; and *The Daily Express and Herald* (Dubuque), April 28, 1857.

<sup>76</sup> Dr. Eads also adds: "Not all the machinations of a corrupt partizan Executive, aided by all the political legerdemain, and intricate machinery of party drill, shall drive me from my post of duty."—*The Iowa Democratic Enquirer* (Muscatine), Vol. IX, No. 35, April 2, 1857; and *The Daily Express and Herald* (Dubuque), April 28, 1857.

loans of school money made by the superintendent of public instruction".<sup>77</sup> Under the authority granted by this act Mr. Beck made a thorough investigation of all loans, transmitting the results of his work to Governor Grimes under date of November 10, 1857.<sup>78</sup>

Mr. Beck found that the State Auditor had in his possession fifty-four notes which he had received from Dr. Eads as having been taken by him for loans of the five per cent fund. These notes amounted to \$155,199.99 in the aggregate. Thirty-eight were accompanied by mortgages as security. Sixteen of these mortgages, eleven of which had not been recorded, were then in the hands of the State Auditor. Six of the remaining number were later received from the Recorder of Lee County, ten came from the same official in Polk County, and three others were received from various sources.<sup>79</sup>

Eleven of the notes, amounting to \$14,746.12 in the aggregate, were taken by Eads for money loaned and purporting to be his own individual funds. Eight notes, amounting in all to \$16,625, were given for property purchased of Eads, while one note for \$20,000 was executed by Eads for money which he borrowed from the school fund himself. Of the fifty-four notes reported by Eads to have been taken by him for loans of the school fund only twenty-nine were given by real borrowers of that fund. Seven

<sup>77</sup> "SEC. 2. It shall be the duty of such agent or agents as the Governor may direct to investigate the character and availability of all pretended loans of school money made by the superintendent of public instruction, and the value and kind of securities given for such loans, to obtain further and additional security thereon when and where deemed necessary, to institute suits for the recovery of the money as having been obtained without authority of law, when such security is declined or refused, and to do such further acts as may be deemed necessary to secure the safety of the common school fund."—*Laws of Iowa, 1856-1857*, p. 244.

<sup>78</sup> *Report of J. M. Beck, Agent for Investigating the Disposition of the School Fund During the Administration of James D. Eads, 1857.*

<sup>79</sup> *Report of J. M. Beck*, p. 3.

notes, amounting to \$18,168.87, which had been given for fund loans had no security whatever nor could Mr. Beck obtain any; while eight notes, amounting to \$33,625, were secured to the amount of \$21,970, thus entailing a possible loss of \$11,655, in addition to those notes having no security at all.<sup>80</sup>

“By selling property on time and taking notes therefor, and loaning money at a usurious rate”, Dr. Eads realized a total gain of \$9,455 on purported loans amounting to \$16,875. By receiving notes issued for the latter amount he was able to take \$9,455 in cash from the school fund and thereby balance his account by reporting said notes as loans made by him. In addition he had collected interest to the amount of \$1,189.83, which he had not accounted for. Adding his \$20,000 note, the interest item of \$1,189.83, and his gain of \$9,455 by speculating in property with school fund money, it may be seen that he was enjoying the use and benefit of \$30,644.83 of school fund moneys.<sup>81</sup>

For convenience in recapitulation Mr. Beck divided the fifty-four notes into the following groups or classes:

1st. Notes issued to Mr. Eads by investors or borrowers for what they believed were his own personal funds — not school funds — including notes purchased or discounted by Eads.<sup>82</sup> This group contained seventeen notes given for an aggregate amount of \$34,375. Of this amount \$20,500 was considered good — \$16,000 being satisfactorily secured and \$4,500 collectible. This would indicate a net loss of \$13,875 on this class of notes.<sup>83</sup>

<sup>80</sup> *Report of J. M. Beck*, p. 20.

<sup>81</sup> *Report of J. M. Beck*, p. 21.

<sup>82</sup> *Report of J. M. Beck*, pp. 21, 22.

<sup>83</sup> Not one of these notes “is of such a character as would authorize its being accepted as a loan of the School Fund. Every one of them was a private Note of Mr. Eads, obtained for money loaned, on property sold, and handed over to the State as loans of the School Fund.”— *Report of J. M. Beck*, p. 22.

2nd. Notes given for bona fide loans of the school fund. In this class there were twenty-nine notes amounting to \$99,578.87. Of this amount \$11,318.87 was neither collectible nor sufficiently secured.<sup>84</sup>

3rd. The note executed by Eads himself for money loaned to himself. This note was given for \$20,000 and was secured by a mortgage on property valued at \$11,000, which sum, however, could not possibly be realized from the property. "He appropriates to his own use \$20,000; calls it a loan to himself, and hands over as vouchers therefor a Note signed by himself, and secured by mortgage on property worth about half the amount!"<sup>85</sup> The interest, amounting to several hundred dollars, had never been paid upon this note by Dr. Eads. Mr. Beck therefore considered this note as evidence of defalcation to the amount of \$20,000.

Owing to the chaotic condition of affairs in Mr. Eads's office and the absence of any records, at least any that were worthy, concerning his transactions with the five per cent fund, Mr. Beck was unable to submit any definite statement relating to that officer's shortage. Below are set forth three different means of determining the shortage, as indicated by Mr. Beck, each producing a different amount as a result. The variation is due to differences of opinion as to what constituted defalcation upon the part of a public officer.

First, recapitulating the losses to the fund in accordance with the statements given above:

Loss and deficiency upon notes of the first class. . . . .	\$13,875.00
Loss and deficiency upon notes of the second class. . . . .	\$11,318.87
Loss on third class — Mr. Eads's note. . . . .	\$20,000.00
Interest collected and not accounted for. . . . .	\$ 1,209.93

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\$46,403.80<sup>86</sup>

<sup>84</sup> *Report of J. M. Beck*, pp. 21, 23, 24.

<sup>85</sup> *Report of J. M. Beck*, p. 24.

<sup>86</sup> *Report of J. M. Beck*, p. 25.



This, however, is below the true estimate and is the most favorable showing which can be made for Dr. Eads.

Second, a truer statement of the condition of his affairs would be as follows:

Amount of his private and individual notes in second class — deducting the note of C. B. Waite since paid .....	\$33,475.00
Loss upon notes of first class by reason of no security	\$11,318.87
Amount of third class — Eads's own note.....	\$20,000.00
Interest collected and not accounted for.....	\$ 1,209.93
	\$66,003.80 <sup>87</sup>

Third, according to accounts on file in the office of the Superintendent of Public Instruction, Dr. Eads received a total of \$281,042.44 of the five per cent fund during his term of office. He also received \$1,209.93 as interest upon the same. This would make a total debit of \$282,252.37 standing against him.<sup>88</sup> Balanced against this is a total credit in his favor of \$217,101.59, composed of the following items:

Amount distributed to counties.....	\$ 87,841.59
Amount loaned the State.....	\$ 40,000.00
Amount of bona fide loans — deducting \$11,318.87 as not secured .....	\$ 88,260.00
Amount received from C. B. Waite's note.....	\$ 1,000.00
	\$217,101.59

<sup>87</sup> Report of J. M. Beck, pp. 25, 26. An error in the addition of the sums has been corrected.

This estimate was based wholly upon notes and securities in the hands of Mr. Beck and "not upon the amount of money which Mr. Eads received and disbursed. The sum he received may be easily ascertained, but it would be a difficult, if not an impossible task to ascertain the amount he disbursed. His reports do not agree with each other; his vouchers do not agree with his report, and in several cases, the books and statements of officers receiving money from him contradict both his vouchers and reports."— Report of J. M. Beck, p. 26.

<sup>88</sup> Report of J. M. Beck, p. 28.

To recapitulate:

Debit, \$282,252.37

Credit, 217,101.59

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Deficit, \$ 65,150.78<sup>89</sup>

In reply to a letter of inquiry addressed to him by Mr. Beck, the Comptroller of the United States Treasury reported that a total of \$281,315.45 of five per cent funds had been paid to the State of Iowa during Dr. Eads's term of office. Iowa State officers charged against Eads for the same fund and the same period a total of \$281,042.44 — a difference of \$273.01.<sup>90</sup> The report of the Comptroller is presumed to have been correct. Hence, the sum of \$273.01 should be added to the deficit indicated above — \$65,150.78 — to secure the total deficit, which then would be \$65,423.79. This latter total Mr. Beck concluded to be the true amount of the deficit in the accounts of Dr. Eads and the sum for which his bondsmen should be held liable.

Soon after the transmission of this report by the Governor the Seventh General Assembly passed an act, approved on March 15, 1858, authorizing the Governor to appoint "a Commissioner to settle with the sureties of J. D. Eads, late Superintendent of Public Instruction."<sup>91</sup> In compliance with this act, Governor Lowe appointed Robert A. Russell of Fort Madison, Iowa, to effect such a settlement, using Beck's report as a basis.<sup>92</sup>

Immediately upon the receipt of his commission Mr. Russell notified the sureties upon the three Eads bonds that he would meet them at his office in Fort Madison on June 1, 1858, for the purpose of reaching a settlement on the terms

<sup>89</sup> *Report of J. M. Beck*, pp. 28, 29.

<sup>90</sup> *Report of J. M. Beck*, p. 29.

<sup>91</sup> *Laws of Iowa*, 1858, p. 92.

<sup>92</sup> *The Iowa Weekly Citizen* (Des Moines), Vol. IV, No. 48, January 11, 1860.

contemplated by the law. Sufficient time was permitted by the notice for the most distant surety to be present on the day appointed. Not one answered the notice, however, and only two came to make inquiries.<sup>93</sup> Consequently no settlement could be made.

It would seem that this failure to appear and attempt a settlement upon the part of the sureties was due to their objection to making a settlement with the Beck report as a basis. This report was objected to for the following reasons:

1. It was based upon evidence obtained from every source but the proper one — Dr. Eads himself.<sup>94</sup>

2. The sureties “know nothing about my accounts with the State.”<sup>95</sup>

3. If all the papers had been left in Dr. Eads’s hands he could have settled the matter satisfactorily.<sup>96</sup>

4. The deficiency in accounts was only apparent.<sup>97</sup>

5. Dr. Eads had always been ready and willing to settle, but had had no opportunity to do so.<sup>98</sup>

6. The Beck report was “a *one-sided partizan concern*”,

<sup>93</sup> Report of Commissioner Robert A. Russell, June 4, 1858, in Department of Public Archives, Des Moines, Iowa.

<sup>94</sup> Letter from Dr. Eads to Governor R. P. Lowe, June 26, 1858, in Department of Public Archives, Des Moines, Iowa.

<sup>95</sup> “It would be impossible for them to know what was *right* and *just* until a final settlement was first made with me.”—Letter from Dr. Eads to Governor R. P. Lowe, June 26, 1858, in Department of Public Archives, Des Moines, Iowa.

<sup>96</sup> By this act of taking away his papers “the State assumed the responsibility of collecting them herself . . . they assumed the ownership and entire control of the whole matter.”—Letter from Dr. Eads to Commissioner Robert A. Russell, June 24, 1858, in Department of Public Archives, Des Moines, Iowa.

<sup>97</sup> Letter from Dr. Eads to Governor R. P. Lowe, June 26, 1858, in Department of Public Archives, Des Moines, Iowa.

<sup>98</sup> Letters from Dr. Eads to Governor R. P. Lowe, June 26, 1858, and July 9, 1858, and to Commissioner Robert A. Russell, June 24, 1858, in Department of Public Archives, Des Moines, Iowa.

the result of prejudice; and "it does not embrace all the business which I had with the State as Superintendent."<sup>99</sup>

Commissioner Russell was impressed with the belief that Dr. Eads and his sureties were simply taking up time in an effort to defer a settlement upon any basis. He expressed the belief that if an adjustment were effected at all it would have to be accomplished as the outcome of a lawsuit.<sup>100</sup> Furthermore, he pointed out that whatever course should be determined upon ought to be attended to promptly, since the sureties who "are worth anything at all, . . . will be endeavoring to put their property out of their hands."<sup>101</sup>

Dr. Eads resented the attempt upon the part of the State to negotiate a settlement with his sureties, chiefly upon the alleged grounds that instead of his owing the State some sixty-five thousand dollars as indicated by the Beck report, the State was really indebted to him in a sum equalling nearly twenty-seven thousand dollars. In support of this contention he submitted the following abstract of his accounts as Superintendent of Public Instruction, insisting that he had in his possession vouchers from the proper officers which would bear out his claims:

James D. Eads Sup. of Pub. Inst.

To the 5 per cent Fund Dr	
January 1855, To Amt Recd. . . . .	\$ 54,441.59
To Amt Recd. . . . .	\$226,873.86
	<hr/>
	\$281,315.45

<sup>99</sup> Letter from Dr. Eads to Governor R. P. Lowe, July 9, 1858, in Department of Public Archives, Des Moines, Iowa.

<sup>100</sup> Letter from Commissioner Robert A. Russell to Governor R. P. Lowe, July 16, 1858, in Department of Public Archives, Des Moines, Iowa.

<sup>101</sup> Letter from Commissioner Robert A. Russell to Governor R. P. Lowe, June 4, 1858, in Department of Public Archives, Des Moines, Iowa.

Cr.

By Amt paid Auditor of State and School Fund Commissioners as shown by the Report of Mr. Beck and the Report of the Auditor to the late Legislature .....	\$242,541.49
By amount paid School Fund Commissioners and other Officers authorized by law to receive it; and that reported by the Auditor for which I hold Vouchers .....	\$ 21,000.00
By Amt loaned Governor Grimes for use of the State	\$ 40,000.00
By Amt., charged for receiving from the U. S. Treasury \$281,315.45 and delivering the same at Iowa City .....	\$ 4,281.61
By Amount paid for Postage and Extra Clerk Hire	\$ 394.00
	<hr/>
	\$308,217.07
Amt Brot down.....	\$281,315.45
	<hr/>
Bal. due me.....	\$ 26,902.62 <sup>102</sup>

Attorney General Rice, in compliance with a joint resolution passed by the Sixth General Assembly approved on January 28, 1857,<sup>103</sup> had in the meantime presented Dr. Eads to the Johnson County grand jury at Iowa City upon the criminal charge of embezzlement.<sup>104</sup> The evidence upon which the charge was based required several days for ade-

<sup>102</sup> This statement of Dr. Eads's account with the State concerning the five per cent fund is incorporated in two letters — one to Governor R. P. Lowe written by Dr. Eads himself and a second to Governor R. P. Lowe written by Commissioner Robert A. Russell, the latter including a copy of the abstract of account. The statement of account contained in the former of the two letters has been taken as the more reliable since it is the work of Dr. Eads himself. There is a disagreement between the two abstracts of approximately \$1246.

“No person who was acquainted with the Dr.'s circumstances when he took charge of the School Fund can be made to believe that he had \$27,000 to advance to the interest of the School Fund.”— Letter from Commissioner Robert A. Russell to Governor R. P. Lowe, July 16, 1858, in Department of Public Archives, Des Moines, Iowa.

<sup>103</sup> *Laws of Iowa*, 1856-1857, p. 463.

<sup>104</sup> *The Washington Press* (Washington, Iowa), Vol. III, No. 22, October 13, 1858.

quate presentation to the jury. The jury, however, refused to return a true bill against Dr. Eads.<sup>105</sup> Later, a civil suit for the recovery of some \$71,880.97 was instituted by the same official against Dr. Eads and his sureties, but was postponed from time to time owing to the efforts being made by Commissioner Russell to settle matters in some satisfactory manner.<sup>106</sup> Upon Mr. Rice's retirement from office the civil suit was not continued by his successor and was finally struck from the docket.<sup>107</sup>

The Eads defalcation seems to have been the paramount topic of discussion at this time. While Commissioner Russell was endeavoring to effect a settlement and Attorney General Rice was seeking the indictment of Dr. Eads for embezzlement, a third investigation of Eads's affairs was being carried on under the authority of the General Assembly of Iowa. This inquiry was conducted by a board of three commissioners, appointed by Governor Lowe, who reported the results of their work to the Governor on June 1, 1858.<sup>108</sup>

Little additional information was disclosed in this report owing to the fact that the two preceding investigations and

<sup>105</sup> The grand jury stood eleven to one in favor of returning a true bill against Dr. Eads.—*The Washington Press* (Washington, Iowa), Vol. III, No. 22, October 13, 1858.

<sup>106</sup> *The Washington Press* (Washington, Iowa), Vol. III, No. 22, October 13, 1858.

<sup>107</sup> Attorney General Rice was accused of being dilatory in the prosecution of Dr. Eads. In defense of what he had done he published a letter in the *Davenport Gazette* in which he stated that "There has never been a time that suit could have been instituted under the policy adopted by the General Assembly—and the policy was . . . considered to have been the only one that could have resulted successfully in securing this fund."

This policy of the General Assembly was that of attempting collection without recourse to the courts.

<sup>108</sup> The commissioners appointed by Governor Lowe were Messrs. John A. Kasson, J. M. Griffiths, and Thomas Seeley. They were appointed by virtue of an act of the Seventh General Assembly, approved on March 23, 1858. For this act see the *Laws of Iowa*, 1858, pp. 410-412.

reports had been quite thorough and because, also, of the "utter confusion" existing in the business of the office during Dr. Eads's administration.<sup>109</sup>

Such irreconcilable statements and so many erasures and alterations were found in the book kept by Dr. Eads that the commissioners were forced to the conclusion that the book was entirely unreliable as a record. In no case did the records found in this book agree with his published reports. Despairing of reaching any tangible result, owing to this condition, without "an investigation very much extended, and over a good part of the State", the commissioners adopted in the main the facts which had previously been reported by Mr. Beck.

As a criterion upon which to base a conclusion as to the amount of the defalcation, the commissioners adopted the following rules of procedure: (1) They charged Dr. Eads with the whole amount received from the United States by him. (2) They credited him with "all bona fide loans from this fund, made to parties *as such*, with the highest degree of prudence and care in the investments and securities". (3) They did not credit him "for loans made to parties *as from his own funds*, the securities running to the individual, not to the officer".<sup>110</sup>

Proceeding upon this basis they submitted the following statement of the accounts of Dr. Eads with the five per cent fund:

<sup>109</sup> *Report of the State Commissioners on the Affairs of the Superintendent of Public Instruction*, p. 9, in *Legislative Documents*, 1859-1860. Hereafter when referring to this document it will be cited as *Report of the State Commissioners*, 1858.

<sup>110</sup> *Report of the State Commissioners*, 1858, pp. 9-11.

The Commissioners would not recommend crediting Dr. Eads with the loans as made "unless the State chooses to accept these, and discharge him *pro tanto*. The evidence of investment carrying no notice of its public character, and being understood by at least one of the parties, as a private loan, the act would show *prima facie*, a conversion of the public money to that extent."

Dr.

There was paid to him in fact, as follows:

Dec. 15, 1854, (per certificate U. S. Comptroller,) .....	\$ 54,441.59
January 2, 1856, (per certificate U. S. Comptroller,) .....	\$226,873.86
	\$281,315.45

Cr.

Distributed to counties, as per vouchers, (except Davis county, which received \$5,000, more than voucher calls for) some of which are doubted,.....	\$ 92,341.59
Loaned the State, July 15, 1856,.....	\$ 40,000.00
Bona fide School Fund loans, satisfactorily secured, as reported by Mr. Beck, excepting therefrom his No. 45, as not well secured. ....	\$ 77,330.00
	\$209,671.59
Leaving not satisfactorily accounted for..	\$ 71,643.86
For which add interest paid to him on alleged school loans and retained.....	\$ 1,237.11
	\$ 72,880.97
Thus making total apparent deficit.....	\$ 72,880.97
Subject to a deduction of Waite's note, since paid, (\$1,000,) and whatever may be realized from the collaterals held by the State. <sup>111</sup>	

The conclusions of this report were accepted as final in fixing the amount of the defalcation. Henceforth, all action taken was based upon the amount of the final deficit after deducting Waite's note, as given above — \$71,880.97.

In concluding their report the commissioners recommended four forms of recourse, two of which were later attempted, namely, the bringing of a suit against Dr. Eads and his bondsmen, and an effort to adjust the whole matter by mutual agreement through referees. Neither plan

<sup>111</sup> Report of the State Commissioners, 1858, pp. 10, 11.



proved successful in accomplishing the end sought. The conviction of the investigators was quite succinctly stated in the belief that "There is no information, there are no facts or records, in any department or office of the State Government, that will enable any officer to audit this claim."<sup>112</sup>

During his official term Dr. Eads had been required to file three bonds for a total penal sum of three hundred thousand dollars.<sup>113</sup> This additional security had been considered advisable and necessary owing to the rapidly increasing financial responsibility attached to the office. Under the operation of the *Code of 1851* the sureties upon each of these bonds remained liable to the amount of the security subscribed by them as if no new bond had been filed;<sup>114</sup> that is, the new bonds had been merely the filing of new and additional security and did not supplant those previously filed.<sup>115</sup>

Upon the publication of the report of the commissioners, above mentioned, and its acceptance as a final statement fixing definitely the amount of the Eads deficiency, attempts were made to have the sureties relieved from their liabil-

<sup>112</sup> *Report of the State Commissioners*, 1858, pp. 14-16.

<sup>113</sup> The first bond — drawn in the penal sum of twenty-five thousand dollars — was filed in the office of the Secretary of State on June 10, 1854, having been approved by Governor Hempstead on June 7, 1854. This bond was later declared invalid by the judge of the First Judicial District.

The second bond was drawn for a similar amount, was approved by Governor Grimes on May 14, 1855, and was filed with the Secretary of State on May 16, 1855.

The third bond was approved by Governor Grimes on December 18, 1855, and was filed with the Secretary of State on December 21, 1855. This bond was drawn in the penal sum of \$250,000, and was subscribed to by fifty-one persons in addition to Eads as principal. These bonds may be found in the Department of Public Archives, Des Moines, Iowa.

<sup>114</sup> "If such requisition be complied with both the old and new security shall be in force".— *Code of 1851*, Sec. 420.

<sup>115</sup> As previously noted this was not true of the first bond which was later declared invalid.

ity.<sup>116</sup> Chief among the reasons cited in support of the contention that they should be relieved was the claim that the signers of the third bond were induced to subscribe upon the representation that the paper was a Democratic caucus call.<sup>117</sup> Other pleas advanced were that the signers of the first bond had been released from their liability,<sup>118</sup> that enforcing the penalty would inflict financial ruin upon the sureties,<sup>119</sup> and that as a mere matter of policy the bondsmen should be granted release. The latter plea was founded upon the contention that if release were not granted the whole German element of the State would align itself against the Republican State administration.<sup>120</sup>

Petitions requesting release for the sureties were circulated among the German people of the State, open meetings were held, the public press — German and non-German — became active, while the Governor and members of the legislature were besieged by letters of entreaty, all petitioning that release be granted. Messrs. Joseph Van Valkenburg and A. T. Shaw were commissioned by their fellow sureties to go to Des Moines to present their case to the Governor

<sup>116</sup> *The Weekly Ottumwa Courier*, New Series, Vol. V, No. 4, February 2, 1860; *The Iowa Weekly Citizen* (Des Moines), Vol. IV, No. 50, January 25, 1860; *The Burlington Free Press*, January 14, 1860; *Senate Journal*, 1860, pp. 200, 201, 310, 311; and letters to Governor Kirkwood written by Messrs. Benedict Hugel, A. J. Shaw, Ex-Governor R. P. Lowe, Jonathan Jones, J. M. Beck, and J. R. Briggs, Jr., Associate Editor of the *Daily Gate City*, in Department of Public Archives, Des Moines, Iowa.

<sup>117</sup> Letter of Dr. A. J. Shaw to Governor Kirkwood, January 31, 1860, in Department of Public Archives, Des Moines, Iowa; and *The Burlington Free Press*, January 14, 1860.

<sup>118</sup> Letter from Jonathan Jones to Governor Kirkwood, December 31, 1860, in Department of Public Archives, Des Moines, Iowa.

<sup>119</sup> *The Iowa Weekly Citizen* (Des Moines), Vol. IV, No. 50, January 26, 1860; *The Weekly Ottumwa Courier*, New Series, Vol. V, No. 4, February 2, 1860; *The Burlington Free Press*, January 14, 1860.

<sup>120</sup> Twenty-two of the fifty-one signers of the third bond were Germans.— Letters from A. J. Shaw and Benedict Hugel to Governor Kirkwood, January 30 and 31, 1860, in Department of Public Archives, Des Moines, Iowa.

and the legislature.<sup>121</sup> Upon February 6, 1860, Senator Rankin of Lee County "presented the petition of 1500 German citizens of Iowa, praying for the release of the sureties of Dr. Eads." Later, Senator Rankin introduced a bill providing for the submission of the question to arbitration or reference.<sup>122</sup> The measure, however, failed of passage.

While the Eads sureties were urging their cause before the legislature at Des Moines, the State, through Attorney General Rice was preparing for trial, before the Lee County District Court, a civil suit against the signers of the second Eads bond. Fearing the outcome of the suit if it were tried before a Lee County jury,<sup>123</sup> Attorney General Rice upon behalf of the State, in May, 1860, accepted the proposition of the counsel for Eads and his sureties that the questions at issue be submitted to a reference board composed of three District Judges constituting a tribunal equal in authority to that of a court.

Thereupon, on June 1, 1860, an order was entered in the Lee County District Court by the presiding Judge — Francis Springer — designating Judges George G. Wright, David S. Wilson, and William G. Woodward as referees to hear and determine the issues between the parties to the pending suit.<sup>124</sup> Although the suit involved Dr. Eads and the signers of the second bond alone as defendants, the issues presented would, upon their determination affect also the sureties upon the third bond.

On August 24, 1860, the referees met at Fort Madison pursuant to "previous notice given to all concerned." All parties interested were present by counsel, the State being

<sup>121</sup> Letter from Ex-Governor R. P. Lowe to Governor Kirkwood, January 30, 1860, in Department of Public Archives, Des Moines, Iowa.

<sup>122</sup> *Senate Journal*, 1860, pp. 200, 201, 310, 311.

<sup>123</sup> Letters from Attorney General Rice to Governor Kirkwood, April 27, and June 4, 1860, in Department of Public Archives, Des Moines, Iowa.

<sup>124</sup> *Report of Referees, State of Iowa vs. James D. Eads, et al.*

represented by the Attorney General and Attorney J. M. Beck, Dr. Eads by J. A. Goodrich, and the sureties by J. C. Hall, S. F. Miller, and D. F. Miller.<sup>125</sup>

“The Referees having heard the evidence and the arguments of Counsel, upon mature consideration thereof” arrived “at the following conclusions upon the propositions of Law which” were “made the criterion of the liability of the defendants.”<sup>126</sup> These conclusions “may be thus . . . briefly stated. The defendants are liable for the whole of the moneys received by said Eads as Superintendent of

<sup>125</sup> *Report of Referees, State of Iowa vs. James D. Eads, et al.*

<sup>126</sup> The following are the propositions of law—as stated by the referees themselves—upon which they based their conclusions:

“1. That in strictness of Law, the Superintendent was not authorized either to loan or to distribute the proceeds of the five per cent fund, coming into his hands, but that it was his duty to hold them (laying the matter before the General Assembly) until some provision of Law should be made in relation thereto. Neither Law nor Equity, however, would hold him responsible on this account. . . .

“2. That the claims which passed to the Auditor of State under the Act of the General Assembly of 22d. Dec. 1856 (Stat. 1857, ch. 10, Sec. 3, p. 8) were not taken & are not held, by the state as collateral security.

“3. That the State, neither by its own action nor by that of its agents, is so far concluded, as to be held to have adopted all the above claims in payment or satisfaction of the liability of the said Eads.

“4. That the evidence does not sustain the conclusion that in all instances, the School Funds were used in the purchase of the lands sold by said Eads, the Securities for which sales were by them delivered to the State as & for evidences of investments of the School moneys.

“5. That the pretended loan by the said Eads of the Twenty Thousand dollars to himself is clearly invalid & that he & his sureties are responsible therefor.

“6. That the defendants are liable for these loans of the School Fund in which no security was taken, or where the security was so manifestly insufficient as to indicate bad faith or an intentional violation of duty.

“7. That the State in exoneration of the Sureties may equitably be held to accept those notes given for sale of Real Estate which are based on actual & valid transactions, when said Eads had title & which are reasonably secured and notes and mortgages may be presumed to be given for legitimate loans and in bona fide transactions & to be properly secured unless the contrary is made to appear.”—*Report of Referees, State of Iowa vs. James D. Eads, et al.*

Public Instruction, subject to the following exceptions & deductions.”

- 1st. The Amount distributed to the County Fund Commissioners.
- 2d. The amount paid to the Governor, on the loan to the State, under the joint Resolution of July 15, 1856.
- 3d. The sums purporting to be loaned & in relation to which no marks of bad faith appear.<sup>127</sup>

Under the rules above set forth the referees found, on January 11, 1861, that Eads had received and was accountable for the following sums:

Amount of the five per cent fund for the year 1853 by United States Treasurers Warrant of 19 Dec. 1854.....	\$ 54,441.59
For the same fund for the year 1854 by warrant of Jan. 7, 1856.....	\$226,873.86
Interest received on several notes at divers times .....	\$ 1,209.93
	<hr/>
Making a total of.....	\$282,525.38

And under the rules above named the Referees find that said Eads is to be allowed the following sums—

Amount distributed to the School Fund Commissioners of divers Counties .....	\$ 91,541.59
Amount paid the Governor on the loan of \$100,000 called for by Resolution of 15 July 1856, the sum of \$	40,000.00
And the sum of.....	\$112,536.00
being the amount of “notes” purporting to be for money loaned by the Superintendent	
	<hr/>

	\$244,077.59
Which leaves a balance against Eads of	\$ 38,447.79

<sup>127</sup> Report of Referees, State of Iowa vs. James D. Eads, et al.

With interest at ten per cent from 1st Aug. 1856 to 10th Oct. 1860 amount- ing to .....	\$ 16,126.65
Said Eads is not entitled to credit for notes amounting in the aggregate to	\$ 41,418.87
	<hr/>
Total balance against Eads.....	\$ 95,993.31 <sup>128</sup>

In concluding their report the referees recommended that the notes amounting in the aggregate to \$41,418.87 "be placed in the hands of a receiver to be prosecuted & that their proceeds be passed to the credit of the said sureties as far as they shall have paid the judgment rendered against themselves in this cause."<sup>129</sup> In keeping with this recommendation, Judge Springer on January 30, 1861, appointed "Joshua Tracy district attorney for the first Judicial District, receiver to take charge of and collect the notes and mortgages which the referees have above recommended should be placed in the hands of a receiver."<sup>130</sup>

Being "desirous of discharging his whole duty" and not wishing it to be said after the close of his term "that others have had to attend to a portion of my duties",<sup>131</sup> Receiver Tracy at once took steps looking toward collection by means of foreclosure. At the expiration of his term of office in 1869 he reported that he had been able to collect by this means a total of \$13,093.96. Later, on November 10, 1871, there was collected by process of execution on J. B. Dorr et

<sup>128</sup> *Report of Referees, State of Iowa vs. James D. Eads, et al.*

<sup>129</sup> The notes for which Dr. Eads was not entitled to credit as designated by the referees were: R. W. Rothrock, \$2000; Leech and McFarland, \$3000; Boyles, Hugel and Stempel, \$4000; A. T. Walling and Co., \$2000; T. J. Cavenor (?), \$7318.87; Thomas Snyder, \$1500; E. W. Lake, \$1000; Gilbert, Burns, McBride and Paul, \$600; James D. Eads, \$20,000; total, \$41,418.87.— *Report of Referees, State of Iowa vs. James D. Eads, et al.*

<sup>130</sup> Order of Judge Francis Springer appointing Joshua Tracy as Receiver, January 30, 1861, in Department of Public Archives, Des Moines, Iowa.

<sup>131</sup> Letter from Attorney Tracy to Governor Kirkwood, January 14, 1861, in Department of Public Archives, Des Moines, Iowa.

al the sum of \$2961.00.<sup>132</sup> In addition to this, Attorney General Rice in his final report upon the Eads matter had indicated a collection of \$55,000,<sup>133</sup> thus making, up to the year 1872, a total realization of \$71,054.96 by the State upon the Eads loans, the greater portion of which had been collected by execution.

In addition to the above amount in cash, the State had taken approximately ninety city lots and thirty-five acres of city lands in the cities of Keokuk and Des Moines, and 1236.25 acres of land scattered through various counties of the State.<sup>134</sup> There is nothing in the archives of the State Auditor's office indicating that this real estate was ever realized upon. However, if the State realized proportionately upon this with other real estate sold under execution its sale should have netted approximately ten thousand dollars. This would bring the total net realization by the State on the Eads loans to about \$81,054.96.

How near this might have come to balancing the claims against Eads can not be ascertained without a computation of the interest due upon the unpaid loans. No definite information enabling one to do this is now obtainable. Perhaps the most accurate approximation is that of a *Report on the Losses to the Permanent School Fund*, made by State Auditor John A. Elliott on February 24, 1870, in response to a resolution of the State Senate.<sup>135</sup> His estimate of losses to that fund due to the Eads loans and sureties was \$140,131.54. This amount included both principal and interest due at the time and is perhaps a little high.

<sup>132</sup> *Report of Receiver Tracy*, in Department of Public Archives, Des Moines, Iowa.

<sup>133</sup> Letter from Attorney General Rice to Governor Kirkwood, December 25, 1860, in Department of Public Archives, Des Moines, Iowa.

<sup>134</sup> Reports in Department of Public Archives, Des Moines, Iowa.

<sup>135</sup> *Report of the Auditor of State on the Losses to the Permanent School Fund*, p. 7, in *Legislative Documents*, 1870, Vol. II.

It will be noted that there is an apparently irreconcilable disagreement among the four reports considered above as to the amount of James D. Eads's defalcation. No two reports agree in fixing the same sum as the amount of the deficiency. The legislative Committee on Ways and Means reported a shortage of \$98,344.75, the report of Mr. Beck fixed the amount at \$65,423.79, the report of the State commissioners stated the deficiency as being \$71,880.97, and the findings of the referees fixed his defalcation at \$95,993.31.

Mr. Beck's estimate is the most favorable to Dr. Eads. The report rendered by the Committee on Ways and Means differed from that of Mr. Beck in that certain notes rejected by the committee were accepted by Mr. Beck because of his having obtained new or sufficient security. Again, the reports of the State commissioners and Mr. Beck disagree, owing to the rejection by the former of security accepted by the latter. The conclusion of the referees differs from the preceding three, since in this report is incorporated a large interest total not found in any of the others.

It will be recalled that the report of the State commissioners was accepted by Governor Lowe and Attorney General Rice as being the most conclusive verdict upon the amount of the shortage. Upon the report of these men the Attorney General based his civil suit against Eads and his sureties, and this contemporary view may be accepted as evidence of its accuracy and reliability. Moreover, the investigation leading up to the report of the commissioners was most thorough, systematic, and extensive and it contained within itself a critical summary and digest of its predecessors. If, therefore, this report is accepted as authoritative the defalcation of James D. Eads will be found to have been approximately \$71,880.97, not including accrued interest except as noted.

THOMAS TEAKLE