THE EXECUTIVE VETO IN IOWA

As early as the days of Montesquieu there developed in political thought the theory that the several branches of government should be kept separate. This theory was very early introduced in America, and it remains to-day an important feature of both the State and national governments. The relation between the legislative and executive departments has been of particular interest. Indeed, few questions have more frequently been the subject of discussion before constitutional conventions in America. At the close of the colonial period there was a marked tendency to extend legislative power at the expense of the executive. In most of the States the Governor was at first chosen by the legislature. This system was not long in operation, however, before a distrust of legislative bodies led to a demand for an increase in the power of the Governor. In accordance with this view the people of Pennsylvania in 1790 revised their State Constitution and provided for the popular election of the Governor. They increased his term of office from one to three years, and vested him with the executive veto. Prior to that time only two States, New York and Massachusetts, gave the Governor the veto power.

Since 1790 there has been a gradual increase in the importance attached to the office of Governor. His power to convene the legislature, the influence which he exerts through his message to the legislature, the tendency to increase his term of office to four years, and the almost universal rule of extending to him the veto power all indicate something of his increased importance. In recent years there have been attempts to bring about greater centraliza-

tion in State government, to give the Governor larger legislative control, and to allow him to veto special items of a proposed measure, without destroying the entire bill.

VETOES UNDER THE ORIGINAL PROVISIONS OF THE ORGANIC ACT

The question of what power should be given to the chief executive in controlling legislation originated very early in the history of Iowa. The Organic Act of the Territory of Iowa, approved on June 12, 1838, contained a clause which declared that the Governor "shall approve of all laws passed by the Legislative Assembly before they shall take effect".[1] No provision was made, however, regarding the time or the manner in which bills should be presented to the Governor, or returned by him to the Legislative Assembly. For the purpose of remedying this defect, the legislature during its first session attempted to pass a bill regulating the intercourse between the Governor and the two houses of the Legislative Assembly.

On December 4, 1838, a committee was appointed by the Council to confer with the Governor relative to this matter. The conference was held and resulted in the drafting of a bill, which was referred back to the Council for passage. Before it was passed, however, the bill was amended in such a way as to make it objectionable. Governor Lucas received the amended bill on December 18th, and on the next day returned it to the Council with the following explanation of his disapproval:

> In comparing the bill submitted for my consideration, with the one originally reported by the committee, I find that the section that was inserted with a view to keep up the mutual conference, and to open the way to a mutual reconciliation of conflicting views, has been stricken from the bill; also the time within which the Executive was required to return an act, etc. with his objections, to the Legis-

[1] Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, p. 103.

lative Assembly, has been altered from ten to five days; *with these alterations I can never concur,* but am still willing to yield my assent to the bill if passed as originally reported by the committee. Until this is done I must use my own discretion, under the Organic Law, *and for your information will state the course I intend to pursue.*

All bills, resolutions, or memorials, submitted to me, will be carefully examined, and if approved, will be signed and deposited in the office of the Secretary of the Territory. If special objections are found, but not sufficient to induce me to withhold my assent from the bill, resolution, or memorial, a special note of explanation will be endorsed with my approval.

Bills, resolutions, or memorials, that may be considered entirely objectionable, or of doubtful policy, will be *retained under advisement* or returned to the Legislative Assembly, with my objections, at such time, and in such way and manner as I may, for the time being, deem to be most advisable.[2]

This message was referred to the committee on Territorial affairs. In making its report on January 22, 1839, the committee advanced the opinion that Congress in framing the Organic Act did not intend to confer the power of an absolute veto upon the Governor, and that the phrase he "*shall* approve all laws" was mandatory, leaving the Governor without discretion.[3]

While the question of the relation between the Governor and the Legislative Assembly was still pending, a resolution was adopted which further complicated affairs and brought Secretary William B. Conway into the controversy. This resolution was one making an allowance for the compensation of clerks, doorkeepers, messengers, and firemen. It directed the payment of such allowances by the Secretary, and provided that a certificate signed by the presiding officers of the two houses should constitute a sufficient voucher for the money paid out. This resolution was not

[2] *Council Journal,* 1838–1839, p. 110.

[3] *Council Journal,* 1838–1839, pp. 190–193.

presented to the Governor for his approval, but was considered as final without his signature. In accordance with its provisions a certificate entitling Samuel W. Summers to pay as sergeant-at-arms was presented to Secretary Conway for payment.[4]

The Secretary, unwilling to assume the responsibility of paying out money in this unusual manner, and still anxious to retain the support of the members of the legislature, asked Governor Lucas to give, in writing, his opinion upon the validity of the voucher. Governor Lucas replied immediately, stating that since the Organic Act provided that all laws should be approved by the Governor, and since the resolution providing for vouchers had not been so approved, payments could not be legally made in the manner prescribed.

This answer to the Secretary's inquiry gave rise to new difficulties. Mr. Conway sent the message at once to the Legislative Assembly, thus intensifying the spirit of contention that already existed between the Governor and the members of the legislature. Upon the receipt of this communication, on Friday, December 7, 1838, the legislature voted to adjourn until the following Monday, but meanwhile to meet in convention on Saturday morning and discuss the matter. In the convention which met at the appointed time the opposition to the Governor's attitude was led by Stephen Hempstead and James W. Grimes; while Gideon S. Bailey and John Frierson spoke in behalf of the Governor. Mr. Hempstead and Mr. Grimes were severe in their denunciation of the Governor for overstepping his bounds. Mr. Bailey and Mr. Frierson, on the other hand, contended that the chief executive had in no way exceeded his authority.[5]

[4] Parish's *Robert Lucas*, pp. 190, 191.

[5] Parish's *Robert Lucas*, pp. 191–195.

An examination of the facts seems to justify the latter contention. The Governor had not vetoed the resolution, nor had he expressed any intention to do so. He had only expressed his opinion that the certificate based upon the joint resolution did not constitute a sufficient voucher. The letter written by the Governor was in no way a restraint upon either the Secretary or the legislature. It was considered, however, as an attempt on the part of the Governor to control legislation and dictate the policy of the Secretary. Moreover, the opposition contended that any interpretation by the Governor amounted to an expression of judicial opinion. Indeed, any comment by the executive upon bills that were passed seemed to incur the displeasure of the members of the legislature to a greater extent than did the direct use of the veto. This is shown by the fact that on January 15, 1839, the House of Representatives, after a long preamble stating that the Governor had been writing "notes and explanations on sundry laws", resolved that Robert Lucas is "unfit to be the ruler of a free people", and that a select committee be appointed to prepare and report a memorial to the President of the United States, asking for his immediate removal.[6] Such a memorial was actually written and presented to President Van Buren, but did not produce the desired effect.

Another question upon which the Governor and the legislature took issue was that of governmental expenditures. Governor Lucas in his message to the Assembly on November 12, 1838, recommended strict economy and a careful distribution of funds so as not to exceed the appropriation made by Congress.[7] This advice, however, was disregarded. Money was appropriated with little regard to the limited means allowed by Congress. On December 21st Hardin

[6] *House Journal,* 1838–1839, p. 13.

[7] *House Journal,* 1838–1839, p. 13.

Nowlin introduced a resolution in the House of Representatives, appointing Mr. Conway fiscal agent of the Legislative Assembly during the session, and providing that all advances of money made by him should be refunded to him out of such money as should later be appropriated by Congress.[8] This resolution was adopted by the two houses and on December 29th was presented to the Governor for his signature.

Governor Lucas could not consistently approve of such a measure, so he returned it at once, stating that the "Secretary of the Territory is, by the organic law, created the disbursing agent of the appropriation made by Congress, to defray the expenses of the present legislative assembly, and this legislative assembly, in my opinion, has no power directly or indirectly, to control the application of money that may be appropriated by Congress to defray the expenses of the next legislative assembly."[9]

The next bill vetoed by the Governor was one dividing Henry County and establishing the county of Jefferson. This bill, unlike the former measures, was disapproved because of its form, and not because of the Governor's opposition to its purpose and content. Governor Lucas in returning this bill presented two objections: first, that the described boundary extended into the Indian country; and second, that it divided certain organized townships. He recommended a rewriting of the bill so as to bound the counties by township lines and the Indian boundary line.[10] In accordance with these suggestions, the bill was modified and became a law on January 21, 1839.

As the work of the Legislative Assembly advanced, the relations between the executive and the two houses became

8 *House Journal,* 1838–1839, p. 138.

9 *House Journal,* 1838–1839, p. 151.

10 *House Journal,* 1838–1839, p. 154.

more and more strained. On November 28, 1838, an attempt had been made to prescribe the time and manner in which bills should be returned to the Assembly. The joint resolution embodying these provisions was sent to the Governor, and on January 4, 1839, was returned, together with a brief note in which the Governor said: "I see no place in the organic law, that vests the Council and House of Representatives with the right to dictate to the Executive in the discharge of his official duties."[11]

On the following day the Governor vetoed another resolution requesting him to inform the legislature of his sanction of bills immediately upon his approval of the same. He stated that it was his desire to comply with the wishes of the legislature, whenever possible; but having no secretary or clerk in his service, it was impracticable for him to return bills to the house immediately upon his approval. He referred to his communication of December 19, 1838, and asserted his intention to follow the course therein prescribed, until a bill was passed regulating the intercourse between the two departments.[12]

Other bills vetoed during the first session of the Legislative Assembly were bills providing that the postmaster of Davenport be authorized to have the mail carried from Davenport to Dubuque twice a week during the session of the legislature;[13] incorporating the City of Dubuque;[14] providing for the compensation of sheriffs;[15] and authorizing the Legislative Assembly to punish for contempt and to privilege its members from arrest.[16]

[11] *House Journal,* 1838–1839, p. 176.

[12] *House Journal,* 1838–1839, pp. 181, 182.

[13] *House Journal,* 1838–1839, p. 176.

[14] *Council Journal,* 1838–1839, p. 150.

[15] *House Journal,* 1838–1839, p. 272.

[16] *Council Journal,* 1838–1839, p. 214.

Aside from these bills two acts were passed by the legislature during the closing days of the session and presented to the Governor, but were not returned until the beginning of the next session. The first of these bills was an act concerning the repeal of certain statutes. Governor Lucas objected to this bill because, as he said, its approval would have repealed all laws passed by the legislative authorities of the Territories of Michigan and Wisconsin, which were still in force in the Territory of Iowa.[17]

The other bill left in the hands of the Governor was one providing for the compensation of printers of the Legislative Assembly "and for other purposes". Notwithstanding the attitude of the Governor in the matter of economy, the legislature persisted in incurring unnecessary expenses. The journals for the last week of the session show a number of resolutions for the payment of money, many of which were not in accord with the Governor's policy. The bill in question was a good example of the methods employed by the legislature. It purported to be a bill for the compensation of printers, but was in fact a general appropriation bill. Moreover, it was passed on the last day of the session, at a time when its return either with or without the Governor's signature was impossible. It was therefore retained in the executive office until the convening of the next legislative session, when it was returned to the House of Representatives, together with a note setting forth the Governor's objections.[18]

VETOES UNDER THE ORGANIC ACT AS AMENDED

The Territorial legislature met for its second session on November 4, 1839.[19] Prior to this time, however, Congress

[17] *House Journal,* 1838–1839, p. 25.

[18] *House Journal,* 1838–1839, pp. 25, 26.

[19] *House Journal,* 1839–1840, p. 3.

had passed an act restricting the veto power of the Governor of the Territory. This act was approved on March 3, 1839, and provided that a vetoed bill might become a law if reconsidered and passed by a two-thirds vote in both houses of the Legislative Assembly.[20] Governor Lucas no doubt recognized this amendment as a wise and representative measure, one which, it is true, reduced his power, but one which also relieved him of much of his former responsibility. He stood firmly by his convictions, however, and did not hesitate to exercise his veto power when in his judgment necessity required it.

The first bill vetoed by the Governor under the new provision of the law was one relative to the Missouri-Iowa boundary dispute. During the early days of December, 1839, the boundary question became acute. Indeed, there was every indication that armed hostilities would result. On the sixth day of that month a motion was made to adjourn the House of Representatives and allow the members to participate in the conflict.[21] This motion was lost and the House remained in session. On the following Monday, however, the House passed resolutions requesting the Governor of Missouri to authorize a suspension of hostilities until July 1, 1840, and asking Governor Lucas to suspend all further military operations until a decision had been received from the Governor of Missouri. These resolutions were presented to Governor Lucas on December 13th, and three days later were returned with his veto. He objected to the title of the resolutions which spoke of the "difficulties hitherto existing between the State of Missouri and the Territory of Iowa".[22] He contended that since the Territorial government was entirely under the control of the Federal

[20] Parish's *Robert Lucas*, p. 219.

[21] *House Journal*, 1839–1840, p. 98.

[22] *House Journal*, 1839–1840, p. 102.

government, the controversy was between the State of Missouri and the United States.[23] He concurred with the Legislative Assembly, however, in attempting to avoid hostilities between the people of Missouri and those residing in the Territory of Iowa. To this end he despatched a special messenger to Washington to submit the matter to the President and to solicit his interposition and instructions on the subject. In the meanwhile he refused to assume responsibilities which he thought belonged to the Federal government. Notwithstanding the Governor's contention, however, the resolutions were again taken up and passed over his veto, the vote being fourteen to six in the House,[24] and seven to one in the Council.[25] This was the first instance in the history of Iowa of a bill or resolution becoming a law without the Governor's approval.

During the remainder of Governor Lucas's administration three bills were vetoed. These were bills to create the office of public printer,[26] to provide for the appointment of a Territorial librarian,[27] and to repeal certain legislative measures.[28] The first two of these bills were rejected because of technicalities and not upon questions of merit. In each case there was an attempt to pass the bill over the veto, but both attempts resulted in a failure to secure the required two-thirds vote. The third bill provided for a repeal of laws formerly passed by the Legislative Assemblies of the Territory of Michigan and the Territory of Wisconsin which were still in force in the Territory of Iowa. This bill was essentially identical with the one formerly vetoed be-

[23] *House Journal,* 1839–1840, p. 110.

[24] *House Journal,* 1839–1840, p. 111.

[25] *Council Journal,* 1839–1840, p. 80.

[26] *House Journal,* 1839–1840, p. 117.

[27] *House Journal,* 1839–1840, p. 132.

[28] Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. I, p. 176.

cause of its interference with important laws. Governor Lucas thought that the approval of such a measure would work injustice by producing a sudden change in the law. This bill was not vetoed until after the close of the session, and therefore, no attempt was made to pass it over the veto.

On May 13, 1841, John Chambers succeeded Robert Lucas as Governor of the Territory. Governor Chambers came into office as a Whig appointee, while the people of the Territory were largely Democratic. This being the case, he had to contend with a legislative body in which his party was in the minority.[29]

The Legislative Assembly met in Butler's Capitol at Iowa City on December 6, 1841. During this session, which lasted until February 13, 1842,[30] two bills received the executive veto. Both of these measures were rejected on the grounds of unconstitutionality. The first was a joint resolution relative to carrying the mail from Iowa City to Keosauqua. This resolution was introduced in the House of Representatives on December 7th, the second day of the session, and provided that the postmaster at Iowa City should be authorized to employ some suitable person to carry the mail to Keosauqua; that the postmaster at Dubuque should employ a carrier to Iowa City, and that the Postmaster General should be memorialized to pay the expenses thus incurred.[31] This measure was presented to Governor Chambers on December 11th, and two days later was vetoed, on the theory that it necessitated a departure by the postmasters from their duties to the Post Office Department. In his veto message the Governor said:

I am entirely satisfied, that the exercise of such a power as is proposed by this resolution, cannot be effected through the instrumen-

[29] Parish's *John Chambers*, p. 128.

[30] *House Journal*, 1841–1842, p. 3.

[31] *House Journal*, 1841–1842, p. 7.

tality or agency of the postmasters appointed by, and acting under the authority of the General Government, without a departure, on their part, from their duties and obligations to the Post Office Department; and not being willing to request an officer of the Government to do an act which I should consider a violation of his duty, I am constrained to withhold my signature and approval from this joint resolution.[32]

An attempt to pass this measure over the Governor's veto in the House was lost by a vote of eight to eighteen. Hence the veto remained in force.

The other bill vetoed during this session of the legislature was one appointing an Acting Commissioner at Iowa City. The bill seems to have been an attempt to unite the offices of Territorial Agent and Superintendent of Public Buildings at Iowa City, and to name the person who should occupy the newly created office. Chambers quoted from the provisions of the Organic Act to show that the appointment of such officers rested with the Governor, and withheld his signature from the bill. A vote in the House upon the question of passing the bill over the Governor's veto resulted in a ballot of thirteen to eleven. The motion was therefore lost — a two-thirds vote being required for its passage.[33]

On the fifth of December, 1842, the Fifth Legislative Assembly convened in the newly erected stone capitol building at Iowa City. Governor Chambers in the early part of the session, in writing to his two sons relative to legislative matters, said: "There is very little for the Legislature to do that can be useful, and yet there is not the least probability of their adjourning before the 21st [of] February."[34] As a matter of fact the session came to an end on February 17, 1843, after eighty-three bills had been passed.

Of the acts passed at this session all but two were ap-

[32] *House Journal,* 1841–1842, p. 29.

[33] *House Journal,* 1841–1842, p. 231.

[34] Parish's *John Chambers,* p. 138.

proved and signed by the Governor. The first act vetoed was a memorial to Congress asking for a survey of certain Indian boundary lines. It was disapproved by the Governor on the ground that the date contained in the bill was erroneous, and because a mistake had been made in locating the point at which the proposed boundary line should intersect the Des Moines River.[35]

The other bill vetoed was "an act to divorce certain persons therein named". It provided for the divorcing of no less than nineteen couples. When the measure was sent to Governor Chambers for his signature he returned it, together with an extensive veto message.[36] He contended that such a wholesale annulment of marriage vows was manifestly unjust. He deemed it proper to give the party accused an opportunity to be heard, and maintained that such hearing could be obtained only in a judicial proceeding. He urged, moreover, that the three branches of government should be kept distinct, and held that the granting of divorces by the legislature was an infringement upon the sphere of the judiciary. In conclusion he said:

> I have heretofore given a reluctant approval to acts affecting individual cases of this kind, but more mature reflection and an examination of our statute books, in connection with this bill, satisfies me that too much facility and encouragement has been given to applications for legislative interposition in such cases, and that it will be more safe and more consistent with the principles of our government to leave them to judicial action, than to continue to legislate for each particular case.

Notwithstanding this protest on the part of the Governor, the bill was again taken up and passed, the vote in the House being sixteen to seven, while in the Council it stood eight to four.[37]

[35] *Council Journal*, 1842–1843, pp. 49, 50.

[36] *House Journal*, 1842–1843, pp. 311–313.

[37] *House Journal*, 1842–1843, pp. 313, 314; *Council Journal*, 1843, p. 178.

During the session of the next Legislative Assembly, which met in December, 1843, and continued in session until February of the following year, there were no bills passed which failed to meet with the Governor's approval. During the early months of 1844 the question of statehood was the chief subject of public interest. In April this question was submitted to a vote of the people, and it was found that a large majority favored statehood. Accordingly a constitutional convention was called to convene at Iowa City for the purpose of drawing up a Constitution which should be submitted to a vote of the people.[38] One of the issues before this convention was the question of the relation between the legislative and executive departments. The Constitution as finally drawn up provided for an executive veto. It stipulated, however, that if a bill once vetoed should again pass both houses by a majority of two-thirds of the members of each house present, it should become a law notwithstanding the Governor's objections.[39]

From the convention the new Constitution was sent to Congress, where an act was passed enabling Iowa to become a State. In framing this act, however, Congress stipulated State boundaries which did not correspond to those proposed by the convention. This change was objected to by the people and accordingly the Constitution was rejected.[40]

In May, 1845, the Seventh Legislative Assembly convened, with the question of statehood still unsettled. Governor Chambers in his message recommended a provision for a popular vote on the question of calling a new convention.[41] The members of the legislature, however, preferred to resubmit the original Constitution to the people and then at-

[38] Parish's *John Chambers,* p. 143.

[39] *Journal of the Iowa Constitutional Convention,* 1844, p. 192.

[40] Parish's *Robert Lucas,* p. 271.

[41] Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. I, pp. 279, 280.

tempt to secure from Congress a satisfactory enabling act. Accordingly the Legislative Assembly passed an act to resubmit the Constitution of 1844 to the voters at the August election, in the same form in which it had come from the convention.[42] The passage of this measure brought forth a formal protest signed by nine members of the House. They said that the bill was "designed to control rather than to ascertain public sentiment".[43] On June 3rd the bill was sent to the Governor and three days later was vetoed.[44] Although Governor Chambers favored statehood, he was of the opinion that a further consideration of the old Constitution was unwise.

From the supporters of the Constitution of 1844 the Governor's veto brought forth a severe criticism. A motion in the House to pass the bill by a constitutional majority resulted in a vote of sixteen to eight. In the Council a similar motion was carried by a ballot of eleven to two. The Constitution was accordingly again referred to the people, by whom it was rejected a second time.[45]

The last bill vetoed by Governor Chambers was an act to provide for the settlement of the titles to half-breed lands in Lee County. The Governor's objection to the bill was that it proposed to change the laws in such a way as to make special rules of procedure applicable to the half-breed titles. "The laws of every country affecting the rights of individuals", the Governor said, in part, "should be equal and uniform, and I am not able to discover any reason for making the rights, whatsoever they may be, of the claimants of the Half Breed lands, an exception to this rule".[46] Here

[42] Parish's *John Chambers*, p. 156.

[43] *House Journal*, 1845, p. 167.

[44] *House Journal*, 1845, p. 204.

[45] *House Journal*, 1845, p. 210; *Council Journal*, 1845, p. 144.

[46] *Council Journal*, 1845, p. 170.

again, however, the protest of the Governor was of no avail. The measure was taken up and passed over his veto in each house by the necessary majority. In the House of Representatives the vote stood nineteen to two. In the Council there were but twelve votes cast, all of which, however, were in favor of the passage of the measure.[47]

During the remainder of the Territorial period only one bill met with the executive veto. This was a bill for the relief of Samuel C. Reed, a citizen of Van Buren County, who lived near the Missouri line and had furnished provisions to the militia engaged in defending the boundary line during the winter of 1839–1840. Being in limited circumstances and having waited several years in the hope of securing some remuneration, he petitioned the legislature for an appropriation for $183.15, the amount of his claim.

Reed was regarded as a patriotic and generous man, and his petition was favorably received. Accordingly, in January, 1846, the legislature passed a bill allowing his claim, with six per cent interest.[48] James Clarke was at this time Governor of the Territory, having succeeded John Chambers in November, 1845. When the bill was sent to him, he returned it with a veto message.[49] His objection was that the legislature should make no discrimination among those who aided in defending the rights of the people of the Territory in the time of impending danger. He contended that to allow one claim would be to encourage others. He suggested, moreover, that all such claims should be submitted to the Federal government and not to the Territorial legislature. An attempt was made to pass this measure over the Governor's veto, but it failed for the want of a two-thirds vote.

[47] *House Journal*, 1845, p. 234; *Council Journal*, 1845, p. 170.

[48] *Annals of Iowa* (First Series), Vol. IV, p. 750.

[49] *House Journal*, 1845–1846, p. 225.

BILLS VETOED SINCE 1846

The Constitution of 1844 was rejected by the people, but two years later another constitutional convention was called to meet at Iowa City on May 4, 1846. On the second day of the session the president announced the appointment of a number of standing committees whose duty it would be to draw up and recommend provisions relative to the various branches of the State government. The committee on the legislative department consisted of Shepherd Leffler, William Hubbell, John J. Selman, Stephen B. Shelleday, and John Conery. On Friday, May 8th, Mr. Leffler presented a report for this committee and recommended as a part of the proposed Constitution the following provision:

> Every bill which shall have passed the general assembly shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it shall have originated, who shall enter the same upon the journal and proceed to reconsider it; if, after such reconsideration, it again pass both houses by yeas and nays, by a majority of two thirds of the members of each house present, it shall become a law notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly by adjournment prevents such return.

Mr. Shelleday moved to amend this section by adding the provision that after "any law of a general nature has passed both branches of the General Assembly, & shall have been vetoed by the Governor, it may be submitted to the people at the next general election, and if it shall receive a majority of all the votes cast for and against it, the same shall become a law, notwithstanding the Governor's objection." The vote on this amendment stood fourteen to fourteen, hence the amendment was lost. An attempt was then made to strike out of the original section the words "majority of

two thirds of the members of each house present," and insert the words "all the members elect to each House,"[50] thus requiring a unanimous vote of the members of the two houses in order to pass a bill over the Governor's veto. This proposed amendment was also lost, and the section as first proposed was made a part of the Constitution.

Ansel Briggs was elected as the first Governor of the State, and served from 1846 to 1850. During this period only one bill was vetoed. This was a bill for the relief of H. H. Hendrix and Edward Pedigo. These two men had become bondsmen for James V. Potts against whom an indictment stood in the district court of Wapello County. Potts having absconded, a bill was passed by the legislature to release the bondsmen from their obligation. Governor Briggs objected to the measure on the ground that it would defeat the purpose of the existing law. It would as he said "establish a pernicious precedent",[51] by encouraging men charged with indictable offenses to escape. He thought that the law ought to be allowed to take its course, and accordingly vetoed the bill. An attempt to pass the measure over the Governor's veto resulted in failure.

In 1850 Stephen Hempstead was elected Governor of the State. During the four years of his administration he exercised the veto power eight times — five times with reference to bills for the construction of toll bridges, twice in connection with the calling of a convention to amend the Constitution, and once with reference to a bill to amend the Code. The Governor's objection to the five bridge bills[52] was that their purpose was to create corporations for private gain, and that as such the bills were unconstitutional. In vetoing the first of these bills Governor Hempstead quoted the sec-

[50] *Journal of the Iowa Constitutional Convention*, 1846, pp. 43, 44, 58, 59.

[51] *House Journal* (Extra Session), 1848, pp. 188, 189.

[52] *House Journal*, 1850–1851, pp. 381, 384; *Senate Journal*, 1851, pp. 319, 322.

ond section of the ninth article of the Constitution, which provided that "Corporations shall not be created in this State by special laws, except for political or municipal purposes".[53] He said that the language and intention of the Constitution could not be mistaken. It "asserts a great and just principle which is worthy of the highest consideration by those who are entrusted with legislative power", the object being to prevent special and partial legislation and to grant equal privileges to all citizens.[54] In vetoing the other four bridge bills the Governor followed the same line of reasoning.

The second series of vetoes by Governor Hempstead had to do with proposed measures for amending the State Constitution. In 1852 there was a wide-spread agitation for amendments granting special charters to corporations and authorizing the establishment of banks. In his message to the General Assembly in December of that year the Governor expressed his belief that such amendments were not advisable, and urged the members to oppose any measures which had for their purpose the alteration of the Constitution in this manner.[55] Disregarding this advice, on December 29th, Elijah Sells, a member of the House of Representatives introduced a bill, the provisions of which were that "at the next general election, a vote shall be taken for or against the call of a convention to amend the constitution, and that in case it shall be found that a majority have voted for a convention, the next succeeding General Assembly shall provide for holding the same." This bill passed both houses and on January 15, 1853, was presented to the Governor for his approval.

The general election referred to in this bill was to be held

[53] *Journal of the Iowa Constitutional Convention*, 1846, p. xv.

[54] *House Journal*, 1850–1851, pp. 382, 383.

[55] *House Journal*, 1852–1853, p. 20.

on the first Monday in August in the year 1854, and the following General Assembly would meet on the first Monday of December of the same year. The tenth article of the Constitution of 1846 contained a provision that in case the people should vote in favor of a convention, such a convention should be held within six months thereafter. Thus it will be seen that the proposed bill interpreted in the light of this constitutional provision would mean that a period of only two months would intervene between the meeting of the General Assembly and the convening of the convention. Governor Hempstead pointed out this fact and urged that two months was not sufficient time in which to pass the necessary laws, elect delegates, and prepare for the convening of the convention. Upon these grounds he vetoed the bill and returned it to the House of Representatives.[56] An attempt was made to pass the bill over the Governor's veto, but the motion was lost by a vote of six to fifty-three.

The members of the legislature were not content, however, to let the matter rest at this point. Another bill authorizing a popular vote upon the question of amending the Constitution was at once introduced and passed by both houses of the Assembly, but not without serious objection on the part of some of the members. Among those opposed to this movement was Senator A. Y. Hull. Finding that he and his followers were unable to prevent the passage of the bill and being indignant at the result, he moved to strike out the title and insert as a substitute: "A bill to enable eight by ten politicians to become Pachas with five tails."[57] This motion was of course lost, and the bill with its original title was presented to Governor Hempstead for his approval. Again the Governor objected, this time upon the ground that while the bill prescribed the number of delegates, it did not indi-

[56] *House Journal*, 1852–1853, pp. 291, 320.

[57] *Senate Journal*, 1852–1853, p. 291.

cate who should be eligible, nor did it state whether they should be elected by counties, by districts, or by the State at large. Aside from this special objection he stated that he was opposed to any measure, the purpose of which was to alter the Constitution. In emphasizing this attitude in his veto message he wrote as follows:

> I cannot, in the absence of a more marked expression of popular desire on the part of the people than what has heretofore been manifested, approve of any bill, which has for its object the calling of a convention to amend the constitution. The legitimate ends of government have been and can still be obtained by its wise provisions, under which the State of Iowa has thus far been prosperous, and the rights and interests of her citizens been secured and protected.[58]

With these objections the Governor returned the bill to the house in which it had originated.

The last bill vetoed by Governor Hempstead was an act to amend chapter eighty of the *Code of 1851*. This chapter dealt with the rights of occupying claimants, and the bill was an attempt to further these rights. The sixth section of the bill declared that "any court deeming the provisions of this act providing for a judgment in favor of the occupying claimant unconstitutional, shall nevertheless order a stay of execution by the successful claimant until payment, tender or satisfaction be made". This was an attempt to require the court to enforce a law which it had decided should have no validity. Thus it will be seen that the measure was clearly unconstitutional, and as such it was vetoed by the Governor.[59]

In reviewing the eight acts vetoed by Governor Hempstead it is interesting to note that in each case there was an attempt to pass the measure over his veto, but that in no case was the attempt successful. Indeed, with one exception

[58] *House Journal*, 1852–1853, pp. 413, 414.

[59] *Senate Journal*, 1852–1853, p. 326.

the vote upon such questions was overwhelmingly in support of the Governor — the exception being in the case of the second bill providing for a vote upon the question of amending the Constitution, when the vote in one house stood twenty-nine to twenty-one.

In August, 1854, James W. Grimes was elected Governor of Iowa, and on the ninth day of the following December he was inaugurated. Under the provisions of the Constitution of 1846 his term would have continued until December, 1858, but his tenure lapsed ten months prior to this time, owing to the provisions of the new Constitution adopted in 1857. During his administration of a little more than three years he had occasion to exercise his veto power no less than ten times.

The first act vetoed by Governor Grimes was one to amend an act to incorporate the Mount Pleasant Collegiate Institute. James Harlan had recently become president of that institution, upon condition that the school should be placed upon a more efficient basis.[60] To accomplish this object he urged the legislature to pass an amendment to the act of incorporation. Accordingly, a bill for that purpose was passed by the legislature in January, 1855. The terms of this bill were clearly such as would create a special corporation. As the Constitution provided that corporations should not be created by special laws, except for political or municipal purposes, the Governor had no option in the matter, but was forced to veto the act as being unconstitutional. In returning the bill, however, he said that the "objects sought by the Incorporators are commended to my judgment. I sympathize in their efforts to establish an Institution of sound learning. I applaud their motive, I desire their success".[61] In conclusion he advocated that a new bill

[60] Brigham's *James Harlan*, p. 76.

[61] *House Journal*, 1854–1855, p. 422.

be formulated upon a constitutional basis, in order that the interests of education might not suffer by the exercise of his veto. Such a bill was immediately passed by the General Assembly and approved by the Governor, and the school was reorganized as Iowa Wesleyan University.[62]

On January 23, 1855, the same day upon which the Governor vetoed the Mount Pleasant Collegiate Institute bill, there was presented for his approval an act in reference to an ordinance passed by the city council of Dubuque. This act declared that certain persons named in the ordinance should form an incorporated company, with the right of perpetual succession, and that this company should enjoy certain rights and privileges. The Governor pointed out the fact that such an act was in conflict with the second section of the eighth article of the Constitution of the State, which declared that corporations should not be created by special laws, except for political or municipal purposes. Viewed in this light the bill was clearly unconstitutional. "The purpose of this bill", said the Governor, "is neither political or municipal; it not only would create a special incorporation, but it would give to it perpetuity, whilst the duration of corporations organized for similar purposes, under the general laws of the State, is limited to fifty years." It is clear from the records that the General Assembly adopted the views of the Governor in this matter, for there was a unanimous disapproval of the motion to pass the bill by a constitutional majority.[63]

The Governor was not again called upon to exercise his veto power for more than a year, but in July, 1856, the legislature at its special session attempted to enact a law which did not meet his approval. This was a bill providing for a change in the law with reference to the issuing of county

[62] *Laws of Iowa*, 1854–1855, p. 213.

[63] *Senate Journal*, 1854–1855, pp. 310, 311.

and corporate bonds. The purpose of such a change was to exempt the town of Fort Madison from the operation of the law. Governor Grimes objected to the measure on the ground that all laws of a general character should be uniform in their operation. This act being designed for the special benefit of the town of Fort Madison, was accordingly declared unconstitutional, and returned to the Senate without his approval.[64]

The next legislative enactment to meet with the Governor's veto was a bill for the purpose of vacating an alley in the town of Keosauqua. The bill provided that the land vacated should remain under the control of the mayor, and that the original proprietors should have no further interest in the property. Governor Grimes objected to the measure because, as he said, it was an attempt to prevent the title in the land from ever reverting to the original owners. He called attention to the fact that when a street or alley is dedicated to public use the legal title remains in the donor, and that the public acquires a simple easement or right of way. When this public franchise ceases the original owners may again resume full possession. Upon these grounds he vetoed the bill and returned it to the Senate.[65] Here again upon a motion to pass the bill by a constitutional majority, the Governor's view was supported by a unanimous vote of the members of the Senate.

The next two bills objected to by the Governor provided for the incorporation of the cities of Winterset and Centerville. The bill providing for the incorporation of Winterset contained a clause declaring that all property owned by the city in its corporate capacity should be exempted from taxation for State or county purposes. The Governor admitted the ability of the General Assembly to make such an exemp-

[64] *Senate Journal,* 1856–1857, p. 80.

[65] *Senate Journal,* 1856–1857, pp. 233, 234.

tion from taxation, and thus conceded the point of constitutionality. He objected to the measure, however, because it tended toward non-uniformity in the laws relative to the various cities of the State. The corporate property of the cities of Dubuque and Knoxville had been exempted, while the property of every other city and town in the State was taxed its proportional share. Governor Grimes was opposed to extending the list of exempted cities, unless indeed it be done by a general act applying to all the cities of the State. His plea was for uniformity, and upon this ground alone he vetoed the proposed law.[66] The incorporation of the city was not, however, long delayed. A new bill was introduced in which the objectionable features were omitted, and on January 16, 1857, only six days after the veto of the first measure, the act of incorporation was approved.[67]

In regard to the incorporation of the city of Centerville the legislature passed a bill, one section of which declared that the city council might propose amendments to the charter, which if adopted by the voters should become a part of the charter. There was no limitation or restraint upon the subjects that might be embraced in these amendments. The adoption of such a measure would, as was pointed out by Governor Grimes, give the city power to extend or curtail its boundaries at will, or to contravene the general laws of the State. As it was clearly not the intention of the General Assembly or the policy of the State to confer upon any municipal corporation such unlimited power, the Governor considered it his duty to veto the measure.[68] Here, as in the former case, immediate steps were taken to formulate a new bill, and on January 23, 1857, the city of Centerville was incorporated.[69]

[66] *Senate Journal,* 1856–1857, pp. 253, 254.

[67] *Laws of Iowa,* 1856–1857, p. 41.

[68] *House Journal,* 1856–1857, p. 350.

[69] *Laws of Iowa,* 1856–1857, p. 107. In the original bill the spelling was Centreville. In the approved act it was changed to Centerville.

Another city whose charter came before the legislature at this session was the city of Council Bluffs. The attempt in this case was to amend the charter. The bill providing for this alteration stipulated that "warrants may be issued for the violation of ordinances, by-laws, rules and regulations of said city, without being predicated or based upon affidavit." The terms were general and might be interpreted as including warrants for search or for seizure. In this respect the bill contravened the fourth article of amendment to the United States Constitution, which forbids search and seizure except upon a warrant issued upon probable cause, and supported by oath or affirmation. Governor Grimes pointed out the weakness of the proposed law, and returned it to the Senate where it had originated.[70]

The next bill which the Governor saw fit to veto was "An act for the relief of the Medical Department of the State University." This bill proposed to grant the sum of five thousand dollars, arising from interest on the University fund of the State, to the College of Physicians and Surgeons at Keokuk. In 1840 Congress had granted two townships of land for the use and support of a University, with such branches as the public convenience might demand. Governor Grimes was opposed to apportioning the funds derived from this land among the several colleges of the State. He maintained that Congress, in making the grant, had used the word University advisedly; that it was a collective term, meaning an assemblage of colleges established at one place. The friends of the bill based their arguments upon the fact that the General Assembly had prior to this time authorized the expenditure of parts of the University fund in establishing branches at Dubuque and Fairfield, and in supporting normal schools at Oskaloosa and Andrew, and by recent legislation had made the college at Keokuk a branch of the

[70] *Senate Journal*, 1856–1857, pp. 351, 352.

University. At the time this act was passed the legislature was considering other bills for the location of branches of the University at Glenwood and Fort Dodge, and for the establishment of an agricultural college at Delhi.

Governor Grimes in commenting upon this situation in his veto message said:

> No one can divine how many other branches are in contemplation, and will be established if the principle heretofore acted upon is not checked. Every one who will reflect upon the subject, must perceive that this policy of distribution, if continued, will reduce the present institution to a shadow, impair its efficiency, and destroy the whole object of the grant.[71]

Notwithstanding the force of this argument a majority of the members of the House were insistent upon passing the bill. In an attempt to enact the measure in spite of the Governor's disapproval the vote stood thirty-two to twenty-seven.

On the same day on which this appropriation bill was vetoed, the Governor disapproved another bill providing that a certain public square in the village of Freeman should be vacated, the grounds sold, and the proceeds appropriated to the construction of a court house at St. Charles in Floyd County. The Governor objected to this bill because, while the legislature could legally vacate property, it could not control its disposition. He pointed out the fact that if the land belonged to Floyd County before it was dedicated to use as a public square, the title would revert to the county. On the contrary, if the land originally belonged to a private individual, then despite the act of the General Assembly the title would revert to the original owner. In the one case, the act would be useless; in the other it would be void. He accordingly withheld his assent, and returned the bill to the House.[72]

[71] *House Journal*, 1856–1857, pp. 431–434.

[72] *House Journal*, 1856–1857, pp. 477, 478.

The last bill vetoed by Governor Grimes was one which proposed to give the United States jurisdiction over all lands purchased as sites for public buildings in Iowa, and to exempt the same from taxation. The clause with reference to jurisdiction included both civil and criminal cases. It was upon this point that the Governor took issue with the General Assembly. His contention was that there was no substantial reason for granting to the United States exclusive criminal jurisdiction within the limits of the State. He argued that a criminal process issued under the authority of the State, for the violation of State laws, should not be powerless against the offender as soon as he passed the threshold of a building belonging to the Federal government. So insistent was he upon this principle that he said he "would much prefer that the United States should never expend a dollar in the purchase of land, and the erection of public buildings within the state than to sacrifice the principle of state sovereignty in so essential a particular."[73]

The Constitution of 1857 made no important change in regard to the Governor's veto power, except that it embodied a clause providing that any bill submitted to the Governor for his approval during the last three days of the session should be deposited by him, either with or without his signature, in the office of the Secretary of State within thirty days after the adjournment of the session. The new Constitution, however, reduced the term of office of the Governor from four to two years. It also provided for an election of certain State officers to be held in October, 1857.

At this fall election Ralph P. Lowe was elected to the office of Governor. During the two years which he served as chief executive, he felt called upon to veto but one measure. This was a joint resolution authorizing a commission to make certain revisions in the law of the State for the pur-

[73] *Senate Journal,* 1856–1857, pp. 495, 496.

pose of making it conform to the new Constitution, and to submit these alterations to the General Assembly. This commission was also to prepare a code of civil and criminal procedure for the consideration of the legislature. The joint resolution in directing the action of an outside party, if properly executed, Governor Lowe maintained, would have had the full force and effect of an ordinary law. It was, therefore, subject to the same rules and regulations as other laws. The resolution did not, however, have the proper enacting clause, and upon this ground it was declared unconstitutional by the Governor. Other defects were set forth in the veto message, showing that the resolution was clearly objectionable.[74] Moreover, the records show that the members of the General Assembly were convinced of this fact, for upon a motion to pass the bill over the executive veto only one vote was cast in its favor, while thirty votes were cast in support of the veto.

On the eleventh day of January, 1860, before a joint convention of the two houses of the legislature Samuel J. Kirkwood took the oath of office as Governor of the State. At the expiration of his first term he was reëlected, and thus remained in office for a period of four years. During this time the paramount topic of concern was the Civil War. Accordingly there was little reason for contention between the Governor and the General Assembly. Notwithstanding this fact, however, six bills were passed by the legislature which were not approved by the Governor. The first was a bill amending the law relative to the meeting of the Board of Education. An act had been passed in 1858 stipulating that the Board of Education should hold a session at the capital of the State on the first Monday of December, 1859, and every second year thereafter.[75] The legislature now

[74] *Senate Journal*, 1858, pp. 330, 331.

[75] *Laws of Iowa*, 1858, pp. 340, 341.

proposed to postpone the next session until the first Monday of December, 1865. Governor Kirkwood was opposed to this measure. He contended that the best interests of the common school system required the attention of the Board of Education, and hence to postpone, for so long a period, the meeting of this board, would be to jeopardize the fundamental interests of education in Iowa.

In this opinion the members of the legislature did not all concur. A motion in the House to pass the measure over the Governor's veto was supported by forty-seven members, and opposed by thirty-two. Thus the motion was lost and the law of 1858 remained unaltered.[76]

The Constitution of 1857 authorized the establishment of a State Bank with branches in various parts of the State. By the close of the year 1859 twelve branches had been organized. They were located at the cities of Muscatine, Dubuque, Keokuk, Mount Pleasant, Davenport, Iowa City, Des Moines, Oskaloosa, Lyons, Washington, Burlington, and Fort Madison.[77] The law under which these banks were established seems to have been carefully framed and based upon a sound financial policy. The system was popular with the people, who desired a sound currency and security for deposits. There were, however, many capitalists in the State who desired a more liberal law. These men came before the General Assembly and urged an amendment to the banking law. In response a bill was passed changing the existing law in three particulars: first, by permitting banks to be organized with a capital of twenty-five thousand dollars, instead of fifty thousand dollars; second, by abolishing the office of Bank Commissioners; and third, by permitting the establishment of banks in towns with a population of two hundred and fifty inhabitants, instead of five hundred.

[76] *House Journal,* 1860, pp. 379, 380.

[77] Gue's *History of Iowa,* Vol. II, pp. 32, 33.

When this measure was sent to Governor Kirkwood for his approval, he returned it with a veto. One of his objections was that it would be unwise to dispense with the Bank Commissioners, who were the special guardians of the depositors, and whose duty it was to make examinations of the condition of the banks to see that the laws were strictly obeyed. He also disapproved the policy of establishing banks in small towns inaccessible to the bill-holders. Although the Governor's arguments did not convince all of the members of the legislature, the bill was not passed over his veto, and no banks were ever established in accordance with the proposed law.[78]

The two following bills vetoed by Governor Kirkwood were such as to require but a brief consideration in this connection. One of these was a bill to cede the jurisdiction over certain lots in the city of Dubuque to the United States government. The objection to this bill was essentially the same as that presented by Governor Grimes to the bill granting to the United States jurisdiction over all lands purchased as sites for public buildings, namely, that in criminal offenses the jurisdiction should in no case be surrendered by the State.[79]

The other bill was one providing for electing the Supreme Court Reporter and defining his duties. It was presented to the Governor without the required enacting clause, and hence was declared unconstitutional.[80]

The next regular session of the legislature convened on January 13, 1862, and continued in session until April 8th of the same year. On April 7th, the day previous to adjournment, two bills were presented for the Governor's approval. These measures were found objectionable, and having been

[78] *Senate Journal*, 1860, pp. 677–679.

[79] *House Journal*, 1860, pp. 638, 639.

[80] *Senate Journal*, 1860, p. 713.

passed during the last three days of the session were sent with the Governor's objections to the office of the Secretary of State.

The first of these bills was for an act to amend the law relative to the government and regulation of the State University. The law as it then existed authorized the Board of Trustees of the University to elect a president and the requisite number of professors, and to determine their respective salaries; and also to determine the tuition fee to be charged students attending the University. The proposed law was an attempt to fix the number of professors and assistants and their compensations, and also to fix the fees for tuition. The bill stipulated such low salaries for the president and professors, and such a high rate of tuition that Governor Kirkwood considered it detrimental to the best interest of education. "I am strongly impressed with the belief," he said in his veto message, "that if the proposed bill should become a law the operations of the University would necessarily be suspended. This I would regard as a great calamity to the cause of education in the State."[81]

The other bill vetoed and sent to the office of the Secretary of State was one attempting to change the salaries of the judges of the Supreme and district courts and of certain other State officers. Section nine, article five of the Constitution provided that the salaries of the Justices of the Supreme Court should be two thousand dollars per year, and that the compensation should not be increased nor diminished during the term for which a Justice had been elected. Governor Kirkwood's interpretation of the law was that the constitutional provision was effective until 1860, after which time the General Assembly might pre-

[81] Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, p. 367.

scribe the compensation of judges. But as a matter of fact a law passed in that year (1860) prescribed again the same compensation of $2000 per year, and this provision, in the opinion of the Governor, could not be changed at that time.[82]

In the fall of 1863 William Milo Stone was elected Governor of the State. Two years later he was reëlected, thus serving for a period of four years. During this time he exercised the veto power three times. In each case the bill in question was defective in form and was returned to the General Assembly for further consideration. In March, 1864, the legislature passed a bill to provide for the publication of an act of the Tenth General Assembly regulating the fees of district attorneys. The act which was intended to be published was an amendment to an act passed at the extra seesion of the Ninth General Assembly. Through some mistake the words "regular session" were used instead of "extra" or "special session". Because of this error the bill was vetoed.[83]

The second instance of Governor Stone's use of the executive veto was in March, 1866. At this time the General Assembly passed a bill to amend a section of an act passed by the Tenth General Assembly. The bill referred to the section and chapter to be amended, but failed to specify either the session of the General Assembly by which the original act was passed, or the volume of session laws in which the act might be found, thus leaving the amendatory act void because of uncertainty. The title of the act indicated the source of the original bill with sufficient clearness, but as the title is not regarded as a part of the bill, the Governor maintained that it could not be relied upon to supply the defect found in the bill itself.[84]

[82] Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, pp. 368–370.

[83] *Senate Journal,* 1864, p. 443.

[84] *Senate Journal,* 1866, p. 333.

At the same session of the legislature, in March, 1866, an act was passed legalizing an election which had been held at Morning Sun, in Louisa County, in April, 1865. In framing this act the author had failed to indicate the title. The Constitution requires that the subject of an act shall be expressed in the title, and that if a subject is embraced in the act and not expressed in the title, that portion of the act shall be void. The meaning of the Constitution is clear upon this point and since the bill in question was directly covered by this clause, the Governor had no choice in the matter, but was forced to return the bill for correction.[85]

In the case of each of the three bills vetoed by Governor Stone there was a motion to pass the measure over the veto, but in no case was the motion carried or even seriously considered by the members of the legislature.

At the close of Governor Stone's second administration in January, 1868, Samuel Merrill became Governor of the State. During the first two years of his service there was no occasion for the exercise of the veto power. He was elected, however, for a second term and during this period six bills were vetoed.

On March 8, 1870, there was introduced into the Senate a bill for the purpose of enabling a certain township to hold a special election. The time stipulated for the holding of this election was "on the last Monday of March, 1870". A further provision of the bill was that the posting of copies of the act in three public places within the township, ten days before the date of election, should be sufficient notice of the election. This bill did not finally pass the two houses and come to the Governor for his approval until March 21st, just a week prior to the date fixed for the election. Accordingly, the required ten days could not be given and the act was of no effect. Governor Merrill pointed out this fact,

[85] *Senate Journal*, 1866, p. 479.

which in itself was sufficient reason for vetoing the bill. He went further, however, and expressed his belief that the proposed measure was an attempt at special legislation, and therefore unconstitutional. It is evident that the members of the Senate were convinced of their error, for upon a motion to pass the bill over the veto, a unanimous vote of forty-two ballots was cast in support of the Governor's view.[86]

A bill for releasing to James H. Jordan the interest of the State in certain lands located in Davis County was introduced into the Senate on March 24, 1870. The property in question consisted of a half section of the saline grant which at that time constituted a part of the University endowment. The question of the title to the land was involved and it had been agreed by the parties that the case should be taken into court in May, and the real ownership of the land determined. The bill granting a release of the State's interest was, however, passed by the two houses, and on April 8, 1870, was presented to the Governor for signature. Governor Merrill was of the opinion that the matter should have been left to the courts, and accordingly, after some deliberation, vetoed the bill. "I cannot but think the present an inopportune time for the action proposed", he declared. "If Mr. Jordan's title is good in law, the courts will undoubtedly sustain it. If it is not, and yet he has equitable claims, the Board of Trustees of the University, it is believed, may be relied on to do justice therein, as they have done in like cases heretofore."[87]

It is interesting to note in this connection that the members of the Senate were not favorably impressed with the attitude of the Governor on this question. A motion to pass the bill over his veto was carried in the Senate by a vote of thirty-nine to six. No record is found, however,

[86] *Senate Journal*, 1870, p. 325.

[87] *Senate Journal*, 1870, p. 531.

that the bill was passed a second time by the House or that it ever became a law.

The legislative session of 1870 came to an end on the thirteenth day of April. During the last three days of the session there were presented to the Governor four bills which were eventually vetoed and deposited with the Secretary of State. The first of these was an act to enable school districts to borrow money for the erection of school houses. The bill provided for the reappraisement of property in independent school districts where there had been a decided increase in the value of the property since the last biennial appraisement. With this new valuation as a basis the district was to be given power to borrow money for the construction of school houses to an amount not to exceed five per cent of the appraised value.

The Constitution of Iowa, however, provides that no "county or other political or municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount in the aggregate exceeding five per centum on the value of the taxable property within such county or corporation, to be ascertained by the last State and county tax lists previous to the incurring of such indebtedness." The provision of the Constitution thus makes it clear that the taxes are to be levied by taking the State and county tax lists as a basis. This being the case, the Governor maintained that any provision for a tax levy based upon a special appraisement of property would be unconstitutional and void. It was upon this ground that he vetoed the measure.[88]

Upon the same day that this bill was vetoed (May 13, 1870) the Governor sent to the office of the Secretary of State without approval an act for the relief of Marion Coun-

[88] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, pp. 389–391.

ty for money stolen from the county safe. On the night of Februrary 9, 1867, robbers had entered the office of the county treasurer of Marion County and taken from the safe about thirty-two thousand dollars, twenty thousand of which belonged to the school fund.[89] Early in February, 1870, D. T. Durham, a member of the House, introduced a bill for the relief of Marion County, one of the provisions of the bill being that the county be given credit for several hundred dollars of the permanent school fund. Governor Merrill objected to the measure. "The school-fund of the State the offspring of the munificence of the federal government", he said, "is too lightly guarded at best, in my judgment, under existing laws, and I cannot consent to the relinquishment of any portion of it, even though to do it might afford temporary relief to a county suffering from a robbery."[90]

Another bill deposited with the Secretary of State at this time was one conferring certain powers on the judges of the circuit courts. The contents of the bill do not appear in the records, but from the brief veto message it is clear that the bill was hastily and carelessly drafted. In speaking of the fourth section of the bill, Governor Merrill suggested that its provisions must have resulted from an oversight or from haste and a want of due consideration. He thought that such a provision in the law would be productive of confusion, and therefore deemed it his duty to veto the bill.[91]

The last legislative measure disapproved of by Governor Merrill was a bill empowering the Governor to release certain lands in Pocahontas County to the United States. This bill was designed to secure the relinquishment of the

[89] *Annals of Iowa* (First Series), Vol. VIII, pp. 383, 384.

[90] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, p. 392.

[91] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, pp. 392, 393.

lands to the United States in order that they might be certified to the State as swamp land. The sole purpose of the bill appears to have been to make possible the necessary step for clearing the title of the lands held by Marcus I. Sacia, who had purchased them from Pocahontas County. The Governor believed that such an act should not be passed, because the claimant had made the purchase with full knowledge of the defect in the title. As pointed out in the veto message the Governor could have allowed the bill to become a law and then have refused to execute it, for the act was so framed as not to require the Governor to relinquish the land, but merely empowered him to do so at his option. Governor Merrill, however, chose to veto the bill, rather than to allow it to become a law and then not be carried into effect.[92]

In January, 1872, Cyrus C. Carpenter of Fort Dodge became Governor of the State. He served for two terms, until January, 1876, during which time he exercised the veto power four times. On March 23, 1872, the Fourteenth General Assembly passed a bill relative to the collection of taxes to aid in the construction of railroads in Clinton and Jackson counties. This bill stipulated "that in any township, incorporated city or town in the counties of Clinton and Jackson, where a tax has been voted to aid in the construction of any railroad, such a tax in said counties shall be collected only on the basis of the valuation as determined by the board of supervisors of said counties, and not on the valuation where it has been raised by the State Board of Equalization".

The Constitution of 1857 provides that the laws of the State shall not be of a local or special character, but shall whenever possible be general and of uniform application

[92] Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. III, pp. 393, 394.

throughout the State. In the opinion of Governor Carpenter the proposed measure was in conflict with this provision of the Constitution and was therefore void. This opinion was concurred in by the Attorney General and accordingly the act was declared unconstitutional. Other objections to the bill, as pointed out in the veto message, were that fairness demanded that the laws be uniform throughout the several counties of the State, and that the proposed measure if adopted would tend to establish a precedent which, if followed, would prove a prolific source of litigation. Upon these grounds the bill was vetoed and returned to the Senate.[93]

On March 1, 1872, there was introduced in the House of Representatives a "Memorial and Joint Resolution to Congress relative to homestead settlers on lands claimed by railroads in Iowa." This memorial set forth the fact that in May, 1856, Congress had granted to certain railroads a large amount of the public domain in Iowa, that in June, 1864, additional grants were made, and that in August of that year the Commissioners of the General Land Office expressly decided that the lands included in the supplemental grant did not inure to the railroads in such a manner as to prevent homestead settlement. It was alleged that under this ruling many homestead settlers had entered this land, and after having lived upon it for five years and improved it, were informed that by a subsequent ruling of the Department of the Interior their claims for homesteads were disallowed and cancelled. It was therefore resolved that "our Senators in Congress be instructed, and our Representatives requested, to use all possible efforts to secure the passage of a law or resolution, or other measure granting to the several railroads, other lands as indemnity, and in lieu of the lands so settled upon as homesteads, and procur-

[93] *Senate Journal*, 1872, pp. 423, 424.

ing a lease from the railroads of their claims to the homesteads and pre-emption settlers of the lands upon which they have so settled; or to extend to such settlers such other relief as may come within the scope of the powers of the General Government.''[94] After much consideration this resolution was finally passed and presented to the Governor on April 23, 1872 — the last day of the session.

Governor Carpenter upon receiving the proposed measure set about to ascertain the exact facts in the case, and subsequently received a letter from the Department of the Interior stating that the Federal government had not at any time declined to issue patents for lands entered subsequent to the passage of the law of 1856, and prior to the definite location of the respective lines. He was of the opinion that anyone making a settlement on these lands subsequent to that time must have done so with knowledge of the existing claims and was, therefore, not entitled to relief. He stated, moreover, that it was a high prerogative to the State government to be clothed with authority to indicate to the Senators and Representatives in Congress the wishes of the people. And he contended that such a prerogative should be exercised very sparingly. For these reasons he declined to sign the proposed measure, but deposited it, together with his veto message and a letter from the Department of Interior, with the Secretary of State.[95]

The two remaining bills vetoed by Governor Carpenter during his administration were a bill with regard to the sale of school lands, and a bill to repeal a certain section of the *Code of 1873* and provide a substitute therefor. The first of these bills was passed at the special session of the legislature in 1873 and was presented to the Governor without an enacting clause. It was therefore clearly unconstitu-

[94] *House Journal*, 1872, pp. 325, 326.

[95] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. IV, pp. 178–180.

tional, and as it had been passed during the last days of the session it was deposited, together with the veto message, in the office of the Secretary of State.[96]

The bill relative to amending the Code was passed by the Fifteenth General Assembly in 1874 and contemplated an alteration in the law relative to the change of venue in criminal cases. Chapter twenty-four, title twenty-five of the *Code of 1873* provided that in criminal cases the defendant might petition for a change of venue to another county. Section 4374 of this chapter provided that the court should exercise its discretion in the granting or rejecting of such a petition. The object of the proposed law was to provide that, in cases where the accused filed the proper petition supported by an affidavit, basing them upon the prejudice of the judge, no discretion should be left with the court, but that it should be the duty of the judge to order the change of venue regardless of his own opinion relative to the matter.

There was nothing in the act to limit the number of times that the accused might thus secure a change of venue. It is clear that the enactment of such a measure would lead to much delay in the conducting of criminal cases. This, as was pointed out in the veto message, would not only result in additional expense to the State, but in many cases would actually defeat justice. It was contended, moreover, that under the existing law no prejudice could endanger the rights of the criminal defendant, so long as the Supreme Court was open for a re-hearing. With these objections to the proposed law, Governor Carpenter on February 24, 1874, returned the bill to the House without his signature.[97]

At the close of Cyrus C. Carpenter's second term of ser-

[96] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. IV, p. 180.

[97] *House Journal*, 1874, pp. 292–296.

vice Samuel J. Kirkwood was again elected Governor of the State. He entered upon his third term in January, 1876, and continued in office until February, 1877, when he resigned to accept a seat in the United States Senate. As Governor he was succeeded by Joshua G. Newbold, who had been elected Lieutenant Governor in 1875. Governor Newbold continued in office only until January, 1878, when he was succeeded by John H. Gear. Governor Gear served as chief executive of the State for two terms, until January 12, 1882. It is interesting to note that during the two years in which Governor Kirkwood and Governor Newbold were in office, and during the four years which Governor Gear served there were no bills passed by the General Assembly which were not approved by the chief executive. Indeed, there was a period of almost eight years during which the veto power was not exercised by the Governor of Iowa.

On January 12, 1882, Buren R. Sherman of Vinton became Governor of the State. Two years later he succeeded himself, thus serving for a period of four years. Shortly after his inauguration in 1882 there was presented for his approval an act to legalize the defective acknowledgments to written instruments. This bill provided that "the acknowledgments of all deeds, mortgages, or other instruments in writing, taken and certified previous to the passage of this act, and which have been admitted to record in the proper counties in this State, be and the same are hereby declared to be legal and valid in all courts of law and equity in this State, anything in the law of the Territory or the State of Iowa in regard to acknowledgments to the contrary notwithstanding." The following section of the act provided, moreover, that even where the officer taking the acknowledgment had failed to affix his seal, the acknowledgment should nevertheless be considered as good and valid both at law and equity. Thus it is apparent that the pro-

posed measure was very broad in its scope, so much so that in the opinion of the Governor it would have provoked litigation rather than eliminated it. He said, also, that legalizing acts, at best, were of doubtful expediency and he was persuaded that a measure so general as the one proposed should not receive the sanction of the legislature.[98] In this opinion the members of the Senate did not concur, for a motion to pass the bill over the Governor's veto was carried by a vote of twenty-seven to eleven. There is no record, however, that such a motion was presented in the House. At any rate the bill never became a law.

Following the date of this veto a period of six years elapsed during which no bill met with executive disapproval. In the meanwhile, Governor Sherman had completed his four years of service and had been succeeded by William Larrabee, who became Governor in January, 1886. It was not until the beginning of Governor Larrabee's second term (in April, 1888) that the next measure objectionable to the executive was passed by the General Assembly.

This was a bill to amend a law of the Eighteenth General Assembly regulating the "good time" of prisoners in the penitentiaries of the State. It appears that this was a bill of general application attempting to reduce the length of time which criminals, already convicted of crime, should be required to serve in the State penitentiaries. As was pointed out in the veto message, the bill, had it become a law, would have resulted in the discharge from the penitentiaries during the first year of about sixty convicts over and above those whose terms expired during the same period under the then existing law. The Governor said that he could not consent to such a wholesale disturbance of the judgments of the courts.

[98] *Senate Journal*, 1882, pp. 472, 473, 481.

He pointed out, moreover, that the State Constitution declared that there should be three branches of government and that no person charged with the exercise of powers within one department should exercise any function belonging to either of the others. The proposed bill, he said, was an attempt on the part of the legislature to exercise executive power in the granting of reprieves, commutations, and pardons. With these objections the Governor sent the proposed measure to the office of the Secretary of State, the bill having been presented to him for his approval on the last day of the legislative session.[99]

Another bill presented to the Governor at the same time was one attempting to repeal a law of the Seventeenth General Assembly relative to the taxation of telegraph and telephone lines and to enact a new law in lieu thereof. The existing law provided that officers of telegraph and telephone lines should file annual reports with the State Auditor, and that with these reports as a basis the State Board of Equalization should assess the companies, and that the taxes thus levied should be payable into the State treasury. The purpose of the proposed law was to make such taxes payable to local rather than State officers. To carry out the provision of the act would have required a survey of all the lines in the State, having regard for the boundaries of all counties, townships, and municipalities, together with an inventory of all properties in each of these divisions. Governor Larrabee pointed out the fact that an "imperfect compliance with these requirements would result in much confusion and litigation, while on the other hand a strict compliance therewith would not only entail upon the owners of such lines or those operating them an unusual burden of trouble and expense, but would greatly increase the labor

[99] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 198–202.

and expense incident to the public officers of the State."[100] He contended, moreover, that there was no sufficient reason for making the change, and that the benefits to be derived would in no case compensate for the disadvantages. The legislature having adjourned, this bill was sent with the previous one to the office of the Secretary of State.

In January, 1890, Horace Boies of Waterloo became Governor of Iowa. It was during his second term, in March, 1892, that he received from the legislature the only bill vetoed during the four years of his administration. This was a bill for "an act to protect the makers of negotiable instruments in certain cases." The exact form of this bill is not preserved in the journals, but from extrinsic evidences it appears that it dealt with notes taken by peddlers and other itinerant vendors. Thus an attempted substitute for the first section of the bill provided that notes taken by any peddler for the purchase price of "any patent, patent right, patent medicines, lightening rods, goods, wares or merchandise, and all notes taken by any insurance agent for the premium on any policy of insurance" should contain a statement of the consideration for which the note was given, and that any subsequent holder would be presumed to have taken the same with notice of all defenses. It was further provided that any peddler or agent taking such a note without indicating on the face such consideration would be deemed guilty of a felony.

It is apparent that members of the legislature were not entirely satisfied with the bill. One of the members of the House explained his attitude by saying that "I cannot support this bill for the reason that it discriminates against a class, who as a rule are doing legitimate business, and deprives them from the right guaranteed by the constitution,

[100] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 202–205.

both of the state and the nation, and is class legislation of the worst type."[101] Governor Boies interpreted the measure as being in conflict with the fourteenth amendment of the Federal Constitution. He said that such a bill if passed would both abridge the privileges and immunities of citizens, and deny the parties affected "the equal protection of the laws." Other objections to the measure were found and recorded in the veto message which, together with the bill itself, was sent to the Senate.[102]

Frank D. Jackson was elected Governor of the State in the fall of 1893, and entered upon his duties in January of the following year. On the sixth day of April, 1894, the last day of the session of the Twenty-fifth General Assembly, there was presented for his approval a bill relative to fraternal beneficiary societies. The seventh section of this bill prescribed the manner in which a fraternal beneficiary society should be incorporated. In drafting the bill the legislators used the following words: "and when at least..... hundred persons have subscribed in writing". When the measure was sent to the Governor he pointed out the fact that the bill was incomplete and uncertain for the reason that the number of subscribers had not been supplied. He said that without this number the bill was void and that since it was a legislative enactment the number could not be supplied by the executive.

The ninth section of the bill was equally objectionable. It provided in effect that a member of the society in order to secure the benefits of the organization must pay all assessments himself, that is, there could be no agreement between a member and his beneficiary whereby the beneficiary should pay the assessments. The Governor interpreted this as meaning that a member, becoming ill and unable to pay

[101] *House Journal,* 1892, pp. 624, 625.

[102] *Senate Journal,* 1892, pp. 699–701.

his assessments in person, could not arrange with a friend to pay the dues and thereby retain the benefits of the organization. Upon these two grounds he vetoed the measure and deposited it in the office of the Secretary of State.[103]

The next measure to call forth the exercise of the executive veto was passed by the General Assembly in April, 1896, during the administration of Governor Francis M. Drake. This bill was designed to amend a section of a law passed by the Twenty-fourth General Assembly, relative to the establishment of a board of park commissioners in certain cities of the first class. The attempt was to make the law applicable "to all cities which had a population of 25,000 at the state election in 1895."

The Governor was in favor of the principle involved in the bill, but considered it unconstitutional on the ground that it was a piece of special legislation. In order that he might not err in this matter, he submitted the question to Attorney General Milton Remley, who concurred in the opinion of the Governor, and suggested that the bill be amended by striking out the words "at the time of the state election in 1895". In this way, he said, the constitutional objection could be overcome. Upon the receipt of this communication from the Attorney General, Governor Drake returned the bill, together with Mr. Remley's letter, to the House where the bill had originated.[104]

In January, 1898, Leslie M. Shaw became Governor, serving in that office for a term of four years. During this time two bills were vetoed. The first of these was a measure attempting to amend section 4045 of the *Code of 1897* dealing with redemption, which provided that the "debtor may redeem real property at any time within one year from the

[103] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VII, pp. 58–61.

[104] *House Journal*, 1896, pp. 1193, 1194.

date of sale, and will in the meantime be entitled to the possession thereof." The proposed measure was an attempt to add the words "any provision in any contract to the contrary notwithstanding."

The Governor considered this measure unconstitutional because it was an abridgment of the right of contract. He expressed his desire to protect the unfortunate debtor in every possible way, but considered it as neither wise nor constitutional to deprive him of a free disposition of his property and of an opportunity to save "at least a pittance out of the remnant of his property."[105]

The other measure disapproved by Governor Shaw was an act to amend the laws of the State relative to insurance. Section 1742 of the *Code of 1897* provided in substance that in any action brought on any policy of insurance for the loss of any building insured, the amount stated in the policy should be received as *prima facie* evidence of the value of the property, but that evidence might be introduced to show the real value, and that the insurance company was liable for the amount of the actual loss, provided that amount did not exceed the sum stipulated in the policy.[106] It appears that the proposed measure was an attempt to make the insurance company liable for the full face value of the policy, regardless of the actual value of the property. The bill was passed by the General Assembly and presented to the Governor during the last three days of the session. Governor Shaw was of the opinion that the proposed law would enable unscrupulous parties to insure property for a sum exceeding its value and then to cause the destruction of the property as a means of financial gain to themselves. This he contended would not only increase fraud and crime, but

[105] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VII, pp. 371, 372.

[106] *Code of 1897*, Sec. 1742.

would materially increase the rate which the insurance companies would be obliged to charge in order to continue in business.

During the thirty days which were allowed by the Constitution for the consideration of the merits of the bill Governor Shaw collected a large mass of evidence from other States, all of which tended to substantiate his view concerning the objectionable features of the proposed law. Thus he showed that in the State of Missouri where a similar law was in operation the rate of insurance was much higher than in Iowa, and moreover, that since the enactment of the Missouri law there had been a material increase in the annual loss by fire. Aside from data collected from States where laws similar to the proposed measure were in operation, Governor Shaw quoted at length from messages of various Governors in neighboring States where such laws had recently been vetoed. All of this evidence, together with the proposed bill, was deposited in the office of the Secretary of State. The Governor explained, however, that if upon further consideration the General Assembly should deem it wise to reënact the bill he would offer no further opposition to the measure.[107]

Albert B. Cummins was elected Governor in the fall of 1901, and entered upon the duties of office on the sixteenth of January in the following year. On February 5th Senator F. M. Molsberry introduced a bill to amend section 1611 of the *Code of 1897*.[108] The existing law provided that the indebtedness of corporations should be limited, and that in no case, except in risks of insurance companies, should the amount of indebtedness exceed two-thirds of the capital stock of the corporation.[109] The bill under consideration

[107] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VII, pp. 372–391.

[108] *Senate Journal*, 1902, p. 177.

[109] *Code of 1897*, Sec. 1611.

was an attempt to remove this restriction in so far as it applied to any "railroad corporation owning or operating a railroad or railroads in this and any other state."

Governor Cummins objected to this measure, first, because it was a piece of special legislation, applying only to those corporations which owned and operated railroads lying partly within and partly without the State, and did not apply to railroads wholly within the State. A second objection was that the bill applied only to corporations "owning or operating" railroads and left out of consideration any corporation that might wish to construct a new road. In the third place he was opposed to the measure because he believed it to be against the best interest of the State to allow any corporation to incur unlimited liabilities. With these objections he returned the proposed measure to the Senate where it had originated. There was a motion to pass the bill over the veto but this motion was lost by a unanimous ballot of thirty-seven votes.[110]

At the close of the session of the Twenty-ninth General Assembly, on April 11, 1902, there was left in the hands of the Governor a bill, the purpose of which was to amend the law with reference to notes taken for insurance policies. The law as it then existed provided that any note taken for insurance, in any company doing business in the State, should show upon its face that it had been taken for insurance, and that such a note should not be collectible unless the company and its agent had fully complied with the law relative to insurance.[111] The bill under consideration was an attempt to amend the law in such a way as to make notes for insurance payable only in the county where the maker resided at the time of executing the note.[112]

[110] *Senate Journal*, 1902, pp. 786–791, 886, 887.

[111] *Code of 1897*, Sec. 1726.

[112] *House Journal*, 1902, p. 244.

Governor Cummins considered this measure unconstitutional, because it impaired the obligation of contracts and made an artificial classification of insurance companies. He accordingly sent the bill to the office of Secretary of State, setting forth the reasons for his disapproval.[113]

A period of four years now elapsed before the right of executive veto was again exercised. On March 29, 1906, Senator Smith of Mitchell County introduced a bill to amend the Code relative to railway rates. The existing law provided that it should be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers for a short than for a long distance. It provided further that freight rates should be fair and just, compared with the rate charged for similar kinds of freight transportation.[114]

Governor Cummins, in his message to the Thirty-first General Assembly, had recommended a change in this law in so far as it applied to passenger rates, but not in its application to freight rates. The bill introduced by Senator Smith was drawn, however, in such a way as to change the law with regard to both passenger and freight rates. In this form it passed the two houses and at the close of the session was left in the hands of the Governor for his consideration. A few days later, on May 5th, Governor Cummins sent the proposed measure, together with a veto message, to the office of the Secretary of State, saying: "If the bill had been restricted to passenger rates it would be unobjectionable, but the introduction of freight rates makes so radical a change in the law as it has existed in the state for eighteen years that I am not prepared to approve it."[115]

[113] Manuscript copy of veto message, May, 1902, in the office of the Secretary of State, Des Moines.

[114] *Code of 1897*, Sec. 2126.

[115] Manuscript copy of veto message, May 5, 1906, in the office of the Secretary of State, Des Moines.

During the session of the Thirty-second General Assembly, in 1907, four bills were introduced which were found to be objectionable to the Governor. The first of these was introduced in the Senate in February, 1907, and was designed to amend the law with reference to the custodian of State documents and publications. Section one, chapter five of the laws of the Thirtieth General Assembly provided that the Secretary of State should act as custodian.[116] The second sentence of this section began with the word "he" referring to the Secretary of State and the provisions which followed related to his powers and duties. The adoption of the measure as proposed would have changed the construction in such a way as to make the word "he" refer to the "document librarian" and thus place a new meaning upon the entire section. Such a change was evidently not the intent of the legislators.

Another objectionable feature of the bill was the fact that it prescribed the salary to be paid to certain employees. It had long been the policy of the State to leave this matter with the Committee on Retrenchment and Reform. The Governor thought this policy a wise one, and one from which there should be no departure. Upon these two grounds he vetoed the measure.[117]

The second bill vetoed during this legislative session was one introduced in the House by Representative Willard C. Earle of Allamakee County, and was an attempt to amend the law with reference to the care and propagation of fish.[118] Section 2540 of the *Code Supplement of 1907* prohibits the taking from the waters of the State any bass, catfish, wall-eyed pike, or trout less than six inches in length.[119] The

[116] *Laws of Iowa*, 1904, p. 4.

[117] *Senate Journal*, 1907, pp. 848, 849.

[118] *House Journal*, 1907, p. 673.

[119] *Code Supplement of 1907*, Sec. 2540.

fourth section of the proposed bill provided that it should be unlawful for any person to take from the boundary waters of the State, or to buy or sell, or have in his possession any bass less than eight inches, any pike less than fourteen inches, or any catfish less than ten inches in length. Governor Cummins interpreted the Code section as referring only to the interior waters of the State, and expressed a doubt as to whether the legislature could fix the terms upon which fish could be taken from the boundary rivers. A more serious objection to the bill was found, however, in the fact that if it should become a law sportsmen could take from interior waters bass, catfish, pike, or trout of six inches or more in length, but could not take them from the boundary rivers unless they were of the size prescribed in section four of the bill. This was clearly a discrimination for which there was no reason.

The Governor showed a further incongruity in the bill when he said that "if a person is about to buy, say, a wall-eyed pike, and he finds one in the market twelve inches long it would be lawful for him to buy it, if it came from the interior waters, but he would be a criminal if it happened to come from boundary waters." This was clearly not the intent of the legislators and accordingly the Governor returned the measure without his signature.[120]

On February 7, 1907, Senator Jamison of Clarke County introduced a bill for an act to amend the Code relating to the distribution of dividends on stock in stock companies writing participating life insurance policies.[121] The bill provided that no stock life insurance company organized under the laws of the State of Iowa, and writing participating life insurance policies upon the level premium plan, should be permitted to declare and pay to its stockholders

[120] *House Journal,* 1907, pp. 1383, 1384.

[121] *Senate Journal,* 1907, p. 214.

from the surplus accumulations of such participating policies any dividends exceeding eight per cent per annum of the face of such paid-up capital stock.

It is clear from a reading of the bill that it applied to policies already written, and to dividends already accrued. In this form the measure was unconstitutional in that it violated the obligation of existing contracts. Governor Cummins after quoting the provisions of the bill said:

> If the language I have quoted embraced only accumulations hereafter made, the validity of the bill would be doubtful, for I gravely question whether it is within the power of the legislature to disturb the effect of contracts already in existence; but it will be observed that it embraces not only accumulations hereafter to be made upon policies already in existence, but accumulations now in the hands of insurance companies and which, by virtue of existing contracts, may belong absolutely to the stockholders.

The Governor pointed out other objections to the measure, and as it had been left with him at the close of the session he sent it together with his veto to the office of the Secretary of State.[122]

The last bill of the Thirty-second General Assembly to meet with the Governor's disapproval, and also the last measure vetoed by Governor Cummins was a bill the purpose of which was to prohibit the discharge into the open air of dense smoke within the corporate limits of cities having a population of fifty thousand.

The provision with regard to population made the measure apply only to the city of Des Moines. Governor Cummins pointed out the fact that although this kind of special legislation had been upheld by the courts, yet it did not comply with the spirit of the Constitution. Another and more serious objection to the bill was found in the fact that

[122] Manuscript copy of veto message, May 2, 1907, in the office of the Secretary of State, Des Moines.

it was too drastic. With regard to this point the Governor said:

> If the bill before me had sufficient flexibility so that only those who unnecessarily fill the air with smoke would incur the penalty of the measure, I would unhesitatingly give it my approval; but it positively declares that anyone who is responsible for the emission of dense smoke into the air is guilty of a misdemeanor, and may be fined not less than twenty-five dollars nor more than one hundred dollars for each day upon which the offense is committed. Construed as the bill must be construed by any court, it would make every householder or owner of a heating or power plant in the city of Des Moines a criminal nearly every day in the year.[123]

The Governor pointed out furthermore that the matter could be controlled by city ordinance and that it was not necessary to place such a measure on the statute books of the State. The bill having been left in the hands of the Governor at the close of the session, he sent it, together with the veto message, to the office of the Secretary of State.

In November, 1908, Governor Cummins resigned his office to accept a seat in the United States Senate. He was succeeded by Warren Garst, who had previously been filling the office of Lieutenant Governor. Governor Garst remained in office until January 14, 1909, but during this time no bills were vetoed.

The next Governor was Beryl F. Carroll, who served two terms, from 1909 to 1913. Two bills were vetoed during this period. The first of these provided for an amendment to the Code with reference to the nomination of candidates for the United States Senate. This measure was an attempt to provide for the nomination of Senators by a more direct method than that provided for in the Federal Constitution, and to introduce what is commonly known as the Oregon plan of nomination. Governor Carroll objected to

[123] Manuscript copy of veto message, May 7, 1907, in the office of the Secretary of State, Des Moines.

the measure because he interpreted it as not complying with the spirit and content of the Federal Constitution. He referred to the provisions of the Constitution and contended that the State should not directly or indirectly take itself from under any of the provisions of the Constitution except by consent of three-fourths of the States, and that whatever provisions applied to one State should apply alike to all and be observed by all. "The state of Iowa", he said, "has no more right to alter, change, modify or in any way limit or restrict the constitutional method of electing senators in Congress without the consent and authority from other states, as provided by the constitution, than Illinois or New York has to circumvent any other provision of the constitution."

The Governor expressed a belief that the entire measure was an effort to accomplish indirectly something which could not be done directly, and as such he considered it an attempt to evade the Constitution. He accordingly returned the bill to the House without his signature.[124]

The second bill vetoed by Governor Carroll was drafted with a view to amend the law relative to the passing of vehicles on the public highway. This measure was introduced in the House of Representatives on January 12, 1911. A little later a substitute measure was adopted, and this in turn was amended. The bill as finally presented to the Governor provided that whenever a person on horseback or in a vehicle, including a motor vehicle, should meet another person on horseback or in a vehicle each person should turn to the right, giving at least half of the road-way, when possible. It provided further that whenever a person should overtake another on the public highway, the person overtaken should upon signal or request, turn to the right, al-

[124] *House Journal*, 1911, pp. 596–599.

lowing a free passage-way of eight feet on the left, if such were possible. The bill also stipulated that a failure to comply with the provisions of the act would render the delinquent liable for all damages which might result therefrom and in addition to a fine of one hundred dollars. Moreover, the offender might be committed to the county jail until such fine and costs were paid.[125]

Governor Carroll believed the measure to be too drastic and one that would lead to abuse and litigation. Accordingly on May 5th he vetoed the bill and sent it to the office of the Secretary of State.[126]

On January 16th, 1913, George W. Clarke became Governor of the State. During the four years of his administration only one bill was vetoed. This measure originated as a result of the foot and mouth disease among the live stock of the State, and was designed to limit the quarantine of live stock in Iowa to a zone of three miles around an infected farm.

Prior to this time the law provided that the Commission of Animal Health should have plenary powers with reference to the prevention, suppression or spread of disease among animals, and for quarantining against diseased animals. The proposed measure if enacted would have taken away the discretionary power of the Commission. In the words of Governor Clarke it would have substituted "unskilled and non-expert opinion for skill and expert knowledge. The statute", he continued, "is unyielding, inelastic. It assumes to comprehend all knowledge and speak the last word upon the subject of preventing by quarantine the spread of the foot-and-mouth disease among animals."

As a further objection to the measure the Governor called

[125] *House Journal*, 1911, pp. 68, 277, 355, 359, 360.

[126] Manuscript copy of veto message, May 5, 1911, in the office of the Secretary of State, Des Moines.

attention to the fact that the Department of Agriculture did not approve of the provisions of the bill, and that its enforcement might result in throwing the entire State into quarantine. He pointed out the danger of a law that did not coincide with the plans of the Federal Government, and urged the importance of coöperation with the Department of Agriculture in suppressing disease. Because of the several objections he refused to sign the measure, but sent it to the Secretary of State. In concluding his veto message the Governor said:

> Thus does every consideration suggest and every authority condemn this bill as unwise. The live-stock industry of Iowa is too great, and its relation to the country as a whole too vast for the State to take even a doubtful position.[127]

CONCLUSION

In reviewing the history of the executive veto in Iowa, it is evident that in recent years this power has been exercised much less frequently than during the Territorial period and the years immediately following. Moreover, it appears that no bill in recent years has been passed by a two-thirds vote over the Governor's veto, while such a procedure was not uncommon during the closing years of the Territorial period.

Since Iowa became a Territory in 1838 seventy-nine bills have been vetoed. Of this number twenty-two were vetoed during the Territorial period. Fifteen of these were vetoed by Governor Robert Lucas, and eleven of them during the year 1839. Four of the seventy-nine bills were passed over the Governor's veto, one during the administration of Robert Lucas, the other three during the administration of Governor Chambers. Several bills were rewritten and

[127] Manuscript copy of veto message, May 15, 1915, in the office of the Secretary of State, Des Moines.

passed in another form; while one bill, relative to the calling of a convention to amend the Constitution in 1853, was rewritten and the new bill failed to meet with the Governor's approval. Three executives, Governor Newbold, Governor Gear, and Governor Garst completed their periods of service without vetoing any bills.

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