SPECIAL MUNICIPAL CHARTERS IN IOWA
1836–1858

For several centuries the special charter method for the incorporation of municipalities was followed both in England and in America. During the nineteenth century, however, the evils of special legislation became so apparent that the practice of granting special charters to municipal corporations was prohibited by constitutional provision in most of the Commonwealths of America.

The experience of Iowa relative to special charters is similar to that of other States. Here special charters were granted by the legislature during the period from 1836 to 1858. But in 1857 a clause was placed in the new Constitution prohibiting special laws "for the incorporation of cities and towns". During the period from 1836 to 1858 there were, however, two general incorporation acts — one enacted by the Territorial legislature of Wisconsin (which remained in force until 1840), and one enacted in 1847 by the Iowa State legislature which operated until the enactment of the general incorporation law of 1858. Since 1858 most of the cities operating under special charters have voluntarily given them up and have organized under the general act. Only five cities still retain their special charters.

The sixty charters and their amendments which were voted to the special charter cities between 1836 and 1858 form the basis of this study. The aim has been to show the outline of the government of the cities operating under this plan. In this article no attempt has been made to

interpret the provisions of the charters nor to present the decision of the courts relative thereto.

I

HISTORICAL INTRODUCTION

The people who settled in the Iowa country at the close of the Black Hawk War[1] came for the most part from the older settled regions east of the Mississippi River — especially from the jurisdictions which had been carved out of the Old Northwest. In many instances the ideas of political organization which they attempted to put into operation in the newly opened country were not adapted to the conditions of a frontier community.

A tendency to adopt the statute laws of other jurisdictions has been especially noted in connection with the establishment of county and township government in Iowa. In fact some of the earlier statutes providing government for these local units were taken bodily and without discrimination from the early statutes of Ohio.[2] The same lack of discriminating judgment is clearly seen in the early laws of Iowa relative to municipal government. Thus the practice of granting special charters to cities and towns was adopted from Wisconsin and Michigan without question.[3]

Nor was the granting of special municipal charters an original idea with the pioneer lawmakers of Iowa; neither was it the creative work of the people of the States formed out of the Old Northwest. Indeed, special municipal charters were common in colonial times — a fact which suggests their origin in England.[4] It appears that the first English

[1] Salter's *Iowa: The First Free State in the Louisiana Purchase*, p. 157.

[2] Aurner's *History of Township Government in Iowa*, pp. 27–32. Little discrimination seems to have been exercised in the selection of laws because sections of the adopted law having to do with the duties of officers were copied when these particular offices had not as yet been created.

[3] See below, note 26.

[4] Dillon's *Municipal Corporations* (5th edition), Vol. I, p. 24.

charter for the incorporation of a city was granted in 1439 to the borough of Kingston-upon-Hull;[5] but the movement for the incorporation of cities really began with the accession of the Tudors at the close of the fifteenth century.

The early English charters did not provide for the incorporation of the whole body of citizens, but only of the few — the oligarchy — with whom the chief authority of the municipality rested. Thus, the granting of special privileges to a few whom the King could control made his influence over Parliament all the more potent owing to the fact that many of its members were elected by the boroughs in which the incorporated oligarchies were supreme. Moreover, the purpose of these special municipal charters in England seems to have been not to make the boroughs more independent or to encourage self-government, but rather to coerce them into harmony with the policy of the royal government which leaned toward centralization.[6] As late as 1830 the English cities were under the control of the wealthy class.

The inhabitants of these chartered cities in England were deprived of nearly all of the powers of local self-government and were ruled by officers whom they were powerless to change. Indeed, local governments were so unrepresentative that it was useless to give them any of the new functions of administration. The care of the poor, lighting, and the paving of streets were functions discharged outside the corporation itself. In fact the corporation "embraced only such matters as the care of municipal property, the issue of police ordinances, and the discharge of certain functions connected with the administration of justice."[7] As a matter of fact the borough was not looked upon as a local organization for the performance of governmental

[5] Goodnow's *Municipal Government*, p. 68.

[6] Goodnow's *Municipal Government*, pp. 68, 69.

[7] Goodnow's *Municipal Government*, p. 70.

functions within the municipal area: it was viewed, on the one hand, as a juristic person with property of its own to be made use of for the benefit of those entitled to it (who were not many in number) and, on the other hand, as a mere delegate of the state government, for which it acted in matters of state rather than of local concern — as, for example, in the administration of justice.[8]

From the mother country the early colonists brought to America, along with the Common Law, the English form of municipal government; and so the chartered borough became an American institution. During the colonial period twenty boroughs were chartered. The first of these was New York, "which dates its civic existence from 1653, became an English municipal corporation in 1665, and received its first charter in 1686."[9] Sixteen of the other charters granted during this period were similar to that of New York and were modeled upon those existing in England at that time.

Colonial municipal charters were granted by the provincial governors of the colonies, in much the same way that the English towns received their charters from the Crown or Parliament. The principal authority was vested in the council composed of the mayor, recorder, aldermen, and assistants or councilmen as they were sometimes called. This council acted as a single body, and in addition to the usual administrative functions performed certain judicial duties.[10]

Although the early colonial charters were in general like those in England during the same period, there was one important difference in organization: in only three of the American cities was the governing authority made a "close

[8] Goodnow's *Municipal Government*, pp. 70, 71.

[9] Fairlie's *Municipal Administration*, p. 72.

[10] Fairlie's *Municipal Administration*, p. 73.

corporation''. In the three instances where the governing authority was a close corporation, the aldermen and councilmen held their positions for life, and vacancies were filled by the common council which thus became a self-perpetuating body; but with the exceptions noted the towns elected their common council by popular vote, under a restricted franchise, for a term varying from one year to life. The mayor was either chosen by the aldermen from their own number, as in the close corporation, or he was appointed by the colonial governor. His term was invariably one year, although reappointments were not uncommon.[11]

After the colonies had secured their independence the State legislatures took upon themselves the authority of granting charters to municipalities — a power hitherto exercised by the colonial governor.[12] The first legislative charters were very similar to those which had been granted at an earlier time; indeed, there were few if any important developments in municipal organization and powers. The close corporation, however, soon ceased to exist, and the council was made an elective body. By the end of the eighteenth century municipalities had come to be completely controlled by legislatures; and not even existing charters were ''recognized as barring any measure the legislature might feel disposed to enact.''[13]

The complete supremacy of the State legislatures over cities marks an important epoch in the history of municipal government in the United States. Whatever might have been the motive in bringing about this situation the results seem to have been unfortunate. This is evidenced by the fact that the early charters granted by the legislature were very narrow in the scope of the powers conferred upon

[11] Fairlie's *Municipal Administration*, pp. 73, 74.
[12] Fairlie's *Municipal Administration*, pp. 77, 78.
[13] Fairlie's *Municipal Administration*, pp. 78, 79.

cities, and included only the right to "exercise judicial powers through the special courts that were established, the right to issue police regulations, and the right to manage the property with which the cities were endowed by the charter". Furthermore, the only income of the municipalities was derived from fines or revenue from city property. They had no taxing power, but usually had authority to borrow money.[14]

The extremely narrow field in which the cities were authorized to operate resulted in repeated applications to the legislature for relief and for an enlargement of power. The State legislature having assumed the authority to grant charters, the cities were powerless to act or exercise any function not "expressly granted or necessarily implied" by their charter, and in interpreting the provisions of charters the courts have been very rigid.[15]

In the earlier years the idea prevailed that a charter was a contract that could not be altered without the consent of the contracting parties. Following this interpretation the State legislatures made only those changes in the charters which were demanded by the petitioning cities; but by 1850 this idea had apparently been abandoned, since the legislatures were then enacting special laws for incorporated cities without their consent or approval — a practice which was upheld by the courts.[16] This attitude of the State legislatures was most unfortunate since it led to an era of special legislation the evils of which were clearly apparent almost from the first. Such was the dissatisfaction that in many States sections were inserted in the State Constitution prohibiting the enactment of any special legislation.[17]

[14] Goodnow's *Municipal Government*, p. 80.

[15] Goodnow's *Municipal Government*, pp. 80, 81.

[16] Goodnow's *Municipal Government*, p. 80.

[17] *Constitution of Iowa*, 1857, Art. III, Sec. 30.

Finally, in America an era of general incorporation acts for cities and towns followed the English practice which began in 1835. After prohibiting special legislation by constitutional provision or amendment, some States abolished "all special charters, or all with enumerated exceptions" and enacted "*general provisions for the incorporation, regulation, and government* of municipal corporation."[18]

In Iowa since 1857 incorporation of cities and towns under a general law has been the rule, based upon a statutory classification of municipalities. Cities and towns of Iowa operating under special charter at the time of the adoption of the present Constitution, although unaffected by the general statute, were granted permission to give up their charters and organize under the general law.[19] Even though a city may be operating under a special charter, the legislature in Iowa may pass laws affecting it in the same manner that legislation may be enacted for any other class of cities.[20] Although special legislation was prohibited by the Constitution of 1857, statutes may be found which are in reality special legislation. But such laws are framed in general terms and the Supreme Court has not declared any of them invalid. An illustration of this type of legislation is the statute of 1902 which provides for the creation and establishment of a board of police and fire commissioners in cities having a population of more than sixty thousand — a law which at the time could apply to only one city in the State, namely, Des Moines.[21]

The first special charters granted to municipalities in the Iowa country were enacted by the legislature of the original

[18] Dillon's *Municipal Corporations* (5th edition), Vol. I, p. 96.

[19] *Code of 1897*, Sec. 631.

[20] *Code of 1897*, Secs. 933–1056.

[21] *Laws of Iowa*, 1902, Ch. 31.

Territory of Wisconsin for the cities of Burlington and Fort Madison.[22] Although they were approved on the same day (January 19, 1838) and follow the same general plan these charters differ greatly in detail. While both charters provided for an annual election of officers by the qualified voters, it appears that they differ as to the time of holding election, the number of officers, and the qualifications of voters. The Burlington charter, strangely enough, provided that the officers should "be commissioned by the governor of the territory".[23] Moreover the Fort Madison charter permitted the council to appoint the subordinate officers. Both charters authorized the council to levy taxes, but the basis for such levy was ad valorem in the Burlington charter, while in the Fort Madison charter the levy was on a percentage scale. Indeed the charter granted to Burlington seems to have been very liberal since the council was authorized to borrow money "for any public purpose", and the people were given an opportunity to vote on the acceptance of the charter. Both of these charters contained the provision that "any future legislature" might alter, amend, or repeal "this act".

The first legislature of the Territory of Iowa, which convened at Burlington in 1838, following the example of the Wisconsin legislation, enacted special charters for Bloomington (now Muscatine)[24] and Davenport.[25] The Bloomington charter was almost identical in its provisions with the Fort Madison charter mentioned above — as were also the charters of Salem, Farmington, Iowa City, and Mount Pleasant which were granted at a later date. Indeed, it appears that the statutes of the original Territory

[22] *Laws of the Territory of Wisconsin*, 1836–1838, pp. 470, 481.
[23] *Laws of the Territory of Wisconsin*, 1836–1838, p. 471.
[24] *Laws of the Territory of Iowa*, 1838–1839, p. 248.
[25] *Laws of the Territory of Iowa*, 1838–1839, p. 265.

of Wisconsin and of the State of Michigan not only furnished the model, but also provided the content for the first charters which were granted by the Territorial legislature of Iowa.[26]

At the second session of the Iowa Legislative Assembly, in 1839-1840, the towns of Salem and Dubuque were voted charters; and in the following year Farmington, Nashville, and Iowa City were permitted to incorporate under special acts.[27] Davenport and Mount Pleasant were granted new charters in 1842, and at the same session Fort Madison and Keosauqua were authorized to incorporate under special charters.[28] During the next two regular sessions of the Assembly no special charters were granted, although at the session of 1843-1844 the Iowa City charter of 1841 was revived and declared to be in full force.[29] Burlington received a new charter in 1845, and in the following year Dubuque was given a second charter.[30] Thus a total of

[26] Compare the *Laws of Michigan*, 1835–1836, pp. 174–179, 179–184, 184–188; *Laws of the Territory of Wisconsin*, 1836–1838, pp. 481–485; *Laws of the Territory of Iowa*, 1838–1839, pp. 248–252.

Note also the similarity of the *Laws of the Territory of Iowa*, 1839–1840, pp. 72–75, 1840–1841, pp. 33–36, 97–100, 1841–1842, pp. 14–16.

[27] References to acts of the legislature granting special charters to municipalities named in the text are as follows: Salem, *Laws of the Territory of Iowa*, 1839–1840, p. 72; Dubuque, *Laws of the Territory of Iowa*, 1839–1840, p. 124; Farmington, *Laws of the Territory of Iowa*, 1840–1841, p. 33; Nashville, *Laws of the Territory of Iowa*, 1840–1841, p. 88; Iowa City, *Laws of the Territory of Iowa*, 1840–1841, p. 97.

[28] References to acts of the legislature granting special charters to municipalities named in the text are as follows: Davenport, *Laws of the Territory of Iowa*, 1841–1842, p. 41; Mount Pleasant, *Laws of the Territory of Iowa*, 1841–1842, p. 14; Fort Madison, *Laws of the Territory of Iowa*, 1841–1842, p. 74; Keosauqua, *Laws of the Territory of Iowa*, 1841–1842, p. 107.

[29] *Laws of the Territory of Iowa*, 1843–1844, p. 156.

[30] References to acts of the legislature granting special charters to municipalities named in the text are as follows: Burlington, *Laws of the Territory of Iowa*, 1845, p. 73; Dubuque, *Laws of the Territory of Iowa*, 1845–1846, p. 114.

thirteen special municipal charters were voted during the period of the Territory of Iowa.

In the year 1847 Farmington and Dubuque were granted new charters and the towns of Fairfield and Keokuk were given their first charters by the General Assembly of the State of Iowa.[31] Fort Madison[32] was given a new charter — the third and last for that city — at the extra session in 1848. Keokuk[33] received a second charter in 1849 and at the same session Cedar Rapids was voted a first charter.[34] At the session of the legislature which convened at Iowa City in 1850 municipal charters were enacted for seven communities, namely, Bloomington (now Muscatine), Davenport, Iowa City, Mount Pleasant, Guttenberg, Bellevue, and Keosauqua.[35] Indeed, up to this time, at no session of the Iowa legislature had so many charters been granted. During the next two sessions charters were granted to "Fort" Des Moines, Council Bluffs, Iowa City, Mount Pleasant, Bloomfield, Le Claire, Knoxville, Oskaloosa, and Lyons; and during the extra session of 1856 Mount Pleasant, Wapello, and Ottumwa were given charters.[36] In

[31] Reference to acts of the legislature granting special charters to municipalities named in the text are as follows: Farmington, *Laws of Iowa,* 1846–1847, p. 95; Dubuque, *Laws of Iowa,* 1846–1847, p. 104; Fairfield, *Laws of Iowa,* 1846–1847, p. 49; Keokuk, *Laws of Iowa,* 1846–1847, p. 154.

[32] *Laws of Iowa,* 1848, p. 64.

[33] *Laws of Iowa,* 1848–1849, p. 18.

[34] *Laws of Iowa,* 1848–1849, p. 116.

[35] References to acts of the legislature granting special charters to municipalities named in the text are as follows: Bloomington, *Laws of Iowa,* 1850–1851, p. 59; Davenport, *Laws of Iowa,* 1850–1851, p. 110; Iowa City, *Laws of Iowa,* 1850–1851, p. 84; Mount Pleasant, *Laws of Iowa,* 1850–1851, p. 195; Guttenberg, *Laws of Iowa,* 1850–1851, p. 100; Bellevue, *Laws of Iowa,* 1850–1851, p. 206; Keosauqua, *Laws of Iowa,* 1850–1851, p. 142.

[36] References to acts of the legislature granting special charters to municipalities named in the text are as follows: Des Moines, *Laws of Iowa,* 1852–1853, p. 49; Council Bluffs, *Laws of Iowa,* 1852–1853, p. 108; Iowa City, *Laws of Iowa,* 1852–1853, p. 99; Mount Pleasant, *Laws of Iowa,* 1854–1855, p. 136;

1857 Glenwood, Winterset, Sioux City, Centerville, Clinton, Newton, Tipton, Maquoketa, Albia, Washington, Eddyville, Des Moines, Burris City, Charles City, Camanche, and Princeton received special charters.[37]

The number of special charters granted at the session of 1856-1857 may be explained by the fact that the new Constitution, which was to go into operation in September, 1857, contained a provision which would prohibit the legislature from enacting special laws; and so the towns wishing special charters besieged the legislature "while there was yet time". Following the adoption of the new Constitution in 1857, the General Assembly which met in 1858 passed a general act[38] for the incorporation of cities and towns. Thus the era of special municipal charters was brought to a close. During the period from 1838 to 1858 forty cities and

Bloomfield, *Laws of Iowa,* 1854–1855, p. 9; Le Claire, *Laws of Iowa,* 1854–1855, p. 20; Knoxville, *Laws of Iowa,* 1854–1855, p. 97; Oskaloosa, *Laws of Iowa,* 1854–1855, p. 123; Lyons, *Laws of Iowa,* 1854–1855, p. 142; Mount Pleasant, *Laws of Iowa,* 1856 (Extra Session), p. 18; Wapello, *Laws of Iowa,* 1856 (Extra Session), p. 52; Ottumwa, *Laws of Iowa,* 1856 (Extra Session), p. 63.

[37] References to acts of the legislature granting special charters to municipalities named in the text are as follows: Glenwood, *Laws of Iowa,* 1856–1857, p. 33; Winterset, *Laws of Iowa,* 1856–1857, p. 41; Sioux City, *Laws of Iowa,* 1856–1857, p. 51; Centerville, *Laws of Iowa,* 1856–1857, p. 107; Clinton, *Laws of Iowa,* 1856–1857, p. 132; Newton, *Laws of Iowa,* 1856–1857, p. 143; Tipton, *Laws of Iowa,* 1856–1857, p. 159; Maquoketa, *Laws of Iowa,* 1856–1857, p. 176; Albia, *Laws of Iowa,* 1856–1857, p. 208; Washington, *Laws of Iowa,* 1856–1857, p. 219; Eddyville, *Laws of Iowa,* 1856–1857, p. 245; Des Moines, *Laws of Iowa,* 1856–1857, p. 281; Burris City, *Laws of Iowa,* 1856–1857, p. 313; Charles City, *Laws of Iowa,* 1856–1857, p. 325; Camanche, *Laws of Iowa,* 1856–1857, p. 359; Princeton, *Laws of Iowa,* 1856–1857, p. 416.

[38] *Laws of Iowa,* 1858, p. 343. It should be noted, however, that this was not the first general incorporation act in the history of Iowa. In 1836 the Legislative Assembly of the original Territory of Wisconsin passed such an act — which remained in force until 1840. Again in 1847 the General Assembly passed a general incorporation act; but it is apparent that the larger and more important municipalities did not take advantage of the provisions of this legislation. Special charters were preferred.

towns had been granted special charters. Twenty-seven towns had been granted one charter; eight towns had been given two; three towns had been given three; and two towns had received four. Altogether sixty municipal charters,[39] besides more than twice that number of amendments, had been provided by special legislation.

II

SOME GENERAL OBSERVATIONS ON SPECIAL CHARTERS IN IOWA

Since special legislation in Iowa was based upon historical precedents it may be presumed that the general characteristics of the Iowa legislation were similar to those found in the statute laws of other States.

THE METHOD OF SECURING SPECIAL CHARTERS

Special municipal charters in Iowa were granted by the legislature which alone had the power to create municipal corporations. According to the early American practice the legislature voted such charters only when requested by the people of the local area. In England, however, especially during the seventeenth and eighteenth centuries, the Crown or Parliament granted special charters to local areas not only when requested by the inhabitants but often in the face of bitter opposition.[40]

The usual method of securing a special charter in Iowa was for the inhabitants of a city or town to petition the legislature in writing. In some instances, a delegation from the locality was sent to the capital for the purpose of presenting a charter which had previously been drafted by a committee of citizens. The proposed charter was of

[39] See Appendix, p. 267.

[40] Dillon's *Municipal Corporations* (5th edition), Vol. I, p. 181.

course introduced in the legislature by a member thereof.[41] Over the granting of municipal charters the legislature had absolute control — it might frame or amend, accept or reject any proposed charter. Following the introduction of a charter bill there seems to have been little uniformity in the procedure of either house of the legislature in reference to its disposition. The proposed act was usually read the first time by the title and ordered to be laid upon the table and printed. At its second reading the bill was considered in the committee of the whole, or it was referred to the committee on judiciary or to the committee on incorporations or to the delegation from the county in which the city or town in question was situated.[42] Final action was taken on the charter bill after the third reading.

The special charter bills were usually passed without much discussion — which seems to suggest that they were not considered as very important legislation by the members of the legislature. In this connection, however, it may be noted that while the records do not show that a charter bill ever failed to pass the legislature, three such bills were vetoed — one by Governor Lucas and two by Governor Grimes — on the ground of irregularities of enactment.[43]

Even though the members of the legislature seem to have been disposed to grant a charter to any municipality that petitioned for one, the inhabitants of cities in a few instances refused the charters which had been voted by the legislature. Most of the charters contained a referendum clause providing for a special election at which the qualified voters could accept or reject the proposed instrument.

[41] *Council Journal*, 1840–1841, p. 131.

[42] *Council Journal*, 1838–1839, pp. 55, 168, 173, 195, 1839–1840, p. 128, 1840–1841, pp. 172, 174.

[43] *Senate Journal*, 1856, p. 253; *House Journal*, 1856, p. 350; *Council Journal*, 1839, p. 150. The towns affected by these vetoes were Dubuque, Winterset, and Centerville.

In reality the same power was given to the voters by those charters having no referendum provision: to reject the charter it was only necessary for the people to refuse to hold an election of officers. Just how many charters failed to go into operation would be difficult to determine as the town records are in not a few instances incomplete and unsatisfactory, but that some of the charters granted by the legislature did fail to become operative is a well known fact.[44]

THE MUNICIPALITY AS A CORPORATION

Municipalities incorporated by special or general acts of the legislature have been held to be corporate bodies. In fact most special municipal charters specifically declare the inhabitants of the incorporated area to be a "body politic and corporate".[45] Although a few of the charters granted to the cities and towns of Iowa simply provided that the "said city is made a body corporate, and is invested with all powers and attributes of a municipal corporation", most of these special instruments of municipal government contained a specific grant of corporate powers. Indeed the most usual and most comprehensive statement of the powers of the corporation was made in these words:

> That the mayor and aldermen . . . . shall be one body politic in deed, fact, and name, with perpetual succession, to be known and called by the name of the mayor and aldermen of the city of ————; and that they and their successors in office at all times hereafter, by the name aforesaid, shall be able and capable in law to have, purchase, take and receive, possess and enjoy lands, tenements and hereditaments, goods, chattels, and effects; and the same to grant, bargain and sell, alien, convey, demise and dispose

[44] The city records show that the charters granted to Sioux City and Washington did not become operative and it is doubtful if the charters passed by the legislature for Bloomfield and Salem ever went into effect.

[45] Dillon's *Municipal Corporations* (5th edition), Vol. I, p. 94.

of, to sue and be sued, to plead and be impleaded, in any court of justice whatever, and to make and use one common seal, and the same to alter and renew at pleasure.

In some instances the following provision was added:

> And shall be competent to have, exercise and enjoy all the rights, immunities, powers and privileges, and be subject to all the duties and obligations incumbent upon and appertaining to a municipal corporation, and for the better ordering and governing said city, the exercise of the corporate powers of the same, hereby and herein granted, and the administration of its fiscal, prudential and municipal concerns with the conduct, direction and government thereof shall be vested in a mayor and board of aldermen.

According to John F. Dillon a corporation is an artificial body created by a law with special powers, immunities, and privileges. Thus it is clear that a corporation is a legal institution, a legal entity, a legal person having a special name and enjoying only such powers as the law provides.[46] Furthermore, it may be pointed out that municipal corporations are voluntary, and that they are created as instruments of local self-government rather than as administrative agents of the State.[47] Indeed, the "power of local government is the distinctive purpose and the distinguishing feature of a municipal corporation", even though these corporations are to a considerable extent employed in the administration of State law.[48]

THE STATUS OF SPECIAL CHARTER CITIES IN IOWA

As already pointed out the municipalities in Iowa operating under special charters were corporations — *public* as distinct from *private*, since all corporations created for the

[46] Patton's *Home Rule in Iowa* in the *Iowa Applied History Series*, Vol. II, p. 117.

[47] Dillon's *Municipal Corporations* (5th edition), Vol. I, pp. 58, 59.

[48] Dillon's *Municipal Corporations* (5th edition), Vol. I, p. 59.

purpose of aiding in the administration of the civil government of the State are public in their nature. Moreover these cities were municipal corporations, distinct from other public corporations like counties, townships, school districts, and road districts.[49]

Special charters, being enactments of the legislature, could by that body be changed, altered, or abolished at pleasure. Indeed the special charter cities were absolutely dependent upon the legislature. The fact of having a special charter did not put them beyond the pale of legislative control, notwithstanding the existence of a strong local feeling against legislative interference.

Although these charters were quite similar in their fundamental provisions, each was a special grant from the legislature and could be amended or repealed by the legislature when in its judgment the necessity for such action arose, or when such action was requested by the people of the municipality. The people were powerless to change their municipal government if the legislature failed to pass the desired charter amendments — although it appears that in three instances the city council had authority to alter the charter with the approval of the qualified voters.[50]

Special charters seemed to have been designed primarily for the purpose of "subordinate local administration" or local self-government. It was thought that the local areas could administer matters of local concern more satisfactorily than could the State government. And it was believed that the policies and laws of the State if administered by

[49] Patton's *Home Rule in Iowa* in the *Iowa Applied History Series*, Vol. II, pp. 117, 118.

[50] *Laws of Iowa*, 1854–1855, p. 129, 1856–1857, pp. 148, 165.
The city council in one charter was given power to accept or reject an amendment passed by the legislature.— *Laws of Iowa*, 1856 (Extra Session), p. 51.

the agencies of local government would be carried out in a manner more in harmony with the wishes of the people of a community.[51]

THE POWERS OF SPECIAL CHARTER CITIES

The powers of municipal corporations have been the subject of many judicial decisions. Indeed these decisions make up the great body of the law of municipal corporations which is applicable to special charter cities in Iowa.

In general it may be said that "*a municipal corporation possesses and can exercise the following powers, and no others:* First, those granted in *express words*; second, those *necessarily or fairly implied* in or *incident* to the powers expressly granted; third, those *essential* to the accomplishment of the declared objects and purposes of the corporation,— not simply convenient, but indispensable."[52] When doubt exists as to the possession of a particular power by a municipality the courts have always decided against the corporation, denying the existence of the power. Thus the powers of public as well as private corporations have been strictly and rigidly construed.[53]

The powers exercised by the special charter cities in Iowa may be divided into two general classes — those which relate to health and good government in which all the inhabitants have an equal interest and ought to have an equal voice, and those which involve the expenditure of money the burden of which must fall upon the property owners. Although it is inevitable that the expenses of carrying out both of these classes of governmental functions must be met by the property owners as taxpayers, still these questions

[51] Dillon's *Municipal Corporations* (5th edition), Vol. I, pp. 30, 31.

[52] Dillon's *Municipal Corporations* (5th edition), Vol. I, pp. 448, 449.

[53] For a list of cases treating upon this question see Dillon's *Municipal Corporations* (5th edition), Vol. I, p. 450, note 1, p. 453, note 2.

are of vital interest to all the inhabitants of the city. Thus every person is desirous of good sanitation, clean and well paved streets, public parks and other local improvements, and should have a voice in demanding and securing these public necessities. Under the special charters public improvements not wholly within the power of the city council were usually secured through petitions signed by the property owners. Especially was this true in the matter of street paving. But in those instances of public improvement which necessitated the borrowing of money or the issuance of bonds, all the voters regardless of property qualifications were allowed to vote and so determine the policy of the city.

SOME CONCLUSIONS RELATIVE TO SPECIAL CHARTER CITIES

The history of special municipal charters seems to show that this form of special legislation has lacked definite, constructive purpose. In fact there seems to have been no substantial reason for such legislation. A study of the special charters granted in Iowa reveals no particular advantages which could not have been secured under a general incorporation act. But the method of special charters, being based upon historical precedent was followed without question by the pioneer lawmakers; and so the era of special legislation continued down to 1857 when the new State Constitution was adopted.

III

ELECTIONS IN SPECIAL CHARTER CITIES

The elections of the special charter cities varied materially from those provided for by the general incorporation acts. Indeed it is probable that no two charters contained the same provisions relative to elections.

TIME OF HOLDING ELECTIONS

Regular elections for the purpose of choosing officers were as a rule held annually. Indeed, from this rule there seems to have been but one exception — the Bloomfield charter of 1855 which provided for biennial elections.[54] Monday was evidently a favorite time for holding elections, since in nearly five-sixths of the charters that day was designated. Usually elections were held upon the first Monday of the month, although Saturday was chosen in a few instances. While elections were held in nearly every month, June seems to have been generally favored. Special elections could be scheduled at any time by complying with the provisions of the charter relative to the posting of election notices.

MANNER OF CALLING ELECTIONS

The charters usually provided the manner of calling elections, whether regular or special. Upon the council, the recorder, or the mayor devolved the task of posting notices. During the early part of the period of special charter legislation in Iowa it was usually the duty of the council to give notice of elections; but after 1848 such duties were performed by the mayor, although in a few charters this work devolved upon the recorder.

Most of the charters provided that the notices of elections should "be posted in three of the most public places", or published in a newspaper printed in the town, for at least five days previous to the time set for the election. The period required for the posting or publishing of notices was not uniform — in some instances being extended to ten days or two weeks. Notices of special elections had to be posted at least thirty days previous to the time of voting.

[54] *Laws of Iowa*, 1854–1855, p. 9.

The manner of calling elections was not always set forth in the charter, but the council was given authority to determine the matter.

MANNER OF CONDUCTING ELECTIONS

The charters usually provided the manner in which elections were to be held; but some charters in the absence of detailed regulations provided that elections should be conducted "similar to those held in townships". Election officials were named by the council, two methods being employed in their selection. During the earlier years two councilmen were chosen as judges and the recorder was made the clerk; but later, when the cities were usually divided into wards, the election officials for each precinct were chosen by the council from without their own number. In a few instances, however, the clerks were the appointees of the judges. Both the judges and the clerks of elections were required by most of the charters to be legal voters in the city.

As a rule the polls were required to be open from the hours of nine or ten in the forenoon until five in the afternoon, or from the hours of eight or ten until four; but in no charter was provision made for opening the polls before eight and in only one instance were they to be open until six in the afternoon.[55] In some cities the polls were only open from twelve (or one or two) until four or five o'clock.

REGULAR AND SPECIAL ELECTIONS

Both regular and special elections were conducted in the same manner, the returns being made to the city council which was authorized to decide contested elections and the qualifications and election of their own members. Special

[55] *Laws of Iowa*, 1856–1857, p. 36.

elections were to be held for a variety of purposes, among which the following may be noted: giving consent to an increase in the tax levy, authorizing a levy of special taxes, giving the council power to issue bonds or borrow money, granting compensation to the council, accepting or rejecting amendments, and for repealing the charter. For a decision upon such questions a majority vote was usually necessary.

QUALIFICATIONS OF VOTERS

The qualifications of voters varied widely, with citizenship as the only test required by all of the special charters. In some instances, however, citizenship was not particularly mentioned; but this qualification was in effect prescribed by the requirement that one must be an elector in the county or be a voter for members of the legislature. A period of residence within the city was usually required — the time varying from ten days in some charters to six months in others. Moreover, more than one-half of the charters prescribed that "free, white, male citizens twenty-one years old", having the necessary residence qualifications, should enjoy the right to vote at all municipal elections. A property qualification was required by one charter for those voting on the question of levying taxes or borrowing money.[56]

POWERS OF ELECTORS

The powers of the electors in the special charter cities were for the most part confined to the election of officers, granting or refusing compensation to the councilmen, and accepting the charter. In deciding questions other than the election of officers a majority vote was usually necessary, although in at least one instance "a majority of three-fifths of the qualified electors present" was required.[57] A

[56] *Laws of Iowa,* 1856–1857, p. 129.

[57] *Laws of the Territory of Iowa,* 1840–1841, p. 88.

few charters permitted the electors to vote on the acceptance of amendments, although the action of the legislature was usually considered as final.[58] Amendments passed by the council were in some instances allowed to be referred to the electors for approval before becoming operative.[59] The power of petitioning the legislature for amendments was also permitted in two charters;[60] and in a few cases the electors were allowed to vote on the repeal of their charter, a majority being necessary to a decision.[61]

The regulation of streets and nuisances, the admission of out-lying lots, and the regulation of business not otherwise provided for were questions which the electors were authorized in some instances to decide. During the early years the electors were empowered to levy taxes not to exceed the amount specified in the charter.[62] And during the later years of the same period the approval of the qualified voters was necessary on matters of public policy, such as borrowing money,[63] subscribing to the capital stock of transportation companies,[64] and the disposal of city property.

[58] *Laws of Iowa,* 1846–1847, p. 91, 1852–1853, p. 139, 1856–1857, pp. 148, 165, 398.

[59] *Laws of Iowa,* 1854–1855, p. 129, 1856–1857, p. 336.

[60] *Laws of the Territory of Iowa,* 1841–1842, pp. 16, 110.

[61] *Laws of Iowa,* 1846–1847, pp. 88, 149, 1848 (Extra Session), p. 26, 1850–1851, p. 108.

[62] *Laws of the Territory of Wisconsin,* 1836–1838, p. 476; *Laws of the Territory of Iowa,* 1838–1839, p. 250, 1839–1840, p. 73, 1840–1841, pp. 35, 98, 1841–1842, pp. 15, 120–121.

In some charters the council had the authority to levy the tax, but the action had to be approved by the electors.— *Laws of Iowa,* 1850–1851, pp. 156, 197, 1852–1853, pp. 91, 132, 1854–1855, pp. 10, 139, 1856–1857, pp. 158, 163, 284.

[63] *Laws of the Territory of Wisconsin,* 1836–1838, p. 476; *Laws of the Territory of Iowa,* 1838–1839, p. 250; *Laws of Iowa,* 1850–1851, pp. 92, 156, 166–167, 213, 1852–1853, pp. 107, 115, 137, 1854–1855, p. 148, 1856 (Extra Session), pp. 26, 71, 1856–1857, pp. 58, 158, 161, 253, 289.

[64] *Laws of Iowa,* 1856–1857, pp. 399, 402.

IV

OFFICERS IN SPECIAL CHARTER CITIES

The charters presented no clear distinction between officers which should be elected by the qualified voters and those which ought to be appointed by council or mayor.

ELECTIVE OFFICERS

In the special charter cities the elective principle was extended to nearly all of the important officers for which any provision was made — the mayor and councilmen under every charter being elected by the qualified voters of the city. During the period from 1838 to 1858 the tendency seems to have been to elect not only the mayor and councilmen, but also the recorder, the marshal, the treasurer, and the assessor. In some instances such an unimportant officer as the wharfmaster was chosen by the people.[65] Discretion had to be exercised in some instances because a few charters provided that the council *could* appoint subordinate officers or *could* provide for their election by the people.

TERM OF ELECTIVE OFFICERS

The term of elective officers was usually one year "and until the successors are elected and qualified". Elections were held anually, except in one instance;[66] and all elective officers except councilmen held their office for one year.[67] A few of the charters provided, however, that the councilmen should serve for two years, according to which plan one was elected in each ward at every annual election.[68]

[65] *Laws of Iowa,* 1850–1851, p. 60, 1854–1855, p. 143, 1856–1857, pp. 134, 361.

[66] *Laws of Iowa,* 1854–1855, p. 9.

[67] For exceptions to this statement see *Laws of Iowa,* 1854–1855, p. 125, 1856 (Extra Session), pp. 20, 32, 1856–1857, pp. 100, 355.

[68] *Laws of Iowa,* 1850–1851, pp. 60, 85, 111, 1852–1853, p. 90, 1854–1855, pp. 9, 143, 1856 (Extra Session), pp. 31, 42, 1856–1857, pp. 113, 134, 177, 361.

Some charters provided for the removal of officers by a vote of the council — a two-thirds vote being necessary for such removal.[69]

COMPENSATION OF ELECTIVE OFFICERS

As pointed out in another connection the councilmen as a rule received no compensation unless allowed by the electors. But for his judicial duties the mayor was usually paid such fees as were allowed justices of the peace for performing similar services; while the recorder's compensation was generally fixed by the council in such sum as was "deemed reasonable". The marshal, assessor, treasurer, and other elective officers were compensated by the council; but most of the charters limited such fees or compensation to the amount paid to township or county officers performing a like service.

QUALIFICATIONS OF ELECTIVE OFFICERS

No definite plan seems to have been followed in prescribing the qualifications of elective officers. Residence in the city was a usual requirement, but the period varied from three months in some charters to three years in others. The usual period of residence was one year. Furthermore, all candidates for elective offices had to be "legal and qualified" voters. In some charters both the residence and electoral qualifications were required, and in many charters elective officers had to be "citizens" of the city.[70]

VACANCIES IN ELECTIVE OFFICES

Vacancies in the elective offices arising by resignation, removal from the city, death, or failure to qualify within

[69] *Laws of Iowa*, 1846–1847, p. 177, 1850–1851, p. 112, 1856 (Extra Session), p. 32, 1856–1857, p. 358.

[70] *Laws of Iowa*, 1850–1851, p. 60, 1852–1853, p. 51, 1854–1855, pp. 136, 143, 1856–1857, pp. 133, 360.

ten days from time of election were in most cases filled by the council. But in some charters provision was made for a special election to fill vacancies; and in one instance vacancies, except those occurring in the board of aldermen, were filled by the mayor.[71] The council was, however, the usual agency for filling vacancies.

BOND OF ELECTIVE OFFICERS

Elective officers during the early part of the period under review were usually not required to give bond. In no instance were councilmen required to give any security for the faithful performance of their duty, and in only a few cases was a bond required of the mayor. But during the latter years of the period, when the marshal, treasurer, assessor, and recorder were elected by the people, a bond could be required in such sum as the council deemed expedient. In any event the council was given the exclusive power of determining the sufficiency or validity of a bond.[72]

OATH OF ELECTIVE OFFICERS

An oath of office was generally required of every officer whether elective or appointive. The oath was usually prescribed in the charter and provision was usually made for its administration by a particular officer such as a justice of the peace, the mayor, or the recorder. Before entering upon the duties of the office, and generally within ten days from time of election, the candidate was required to take an oath to support the Constitution and laws of the United States, the Constitution and laws of the State (or Territory

[71] *Laws of Iowa,* 1846–1847, p. 97.

The council was given power in one instance to fill vacancies in its own body.— *Laws of Iowa,* 1856–1857, p. 436.

[72] In one charter the bond was approved by the mayor.— *Laws of Iowa,* 1846–1847, p. 99. The bond of the Clerk of the Court was fixed in one charter at $5000.00.— *Laws of Iowa,* 1856–1857, p. 355.

as the case might be), and to faithfully perform the duties required of him by the charter or by law.

APPOINTIVE OFFICERS

Most of the special charters granted before 1850 provided that the treasurer, assessor, marshal, and sometimes the recorder, should be appointed by the city council. In some instances the council was authorized to "provide for" the election of officers, "prescribe their duties, term, and remove them at pleasure". Thus it appears that the charter intended that such officers should be appointed by the council rather than elected by the people. Many charters, however, provided that subordinate officers (other than the mayor, recorder, and councilmen) could be chosen by the council or be elected by the qualified voters — the method to be determined by the council.

In a few of the larger cities the charters authorized the appointment of a city surveyor, a city supervisor, a city engineer, and a solicitor.[73] Furthermore commissioners for the purpose of assessing damages resulting from changing streets were usually provided for. Their manner of appointment was not uniform — in some instances being chosen by the council and in others by the marshal. The amendment granted to the city of Keokuk in 1856 gave the council power to appoint a school board, commissioners for assessing damages, fire inspectors, fire wardens, and engineers.[74]

During the latter part of the period the charters usually provided for the appointment by the council of health officers, a clerk of the market, street commissioners, election

[73] *Laws of the Territory of Wisconsin*, 1836–1838, p. 474; *Laws of Iowa*, 1850–1851, pp. 64, 88, 1852–1853, p. 103, 1854–1855, pp. 101, 147, 1856 (Extra Session), pp. 35, 47, 67, 1856–1857, pp. 37, 46, 55, 138, 223, 249, 284, 317.

[74] *Laws of Iowa*, 1856 (Extra Session), pp. 47, 48.

officials, and others.[75] Although the power of appointment was usually vested in the council, in a few instances such authority was exercised by the marshal or the mayor. As a matter of fact the Farmington charter of 1847 authorized the mayor to "nominate, and with the concurrence of the Board of Aldermen, appoint all officers within the city, which are not ordered by law or ordinance to be otherwise appointed."[76]

TERM OF APPOINTIVE OFFICERS

The term of appointive officers was as a rule one year. Although the council was authorized to prescribe the term for subordinate officers, the charters in most instances limited their term to "one year and until the successors were elected and qualified." While the term was fixed by ordinance in about twenty charters, the tenure of officers was usually dependent upon "the pleasure" of the council, and removals for cause could be made at any time. Vacancies were usually filled by the council.[77]

COMPENSATION OF APPOINTIVE OFFICERS

The usual method of compensating subordinate officers was the fee system — the amount in most instances being determined by the council. A limitation was generally placed upon this power of the council, which provided that the compensation should not exceed the amount paid by the township or the county for similar services. Some charters provided that the marshal should receive the same fees as

[75] The first charter providing for the appointment of such officers was the one granted to Muscatine in 1851.— *Laws of Iowa*, 1850–1851, p. 64.

[76] *Laws of Iowa*, 1846–1847, p. 97.

[77] The only exception to this statement is found in the Farmington charter of 1847.— *Laws of Iowa*, 1846–1847, p. 97.

constables. The road supervisor was in one instance to be compensated as provided by State law.[78]

QUALIFICATIONS OF APPOINTIVE OFFICERS

The qualifications of appointive officers were such as the council deemed necessary — most of the charters containing the provision that subordinate officers should "be subject to such qualifications as the council may prescribe."

BOND OF APPOINTIVE OFFICERS

The important subordinate officers — namely, the treasurer, marshal, and assessors — were invariably required to give security for the faithful performance of their duties. But as indicated above, these officers were appointed only during the early years of the period. Other appointive officers might at the discretion of the council be required to give bond. The amount of the bond was not fixed by the charter, but should be "in such sum as was deemed sufficient" by the council.

OATH OF APPOINTIVE OFFICERS

Appointive officers might be required to take an oath "to faithfully perform the duties of their office"; but in some instances all officers of the corporation were compelled to take the same oath. Furthermore a few charters provided that "fines and penalties" might be enacted by the council to enforce the oath which was administered by the justice of the peace, the mayor, or the recorder. It must be remembered, however, that the oath as a qualification for office was usually at the discretion of the council.

[78] *Laws of Iowa*, 1850–1851, p. 108.

V

ORGANIZATION OF THE COUNCIL IN SPECIAL CHARTER CITIES

The city council was by far the most important organ of municipal government under the charters — a principle which was probably carried over from the general incorporation acts. The organization of the council is vital, since its exact character often forecasts the kind of work it will perform.

COMPOSITION OF THE COUNCIL

The council with one exception was composed of one branch or house consisting of from three to fourteen aldermen.[79] Between the years 1838 and 1847 the "aldermen" or "trustees" varied from three to five in number — although Burlington's charter of 1838 provided for eight, and Dubuque's charter of 1840 allowed six councilmen which was increased to thirteen in 1846.[80] But throughout the latter part of the period the number of councilmen tended to increase, owing to the ward system of representation. As a matter of fact the council had the power to increase the number of wards and in that way controlled the number of aldermen.

In addition to the aldermen the council consisted of a mayor or president, and the recorder or clerk.[81] The mayor was always a member of the council, and the recorder was so considered in most of the charters granted before 1847. Indeed in three charters granted after that year the re-

[79] The Des Moines charter of 1857 provided for fourteen councilmen — the largest number of any special charter city.— *Laws of Iowa*, 1856–1857, p. 283.

[80] *Laws of the Territory of Wisconsin*, 1836–1838, p. 471; *Laws of the Territory of Iowa*, 1839–1840, p. 158; *Laws of Iowa*, 1845–1846, p. 115.

[81] *Laws of the Territory of Wisconsin*, 1836–1838, pp. 481, 482.

corder was a member of the council, and as before his presence was necessary to a quorum.[82]

ELECTION OF MEMBERS

Councilmen were generally elected annually by wards — since most cities were divided into wards by their charter or the power to establish wards was vested in the council. But in cities not having the ward system councilmen were elected at large. Vacancies in the council were generally filled by a special election called for that purpose. In one instance, however, if the vacancy occurred within thirty days of the time of the next regular election, no special election would be called.[83]

TERM OF MEMBERS

But little variation existed in the provisions of the charters in regard to the term for which members of the council were chosen. The charters, except in one instance, provided for annual elections; and the term of members was one year in about half of the cities.[84] In those municipalities having the ward system, however, the term of councilmen was generally two years — one councilman being elected in each ward at the annual meeting.

QUALIFICATIONS OF MEMBERS

There was little uniformity in the charters with regard to the qualifications of members of the council. A period of residence was in most instances required — residence not only in the State but also in the city and the ward from

[82] *Laws of Iowa,* 1848–1849, p. 116, 1850–1851, p. 102, 1856–1857, p. 153.

[83] *Laws of Iowa,* 1856 (Extra Session), p. 43.

[84] The term was one year ''and until the successors were elected and qualified''. The exception referred to was the Bloomfield charter of 1855.— *Laws of Iowa,* 1854–1855, p. 9.

which a member was elected. Furthermore, citizenship was in many charters a specified qualification. Members were often required to be citizens of the United States, residents of the State for six months, and of the city for three months next preceding the municipal election. Of the many other qualifications of members of the council, the following may be noted: must have "citizenship in the city"; must be a legal voter; must be twenty-one years old and a citizen of the State; and must have the qualifications of electors for members of the legislature.

Moreover, in most of the charters granted after 1850 members of the council were ineligible to any office within the gift of the council during the term for which they were elected; and they were prohibited from being "interested directly or indirectly, in the profit of any contract or job for work" done for the city.[85]

COMPENSATION OF MEMBERS

Compensation for members of the council was usually not fixed by the charters, although as a rule it was provided that the recorder should be paid such fees as were deemed necessary by the council "not to exceed the amount paid township officers for similar service". Moreover, for his judicial duties the mayor was given the same compensation as was accorded justices of the peace. But aldermen in more than one-half of the cities were not paid, unless compensation was allowed by the legal voters at a special election called for that purpose.

From the general rule as above stated there were, however several exceptions. The Burlington charter of 1838

[85] *Laws of the Territory of Iowa*, 1845, p. 77; *Laws of Iowa*, 1845–1846, p. 117, 1846–1847, p. 107, 1848–1849, p. 22, 1850–1851, pp. 65, 87–88, 147, 209, 1852–1853, pp. 51–52, 102, 111, 1854-1855, pp. 24–25, 100–101, 149, 1856 (Extra Session), pp. 27, 34–35, 56, 66, 1856–1857, pp. 36, 45, 54, 139, 154, 183, 211–212, 222, 248, 286, 316, 334, 346, 369, 421.

provided that the council should receive no compensation;[86] and this same provision was contained in the Fort Madison charter of 1842, which was amended in the following year allowing one dollar for each meeting after January 1, 1844 — an amendment which was repealed in 1844.[87] Fort Madison again affirmed the "no compensation" plan in 1848, but in 1853 provided that one dollar per meeting might be paid.[88] Burlington's charter was amended in 1841 authorizing "the mayor and aldermen . . . . to receive pay not exceeding one dollar and fifty cents each, per day, for each regular session. . . . there shall not be more than one regular session in each month . . . . [and] no regular session shall continue longer than two days."[89] This was changed in 1851 to one dollar per day, but was not to exceed fifty dollars per year; while the maximum for councilmen in Dubuque was fifty-two dollars per year.[90] A compensation of thirty dollars a year was allowed by the Iowa City charter of 1855 and the Cedar Rapids charter of 1856.[91] The councilmen in the city of Davenport were authorized to fix their own compensation by a two-thirds vote of all the members elected.[92] Both the aldermen and the councilmen of Keokuk's bicameral council were to receive the same compensation.[93]

BOND AND OATH OF MEMBERS

Members of the council — except the recorder in some instances — were not required to give bond; but in a few

[86] *Laws of the Territory of Wisconsin*, 1836–1838, p. 474.

[87] *Laws of the Territory of Iowa*, 1842–1843, p. 38, 1843–1844, p. 152.

[88] *Laws of Iowa*, 1848 (Extra Session), p. 70, 1852–1853, p. 57.

[89] *Laws of the Territory of Iowa*, 1840–1841, p. 86.

[90] *Laws of Iowa*, 1850–1851, p. 82, 1852–1853, p. 92.

[91] *Laws of Iowa*, 1854–1855, p. 179, 1856 (Extra Session), p. 40.

[92] *Laws of Iowa*, 1856–1857, p. 99.

[93] *Laws of Iowa*, 1856–1857, p. 302.

charters the council was authorized to fix such fines and penalties as seemed necessary for compelling the attendance of absent members. Without exception members of the council were required to take an oath before entering upon the performance of their duties. In some instances they were required to take an oath to support the Constitution and laws of the United States, the Constitution and laws of the State (or Territory as the case might be), and to faithfully perform the duties of their office. The exact wording of the oath was not always given, nor was it always uniform. The oath was usually administered by a justice of the peace, although any one so qualified was permitted to administer oaths.

REMOVAL OF MEMBERS

Removal of councilmen was permitted by a few charters if the proposition was supported by a two-thirds vote of the whole number elected;[94] but removal twice for the same offence was prohibited in some instances. The revised charter enacted for Dubuque in 1857 authorized the council to remove any elective officer by a two-thirds vote of all the members of the council; but any appointive officer was subject to removal by a majority vote.[95] In no charter were the people given authority to remove officers.

MEETINGS OF THE COUNCIL

The council was usually authorized to prescribe by ordinance the time of holding its regular meetings; and yet in several charters the time was specifically designated. The charters granted to Mount Pleasant in 1851 and 1855 provided that the "regular meetings . . . . shall be

[94] *Laws of Iowa*, 1846–1847, p. 177, 1850–1851, p. 112, 1856 (Extra Session), p. 32, 1856–1857, p. 358.

[95] *Laws of Iowa*, 1856–1857, p. 358.

held on the first Monday in each month (except the April meeting which shall be held on the second Monday in April) and the board may provide by ordinance for calling special meetings."[96] Another charter contained the provisions that meetings must be held "at least once each month, on a time to be fixed by ordinance".[97] Salem's charter of 1855 provided that "the regular meetings . . . . shall be held on the first Saturday in each month",[98] while Glenwood's charter of 1857 authorized the council to "hold its meetings as it sees fit, having fixed, stated times".[99] Such meetings were usually called as provided by ordinance.

The majority of the charters also authorized special meetings of the council to be called in such manner as might be prescribed by ordinance. In some instances, however, the mayor was permitted to call special meetings and in others a majority of the council could call such meetings; but in either case notice had to be given to the individual members, or the call must be posted in some public place for a specified period previous to the time set for the meeting.

Records of all meetings of the council were required to be kept by the clerk, whose books were at "all reasonable hours to be open to the inspection of the public" without cost. Furthermore the meetings of the council were public so that the people might at any time attend.

A quorum generally consisted of a majority of the members, the mayor being included in every instance. Moreover, the recorder as well as the mayor was in many cases required for a quorum. Some charters required a specific number for a quorum — as in the Bloomington (now Mus-

[96] *Laws of Iowa*, 1850–1851, p. 196, 1854–1855, p. 137.
[97] *Laws of Iowa*, 1854–1855, p. 127.
[98] *Laws of Iowa*, 1854–1855, p. 163.
[99] *Laws of Iowa*, 1856–1857, p. 37.

catine) charter of 1839 which provided that "any three" of the council "shall be a board for the transaction of business".[100]

The mayor, or president as he was sometimes called, was the presiding officer of the council. In many instances, especially during the latter part of the period, the council was authorized to choose a president *pro tem* from its own number, whose duty it was to perform the functions of the mayor in his absence. A few charters allowed the oldest councilman to preside in the absence of the mayor or president *pro tem*.

VI

POWERS OF THE COUNCIL IN SPECIAL CHARTER CITIES

The most important department of municipal government under the special charters was that of the council. Indeed, this was also true under the general incorporation acts passed during the period. In the early charters, however, the powers granted to the council were very meager; but during the latter part of the period the legislature seems to have enlarged the powers and functions of the council. As a matter of fact such an enlargement of power was necessary in order that the growing municipalities might not be unduly hampered. During the early years of the period about the only reason for incorporation was to facilitate the collection of taxes and the improvement of police regulations. Money was needed for the improvement of the rivers and wharves; and the preservation of order in the river towns was not easily accomplished.

POWER OVER ELECTIONS

The powers of the council over elections varied. In the charters granted during early years of the period the quali-

[100] *Laws of the Territory of Iowa*, 1838–1839, p. 248.

fied electors who assembled for the first election were authorized to choose *viva voce* two judges and a clerk.[101] But at all subsequent elections the trustees or any two of them were required to act as judges, and the recorder was to be the clerk. With the exception of Dubuque's charter of 1840,[102] the trustees and the recorder conducted municipal elections until 1841. Davenport's charter, enacted in the next year, provided that the council should appoint all election officials.[103] From this time until 1858 these two methods of securing election officials were of nearly equal importance.[104]

Until 1849 another duty of the council in regard to elections was the posting of election notices. The charters usually required such notices to be posted for a period of ten days previous to the election. But following the Keokuk charter of 1849 this duty was taken from the council and in the remainder of the charters the mayor or the recorder gave notice.[105]

The first charter granted to an Iowa municipality provided that the council should locate the polling places.[106] Indeed this provision was incorporated in about twenty of the special charters, and as a prescribed duty of the council it continued throughout the period of special legislation.

Vacancies in the elective and appointive offices were generally filled by the council; and yet in about one-fourth of the charters vacancies were filled by special elections.

[101] See the early charters referred to in the Appendix, p. 267.

[102] *Laws of the Territory of Iowa,* 1839–1840, p. 162.

[103] *Laws of the Territory of Iowa,* 1841–1842, p. 42.

[104] Judges of elections were, under one charter, to be appointed by the council, and the judges in turn were to choose the clerk.— *Laws of Iowa,* 1848 (Extra Session), p. 65.

[105] *Laws of Iowa,* 1848–1849, p. 20.

[106] *Laws of the Territory of Wisconsin,* 1836–1838, p. 474.

Furthermore, it appears that in most instances the council was authorized to appoint subordinate officers not otherwise provided for, or a special election could be called for the purpose of choosing them. Two charters permitted the council to decide contested elections; and in a majority of the cities operating under special charter the council was authorized to be the judge of the election and qualifications of its own members.[107]

POWER OVER WARDS

The council was authorized to "change, unite, or divide" the wards, or any of them, whenever they deemed it necessary for the best interests of the city. But in some of the charters no provision was made for wards. The charter granted to Charles City in 1857 allowed the council to divide the city into wards when the population reached two thousand.[108]

When a city or town was divided into wards by the provisions of the charter, the councilmen were apportioned among the precincts, although in two cases the council was given power to re-apportion the representatives whenever the interests of the city required it.[109] In a few instances the council was given power to extend the corporate limits of the municipality.[110]

Special provision was sometimes made for the expenditure of road taxes in each ward in proportion to the amount levied in those wards.[111] The Des Moines charter of 1857 authorized the council to call a special election in any ward

[107] *Laws of Iowa*, 1846–1847, p. 96, 1850–1851, p. 112.

[108] *Laws of Iowa*, 1856–1857, p. 326.

[109] *Laws of the Territory of Iowa*, 1839–1840, p. 162; *Laws of Iowa*, 1850–1851, p. 94.

[110] *Laws of Iowa*, 1854–1855, p. 171, 1856–1857, p. 353.

[111] *Laws of Iowa*, 1856–1857, pp. 149, 293.

on a petition of twenty-five property holders residing therein for the purpose of deciding the question of a tax for improvements in a particular ward.[112] A special tax on a ward was also provided for by the amendment to the Davenport charter in 1855.[113] Neither of the general incorporation acts of this period provided for wards, nor was the council given any power to create them under such legislation.

POWER OVER CITY OFFICERS

One of the most important functions of the council under special charters was the control which it exercised over city officers. While in no case was the council given specific authority to supervise the official conduct of subordinates, yet in many indirect ways this in effect was accomplished. For example, a section frequently found in the charters gave the council power "to appoint in such manner as it determines and during pleasure, one or more street commissioners, a clerk of the market, city surveyor, health officers and such other officers as it deems advisable, and may prescribe their duties, powers and qualifications".[114]

Far more important than the authority to supervise the conduct of officials was the council's power of appointment and removal. While it is a recognized principle of government that the power to appoint implies the power to remove, in many charters specific provision was made for the removal by the council not only of appointive but also of elective officers. The power of removal seems, however, to have been specially directed against the officers whom the council was authorized to appoint — their term being usually dependent upon the "pleasure of the council", but not to exceed one year.

[112] *Laws of Iowa*, 1856–1857, p. 284.

[113] *Laws of Iowa*, 1854–1855, pp. 85, 86.

[114] See *Laws of Iowa*, 1850–1851, p. 64.

The powers and duties of officers were generally prescribed by the council — unless specifically enumerated in the charter. But in no case could the council demand the performance of duties which were contrary to the charter or laws of the State. Many charters as a matter of fact authorized the council to "fix fines and penalties" in order to compel the faithful performance of duty. In the charter granted to Maquoketa in 1857 it was provided that "any officer willfully neglecting or refusing to perform any duties herein required of him, shall be punished by fine not exceeding one hundred dollars, or imprisonment in the county or city jail, not exceeding six months, or by both such fine and imprisonment, and shall be subject to an action for damages in behalf of any person or corporation, aggrieved by such neglect or refusal; and any conviction or judgment under this section, shall work a forfeiture of any office held by the person so convicted, and shall forever disqualify him from holding office under this charter."[115] In the amended charter granted to Dubuque in 1857 further provisions of this character were set forth giving the council power to provide the manner of preferring charges against a city official and the council was authorized to remove any officer except the city judge.[116]

During the later years of the period the council was given power to expel a member of its own body by a two-thirds vote of the whole number elected. In one charter at least this power was limited and could not be exercised against a member twice for the same offense.[117] The precedent for the council's power to expel a member seems to have been the general incorporation act of 1847.[118]

[115] *Laws of Iowa,* 1856–1857, p. 187.

[116] *Laws of Iowa,* 1856–1857, p. 358.

[117] *Laws of Iowa,* 1850–1851, p. 112, 1856 (Extra Session), p. 32, 1856–1857, p. 358.

[118] *Laws of Iowa,* 1846–1847, p. 177.

Subordinate officers were also under the control of the council in the matter of compensation. The council under most of the charters was given power to fix the fees of officers not otherwise provided for, although such fees were limited by the amount paid by townships for similar services. This limitation, however, would apply to only a very few city officers. Except the recorder and the mayor the members of the council usually served without compensation although in at least one instance the council by a two-thirds vote was authorized to determine the compensation of councilmen.[119] This was an exception to the general rule, for in most cases the electors had absolute control of the compensation of the council.

Vacancies in any office, except that of councilman, were generally filled by the council, although in some instances special elections were provided for such purposes. The council also controlled the officers of the city by requiring at their discretion a bond for the faithful performance of their duty. The amount of the bond was with scarcely an exception determined by the council; and city officers, except councilmen, were in most instances liable to a bond.

POWER TO LEVY TAXES

One of the primary reasons for the incorporation of municipalities was to facilitate the levying and collecting of taxes. Indeed, the importance of the taxing power as a function of the council under special charters can best be shown by the fact that every charter and more than one-half of the amendments thereto conferred this authority in specific terms. Every charter contained provisions for levying and collecting taxes of a general nature, together with special taxes of various kinds.

General taxes were usually limited by the charters, as

[119] *Laws of Iowa*, 1856–1857, p. 99.

may be seen by the following provisions selected at random: "The mayor and aldermen shall have power to assess and levy an annual tax, on all personal property in said town, made subject to taxation by the laws of Iowa for county purposes, not exceeding in any one year, one half per centum on both real and personal estate and property".[120] In this instance not only was the amount of the tax limited, but the property subject to taxation was also determined by State law. A similar provision was contained in the Mount Pleasant charter of 1851 which provided that the "mayor and councilmen shall have power to levy by ordinance a tax on real and personal estate within the limits of said corporation, not exceeding one-half of one per centum in any one year".[121]

Although the wording of the charters granting to the council the power of taxation was in most instances very similar, the rate varied considerably. The majority of the charters provided that the rate should not exceed one-half per centum on the assessed valuation of the property subject to taxation; and the tax was usually on a percentage basis. The Burlington charter of 1838, however, provided that an ad valorem tax should be levied. In this case the tax was limited to twenty-five cents per one hundred dollars worth of property, unless increased by a petition of a majority of the property holders.[122] The charter granted to Fort Madison upon the same day provided that the usual "one-half per centum" tax should be levied.[123] Dubuque's charter of 1840 limited the rate to one-fourth per cent; while Bloomington's charter of 1849 allowed two per cent.[124]

[120] *Laws of Iowa,* 1848 (Extra Session), p. 68.

[121] *Laws of Iowa,* 1850–1851, p. 197.

[122] *Laws of the Territory of Wisconsin,* 1836–1838, p. 475.

[123] *Laws of the Territory of Wisconsin,* 1836–1838, p. 483.

[124] *Laws of the Territory of Iowa,* 1839–1840, p. 160; *Laws of Iowa,* 1848–1849, p. 68.

In one instance the charter fixed a lump sum beyond which the council could not go unless a majority of the electors in annual meeting favored it. Furthermore, in a few cases it appears that the rate was limited to one and one-half cents on the dollar, in others from three to ten mills, and in others from twelve and one-half to twenty-five cents per one hundred dollars worth of property.[125] From this it would seem that local needs must have played an important part in determining the rate of taxation in a particular municipality. It is possible that the extravagance of the council became burdensome to the people and that attempts were made to check unnecessary expenditures.[126] The principle of having the electors sanction any increase in the tax rate as provided by the charter was followed in nearly every charter — although the method was usually by special election and not by petition as above mentioned. In a few cases, however, the tax levy had to be submitted to the voters for approval, even though the rate was equal to or less than the limitation provided in the charter.[127]

Many charters authorized the council to collect all municipal taxes; but in several instances the road taxes and school funds were paid to the proper city authorities by county officers. A section from the Fort Madison charter of 1838 — which seems to have been very closely followed in the other charters — will show the power of the council over the collection of taxes. It reads as follows: "It shall be the duty of the president and trustees to make out a duplicate of taxes, charging each individual therein an

[125] *Laws of the Territory of Iowa,* 1843–1844, p. 152; *Laws of Iowa,* 1846–1847, pp. 91, 113, 1854–1855, p. 170, 1856 (Extra Session), p. 24, 1856–1857, p. 330.

[126] *Laws of the Territory of Wisconsin,* 1836–1838, p. 485; *Laws of the Territory of Iowa,* 1841–1842. p. 78, 1843–1844, p. 152; *Laws of Iowa,* 1854–1855, p. 170.

[127] For an example of such a provision see *Laws of Iowa,* 1856–1857, p. 146.

amount or tax in proportion to the real and personal estate of such individual, within said town, which duplicate shall be signed by the president and recorder, and delivered to the marshal, or such other person as shall be appointed collector, whose duty it shall be to collect the same within such time and such manner as the ordinance shall direct."[128] The collector was generally appointed by and remained under the control of the council.

A number of the charters failed to make any provision for special taxes — which probably accounts for the number of amendments dealing exclusively with this subject. Such amendments were necessary owing to the recognized principle that "without a specific grant of power a city is helpless."

The purposes for which special taxes might be levied were as a rule expressly mentioned in the charters or in the amendments. The majority of the special taxes mentioned were for the purpose of grading, paving, altering, and improving the streets, and for other public works. The people affected by the proposed improvement usually gave their approval or disapproval at a special election or by petition; and if the sentiment of the people was unfavorable to the proposition, the project failed. In some instances, however, the cost of the improvement was met in part by the property owners affected and the remainder was paid by the corporation. Sometimes the whole expense was met by a special tax on the property benefited by the improvement.

From these general rules there were, however, many exceptions. In one case a special tax was authorized for the purpose of improving the streets, to be levied upon "the lots thus increased in value, not exceeding twelve per cent. on the first assessment, provided such special tax shall not

[128] *Laws of the Territory of Wisconsin*, 1836–1838, p. 484.

be more than one half of cost of such improvement; the other half or more, as the case may be, to be paid by the corporation."[129] Another provision directed that the tax should be assessed on "all lots" situated along the street to be improved, but such improvement must be petitioned for by the owners of two-thirds of the lots.[130] In 1851 the city council of Dubuque was given authority to levy a special tax not to exceed one per cent for the improvement of the harbor, although such levy was limited to two years.[131] The authorities of Keosauqua in the same year were permitted to levy a special assessment of not more than two and one-half per cent for the purpose of erecting a bridge across the Des Moines River, provided that three-fourths of the voters favored the proposition.[132]

The approval of a special tax by the people was in some instances unnecessary, since the council was given complete power to levy and collect special assessments without the consent of the voters or property owners.[133] In at least one charter the council was authorized to levy a special tax and to fix the amount; but the improvement for which the levy was made had to be approved by the electors.[134]

After 1850 the council was given power in several instances to levy taxes for the support and maintenance of public schools. The first provision of this kind was contained in the charter granted to the city of Muscatine in 1851, the ninth section of which gives the council power to

[129] *Laws of the Territory of Iowa,* 1841–1842, p. 121.

[130] *Laws of the Territory of Iowa,* 1843–1844, p. 150.

[131] *Laws of Iowa,* 1850–1851, p. 142.

[132] *Laws of Iowa,* 1850–1851, p. 156.

[133] *Laws of Iowa,* 1854–1855, p. 85, 1856 (Extra Session), pp. 45, 47, 1856–1857, pp. 72, 240–241, 398.

[134] This provision is found in an amendment enacted for Fort Madison in 1853.— *Laws of Iowa,* 1852–1853, pp. 57, 58.

"provide for the establishment and support of schools in the city, when there has been a legal vote of the citizens in favor thereof, and to provide for the government of the same."[135] Similar provisions were contained in the charters enacted for Iowa City, Lyons, and Clinton.[136]

A number of the charters contained detailed provisions exempting certain improvements from taxation at the discretion of the council or of the voters. The rates of assessment were in most instances dependent upon the amount and kind of property included.[137] Furthermore, land not laid out into lots could not be taxed except as agricultural lands or by the acre.[138] A special tax on dogs was also allowed by several of the charters.

In general it may be said that the charters contained little in regard to poll taxes or road taxes, although the towns operating under special charters constituted a road district which extended from one to two miles from the corporation limits. The council was usually authorized to supersede the regular road supervisors and to assume their duties; but in order to facilitate administration the council was given power to appoint one or more road overseers who were responsible to the appointing authority.

Burlington's charter of 1838 provided that all poll taxes should be applied to the repair of the streets and to no other purpose,[139] and yet the charter granted to Fort Madison on the same day allowed the council to assess two days labor upon the streets for every male inhabitant above the age of twenty-one and under fifty years. Moreover, the board was

[135] *Laws of Iowa*, 1850–1851, p. 64.

[136] *Laws of Iowa*, 1850–1851, p. 90, 1854–1855, p. 147, 1856–1857, p. 137.

[137] *Laws of Iowa*, 1854–1855, p. 103, 1856 (Extra Session), pp. 59, 69, 1856–1857, pp. 39, 57, 214, 225, 251, 319.

[138] *Laws of Iowa*, 1854–1855, pp. 175, 176, 1856 (Extra Session), p. 51.

[139] *Laws of the Territory of Wisconsin*, 1836–1838, p. 475.

given authority to appropriate such other sums raised upon the taxable property of the corporation as was deemed necessary for the maintenance of the streets.[140]

Burlington's second charter, enacted by the Territorial legislature of Iowa in 1845, gave the council power to collect "in money or labor, any sum not exceeding one dollar annually, as a road tax, from each and every person liable, by law, to pay such tax, or to labor on the highways".[141] This same provision was also incorporated in the next two charters granted to Dubuque.[142] In one instance the council was permitted to "require those persons having teams and owing street labor to furnish the supervisor with the same, providing for a fair and adequate allowance for the use thereof".[143] The Davenport charter of 1851 gave the board the power to require every male inhabitant in the city over twenty-one years of age to labor on the streets, not to exceed three days per year, and for refusal after notice to forfeit one dollar a day for each day so refused.[144] From this there seems to have been no age limit beyond which such labor might not be required, as was also the case in the Fort Madison charter mentioned above.

In some instances the persons liable to do work on the roads by the laws of the State might be required by the council to perform such labor.[145] Furthermore, the council was authorized in a few cases "to levy road taxes, not exceeding the amount allowed to be levied by the county court,

[140] *Laws of the Territory of Wisconsin*, 1836–1838, pp. 484, 485.

[141] *Laws of the Territory of Iowa*, 1845, p. 81.

[142] *Laws of the Territory of Iowa*, 1845–1846, p. 121; *Laws of Iowa*, 1846–1847, p. 111.

[143] *Laws of Iowa*, 1850–1851, p. 94.

[144] *Laws of Iowa*, 1850–1851, p. 123.

[145] *Laws of Iowa*, 1850–1851, pp. 152, 177, 211, 1852–1853, pp. 106, 107, 1856 (Extra Session), pp. 39, 71, 1856–1857, pp. 40, 49, 58.

and may provide" for the payment thereof.[146] By two charters a general tax, not to exceed three mills on the dollar on all property liable to road tax in the city, was allowed. The same charters prescribed a "road poll tax not exceeding three dollars for each resident under the age of fifty years and over the age of twenty-one years, the collection and payment of said taxes to be made or enforced in the same manner as other taxes in said city."[147] From this provision it would seem that women were liable for the payment of such taxes — although this could hardly have been the interpretation placed upon the clause.

The authority to correct injudicious or erroneous assessments being a necessary adjunct of the power to levy taxes, the charters almost without exception permitted the council to act as a board of equalization. In a few of the charters in which no specific provision was made for equalizing taxes, it was provided that the proceedings should "not be more stringent or summary than for the collection of state and county taxes".

In general it may be said that the council had the power to levy general and special taxes and to equalize them; that the assessor had the authority to assess the property, both real and personal, upon which taxes were levied; and that the marshal as collector, or some one appointed by the council, had the power to collect taxes by sale of property if necessary. In other words the taxing powers of the city council and its agents were complete.

FINANCIAL POWERS

The financial powers of the council consisted of adjusting claims, auditing accounts, publishing financial reports, ap-

[146] *Laws of Iowa*, 1852–1853, p. 91, 1854–1855, p. 179, 1856 (Extra Session), pp. 27, 40, 1856–1857, pp. 334, 352, 366.

[147] *Laws of Iowa*, 1856–1857, pp. 65, 142.

proving expenditures, issuing bonds, borrowing money, and appropriating funds for various purposes. Provision was usually made in the charters for the payment into the city treasury of all money raised and collected by any tax, license, penalty, fine, or forfeiture; nor could any money be drawn therefrom except by the order of the council, signed by the mayor and countersigned by the recorder — which was to be taken as evidence of the regular passage or approval of such expenditure.

Furthermore, it was usually the duty of the council to liquidate and settle all claims or demands against the corporation, and to require all officers who were intrusted with the collection or care of public money to render account to the council in such manner as the members thereof might direct. The council was directed by almost every charter to publish semi-annually — and if annually, at least twenty days before the regular election — a complete statement of the finances of the city, including a report of the receipts and expenditures together with all debts due or owing to and from the city. And the council was generally given authority to pass all laws "necessary and proper for carrying out the foregoing powers."

Of all the financial powers granted to the council that of borrowing money was probably the most important and the most fully regulated. Although provisions of this character were not usual in the charters enacted before 1850, still the first charter granted to an Iowa town contained such a section. Following the year 1850 nearly every charter contained provisions allowing the council under certain restrictions to borrow money. Moreover, many amendments were enacted by the legislature, either extending the power of the council over such matters or granting it to those cities whose charters contained no such authority.

As pointed out above, the Burlington charter of 1838

authorized the council to borrow money "for any public purpose" whenever it seemed expedient. But this power was limited by the requirement that the "nature and object of the loan shall be stated and a day fixed for the electors of the city to express their wishes."[148] Similar provisions requiring a majority vote of the people were incorporated in several of the charters passed during the later years of the period.[149]

Some of the charters designated the purpose for which money could be borrowed. Public improvements and the paving and repairing of streets were particularly mentioned; and in most instances the purpose of the loan must be stated in the call for the special election. To this general rule there were, however, many exceptions. For example, the Charles City charter of 1857 empowered the council to borrow money not to exceed "two hundred thousand dollars, and pledge the faith of the city for the payment thereof".[150] The purpose of the loan was not stated in the charter, nor need it be voted upon, although the question of borrowing had to be submitted to the voters. The borrowing power of the council of Camanche was limited to ten thousand dollars for school purposes.[151] In some instances the nature, object, and amount of the loan must be submitted to the people for approval, and the money could not be diverted from the object thus specified.[152]

Many charters provided that the borrowing of money must be approved by a two-thirds majority of the electors.

[148] *Laws of the Territory of Wisconsin,* 1836–1838, pp. 476, 477.

[149] *Laws of Iowa,* 1852–1853, p. 57, 1854–1855, p. 180, 1856 (Extra Session), p. 40, 1856–1857, pp. 180, 320, 333, 368.

[150] *Laws of Iowa,* 1856–1857, p. 333.

[151] *Laws of Iowa,* 1856–1857, pp. 365, 368.

[152] For such a provision see *Laws of Iowa,* 1856–1857, pp. 368, 369.

Such a requirement was particularly conspicuous in the charters granted during the later years of the period of special legislation. Four charters in 1851, three in 1853, and ten or more of the charters passed in 1857 contained such provisions.[153] As pointed out above, the purposes of the loans varied: in some instances "any purpose" was specifically mentioned, and in others the matter was left wholly to the discretion of the council.

To facilitate the borrowing of money cities operating under special charters were in many instances authorized to issue bonds. Particularly was this true when a city was given power to subscribe to the capital stock of a railroad company or a plank road company.[154] The amount of the bonds was usually limited, as was also their duration and the maximum rate of interest. From ten to twenty years was the period generally specified and the interest rate was in most instances left to the discretion of the council.[155]

Full discretion in the appropriation and distribution of corporate funds was not always vested in the council. The first charter containing a limitation in this matter was the one enacted for Fort Madison in 1848, which provided that "one half of the yearly revenue of the town for the payment of the present debt of the corporation" shall be appropriated by the mayor and aldermen, "but in no case shall they be allowed to make any contract, or incur any liabilities more than the amount of the surplus money on hand, and one half of the nett yearly revenue of the year when the contract is made or liability incurred."[156] A

[153] *Laws of Iowa,* 1850–1851, pp. 64–65, 92, 156, 213, 1852–1853, pp. 53, 107, 115, 1854–1855, p. 148, 1856 (Extra Session), pp. 26, 71, 1856–1857, pp. 41, 58, 72, 138, 158, 161–162, 226, 253, 289, 352.

[154] *Laws of Iowa,* 1850–1851, p. 166, 1856 (Extra Session), pp. 75, 76, 1856–1857, pp. 270, 399, 400, 402, 403, 447.

[155] In one instance the rate was not to exceed ten per cent.— *Laws of Iowa,* 1856–1857, p. 399.

[156] *Laws of Iowa,* 1848 (Extra Session), p. 72.

number of the charters permitted the council to appropriate money for the payment of all debts and expenses of the city, although the method was left to their discretion. A few charters allowed the board to appropriate "such fines and forfeitures as might be by them collected."

"An Act to provide for the repeal of the charter of Fort Madison", passed by the legislature in 1847, provided that "the Mayor and Board of Aldermen . . . . shall have no power to appropriate any of the funds collected or to be collected by them, other than for the payment of the officers of said town, and the debts of the corporation now existing and unpaid — that it shall be their duty to pay said debt or debts as soon as they shall be enabled to do so".[157] The Des Moines charter of 1857 made it "necessary to secure a two-thirds vote of . . . . [the] council, to carry in the affirmative any proposition involving appropriations for any general purpose".[158]

POWER OVER CITY PROPERTY

In almost every charter the corporate powers were enumerated in great detail. Included in such enumeration was the authority of the council over city property. The form in which this power was granted was stereotyped and read as follows: the city shall have "also the power of purchasing, using, occupying, enjoying and conveying real, personal and mixed estate." Thus the council was given authority to purchase and acquire property for the use and benefit of the corporation; and upon this power there were no limitations, except such as might be inferred from the restrictions above mentioned relative to the council's power to levy taxes and borrow money. But if funds were available there was nothing to prevent the purchase of such

[157] *Laws of Iowa*, 1846–1847, p. 149.

[158] *Laws of Iowa*, 1856–1857, p. 284.

property as the council deemed necessary. On the other hand, in regard to the sale of city property such freedom was in most instances limited.

Most of the charters required that the question of the sale of city property be submitted to the voters in such manner as the council deemed expedient, although in a few instances the manner was specifically provided. Ten days' notice was usually required in one or more newspapers printed in the city, or posted in three of the most public places, setting forth the time, place, and purpose of the election. In all cases the proposition had to be approved by a majority of the qualified electors voting at the election; and written or printed ballots were in most instances specified.[159] From this general rule there was, however, at least one exception: Guttenberg's charter, amended in 1857, provided that "any lot or lots or piece of ground of the town property for manufacturing purposes" may be sold by the council without the consent of the people. Guttenberg was evidently bidding for factories, for in the same amendment provision was made allowing the council to lease or rent public landing lots for mill or warehouse purposes.[160]

In addition to the power of purchasing property, the charters in several instances conferred upon the council the power of eminent domain. For example, the Maquoketa charter of 1857 provided that "the council shall have the right to take and appropriate private property to the use of said city, or destroy or remove the same when it shall be necessary . . . . by paying to the owners the full value thereof, to be ascertained by disinterested appraisers, as shall be provided by ordinance."[161] The Charles City

[159] *Laws of the Territory of Iowa,* 1845, p. 83, 1845–1846, p. 123; *Laws of Iowa,* 1848–1849, p. 27, 1854–1855, p. 32, 1856–1857, pp. 349, 427.

[160] *Laws of Iowa,* 1856–1857, pp. 157, 158.

[161] *Laws of Iowa,* 1856–1857, p. 179.

charter of the same year provided that in "every case the said city shall be liable to make full compensation at the fair cash value to the owners of all property, which shall then be taken for public use".[162]

Private property taken by the corporation was used for a variety of purposes — among which may be mentioned streets and alleys, public parks and grounds, and public buildings. As a matter of fact the council in several cities had the power to erect and repair market houses, work houses, hospitals, public halls, and city jails.[163] Moreover, the improvement and regulation of public grounds was a duty of the city council in a few cases.[164]

POWER OVER PUBLIC SCHOOLS

Before 1846 city councils in Iowa had no authority over public schools; but in that year the charter granted to Dubuque contained a section providing that the "council shall have power whenever they deem it expedient, to provide for the establishment and support of public schools within said city, and to pass all ordinances necessary and proper for the good government of the same."[165] The same section was incorporated in the new charter granted to Dubuque in the following year as well as in the charters enacted for Keokuk, Davenport, Keosauqua, Le Claire, and Des Moines.[166]

In 1851 a new element was introduced in the charters requiring the approval of the citizens on the question of establishing schools[167]— although the next two charters

[162] *Laws of Iowa*, 1856–1857, p. 337.

[163] *Laws of Iowa*, 1854–1855, p. 19, 1856–1857, pp. 288, 348.

[164] *Laws of Iowa*, 1856 (Extra Session), pp. 39, 60, 1856–1857, pp. 40, 49, 58, 115, 215, 226, 252, 320, 329, 333, 353.

[165] *Laws of the Territory of Iowa*, 1845–1846, p. 121. See also Aurner's *History of Education in Iowa*, Vol. I, pp. 16, 17.

[166] *Laws of Iowa*, 1846–1847, p. 111, 1848–1849, pp. 25, 26, 1850–1851, pp. 116, 152, 1854–1855, p. 29, 1856–1857, p. 290.

[167] *Laws of Iowa*, 1850–1851, pp. 64, 90, 1856–1857, p. 137.

enacted in the same year followed the plan as expressed in the Dubuque charter of 1846.[168] Two charters provided that the council should have "full control and authority over the common schools in said city".[169]

The charter granted to Maquoketa in 1857 contained a comprehensive provision which reads as follows: "The council may provide for the establishment and support of public schools within the city, and may constitute and regulate the school districts therein, and may form school districts embracing territory partly within and partly without the limits of said city, whenever the school fund commissioner, or other officer or officers having authority to form or alter school districts, shall concur therein: *Provided,* That the powers granted in this section shall only be exercised in pursuance of a vote of the citizens and persons interested in the exercise of said powers, and may provide by ordinance for the government of any and all schools established by said council."[170]

The school district which was co-extensive with the city of Dubuque was subject to the regulations of the council, and yet the school fund commissioner was authorized to alter the boundaries of the district. Moreover, the council could levy a school tax not to exceed one-fourth of one per cent and provide for the erection of buildings and for other expenses.[171] Camanche's charter, enacted in the same year, contained about the same provisions, although the district was not subject to alteration by the school fund commissioner.[172]

A very few of the charters authorized the council to ap-

[168] *Laws of Iowa,* 1850–1851, pp. 116, 152.

[169] *Laws of Iowa,* 1856 (Extra Session), p. 71, 1856–1857, p. 41.

[170] *Laws of Iowa,* 1856–1857, pp. 179, 180.

[171] *Laws of Iowa,* 1856–1857, p. 354.

[172] *Laws of Iowa,* 1856–1857, pp. 364, 365.

point or provide for the election of a board of education for the district. Furthermore, the council was allowed to vest in such board the necessary power for the care and management of public schools within the district, the employment of teachers, supervision of schools, and such other duties as seemed necessary. The council in a few instances was required to publish annually a complete school report.[173] In two charters the council was granted all the powers enumerated in chapter sixty-nine of the *Code of 1851*.[174]

The power of the council to borrow money and levy taxes for school purposes has been discussed above in the section dealing with power to levy taxes and financial powers.

POLICE POWERS

Municipal corporations are created not only for the purpose of administering local affairs but also to serve as agents of the State. The powers which they exercise are delegated to them. Many of these powers are known as police powers. Thus under the police powers of the municipality, nuisances, health, fires, markets, liquor, and the like, are regulated and controlled. In fact, while the exercise of police power by a governmental agency is primarily for the general welfare of the people, "it is well settled that laws and regulations of this character, though they may disturb the enjoyment of individual rights, are not unconstitutional, though no provision is made for compensation for such disturbances." Under the guise of police power private property may not be appropriated for public use, but its use and enjoyment may be regulated. If the owner suffers injury, "he is compensated for it by sharing in the

[173] *Laws of Iowa*, 1854–1855, pp. 15, 16, 1856 (Extra Session), p. 45, 1856–1857, pp. 354, 365.

[174] *Laws of Iowa*, 1854–1855, p. 181, 1856 (Extra Session), p. 28.

general benefits which the regulations are intended and calculated to secure. The citizen owns his property absolutely . . . . still he owns it subject to this restriction, namely, that it must be so used as not unreasonably to injure others".[175]

One of the police powers most frequently granted to the council by the special charters was that of the regulation of health — although during the later years of the period the provisions of the charters were more comprehensive. As a matter of fact, of the fourteen charters granted to municipalities in Iowa before 1846, only six contained provisions in regard to the regulation and control of public health; while of the forty-three charters enacted after that year, all but seven of them contained specific sections authorizing such regulation.

In general it may be said that about three-fourths of the charters vested the municipal authorities with power to regulate the health of the inhabitants, to fill up or drain low-lying lots upon which stagnant water had collected, and to prevent and abate nuisances. The council was also authorized to "pass all needful ordinances and by-laws", and to appoint health officers to carry out the foregoing powers. The following provision — identical in most of the charters — is typical of the council's power over health: "The council may make all necessary ordinances in relation to the cleanliness and health of the city, and may require the owners of lots, on which water become[s] stagnant, to drain or fill up the same; and in default thereof, after reasonable notice, may cause the same to be done at the expense of the city, and assess the costs thereof on the specific lots and cause them to be sold by the collector of the city, as in the case of taxes; and the owner may redeem from such sale as in case of a sale for tax."[176] In some instances the

[175] Dillon's *Municipal Corporations* (5th edition), Vol. I, pp. 553–555.

[176] For such a provision see *Laws of Iowa*, 1852–1853, p. 104.

council was authorized "to cause all putrid substances, either animal or vegetable, to be removed".[177]

Provision was made in a few of the charters for the protection of the inhabitants of the cities against contagious diseases, the council being authorized to pass quarantine regulations. Burlington's charter of 1838 authorized the council "to use all needful means to prevent the introduction of infectious diseases into said city".[178] The next provision of this character is found in the Davenport charter of 1851, authorizing the council "to make regulations to prevent the introduction of contagious diseases into the city, to make quarantine laws for that purpose, and to enforce the same within five miles of the city".[179] Similar provisions were contained in an amendment to the Keokuk charter in 1853, allowing the council "to make regulations to prevent the introduction of paupers, or of contagious diseases, into the city, also to make quarantine laws and enforce the same within the city, and not to exceed four miles beyond the city bounds".[180] The jurisdiction of the council for the enforcement of such regulations was limited to three miles in the Mount Pleasant and Council Bluffs charters; while the Charles City charter contained no specific grant of power in such matters beyond the corporate limits.[181]

Hospitals were not generally provided for in the special charters. In fact it was not until 1851 that any provision was made for the establishment of hospitals. Davenport's charter of 1851 authorized the council "to establish hospitals, and make regulations for the government of the

[177] *Laws of Iowa,* 1856–1857, p. 289.

[178] *Laws of the Territory of Wisconsin,* 1836–1838, p. 472.

[179] *Laws of Iowa,* 1850–1851, p. 117.

[180] *Laws of Iowa,* 1852–1853, p. 135.

[181] *Laws of Iowa,* 1856 (Extra Session), p. 23, 1856–1857, pp. 115, 329.

same".[182] Dubuque's amendment in 1855 permitted the council "to erect, purchase, hold and regulate, hospitals".[183] It may be noted that most of the towns whose charters contained provisions for hospitals and quarantine regulations were river towns — the early ports of entry into the Iowa country.

Health officers for carrying out the health ordinances were appointed by the council and were subject to such rules and regulations as well as such compensation as the council deemed necessary and proper.

Some of the charters contained other miscellaneous provisions relative to certain trades and occupations which may be classed as police power. Bakers and butchers were subject to license and regulation by the council in the interest of the health of the inhabitants of the city. Moreover, in a few cases the sale of meats, fish, and poultry was prohibited except in a market, which was generally under the control of the council. Tenement houses, livery stables, nuisances, and cemeteries and burials were usually under the control and regulation of the council. Public wells were also subject to the same authority.

Most of the charters contained specific provisions enabling the council to pass ordinances for preventing the destruction of property by fire. As a matter of fact only about ten charters failed to grant such power. Furthermore, the council was usually authorized to prohibit the discharge of fire arms, to regulate the storage and sale of gunpowder, and to organize fire companies and provide them with all necessary fire extinguishing apparatus.

In order to carry out these provisions effectually the council in most instances was given power to prevent by

[182] *Laws of Iowa*, 1850–1851, p. 117. For other provisions of a similar character see *Laws of Iowa*, 1856 (Extra Session), p. 23, 1856–1857, pp. 115, 329, 348.

[183] *Laws of Iowa*, 1854–1855, p. 19.

ordinance the erection of any building of wood of more than ten feet in height in any block if such construction was by petition opposed by the owners of three-fourths of the lots in the square or fractional square. Moreover the council was authorized to condemn and cause to be removed any building or addition to any building in such square, except where the outer walls were composed of brick or stone and mortar. In the Burlington amendment of 1853, however, the council was authorized to give permission for the erection of buildings contrary to ordinance. This amendment also provided that "all judgments for the violation of any ordinance passed by virtue of this section, shall be liens upon the real estate, upon which such building is located, and the same shall be sold to satisfy the execution."[184]

Probably the most comprehensive statement of the power of the council over fires was contained in an amendment to the Keokuk charter in 1856 and reads as follows:

> That the City Council for the purpose of guarding against the calamities of fire, shall have power to prescribe the limits within which wooden buildings shall not be erected, or placed, or repaired, without the permission of the said Council, and to direct that all and any buildings within the limits prescribed, shall be made or constructed of fire-proof materials, and to prohibit the repairing or rebuilding of wooden buildings within the fire limits, when the same shall have been damaged to the extent of fifty per cent of the value thereof, and to prescribe the manner of ascertaining such damage. The City Council shall also have power to regulate the construction of chimneys so as to admit chimney sweeps, and to compel the sweeping and cleaning of chimneys, to prevent the dangerous construction and condition of chimneys, fire places, hearths, stoves, stove pipes, ovens, boilers and apparatus used in and about any building or manufactory, and to cause the same to be removed or placed in a safe and secure condition when considered dangerous.
>
> To prevent the deposit of ashes in unsafe places, and appoint one or more officers to enter into all buildings and inclosures, to discover

[184] *Laws of Iowa*, 1852–1853, pp. 84, 85.

whether the same are in a dangerous state, and to cause such as may be dangerous to be put in safe condition.

To require the inhabitants to provide as many fire buckets, and in such manner and time, as they shall prescribe, and to regulate the use of them in time of fire. To regulate and prevent the carrying on of manufactories dangerous in causing or promoting fire. To regulate and prevent the use of fire works and fire arms. To compel the owners or occupants of houses or other buildings to have scuttles in the roofs, and stairs or ladders leading to the same.

To authorize the Mayor, Aldermen, Fire Wardens, or other officers of said city, to keep away from the vicinity of any fire, idle and suspicious persons, and to compel all officers of said city and other persons to aid in the extinguishment of fires, and preservation of property exposed to danger thereat.

To organize fire, hook, ladder and axe companies.— To provide fire engines, and other apparatus for the extinguishment of fires. To appoint during pleasure, Wardens and Engineers of the fire department. To appoint during pleasure a competent number of Firemen and prescribe their duties, and to impose fines and forfeitures upon them, for the violation of the rules and regulations prescribed, and generally to establish such regulations for the prevention and extinguishment of fires, as the City Council deem expedient.[185]

It seems that such elaborate and detailed provisions were hardly necessary in order to give the council complete power over fire prevention; but by this means the cities were freed from judicial interference in the powers granted by the legislature.

The power to license and the power to tax are based upon different principles — the former being exercised for regulative purposes, although in some instances it has been held not to be unconstitutional for licenses to be issued for revenue.

Most of the special charters, particularly during the later years of the period, permitted the council "to regulate by

[185] *Laws of Iowa,* 1856 (Extra Session), pp. 48, 49.

good and wholesome'' laws all taverns, groceries, and other places where spirituous liquors were sold. Moreover, the council was given full and exclusive power to grant or refuse licenses to taverns, inn keepers, and retailers of liquor in quantities of less than one quart. Although the council was given exclusive authority over the sale of liquor within the corporation, most of the charters provided that the regulations passed by the council should not be repugnant to the laws of the Territory or the State.

The Bloomington (now Muscatine) amendment of 1842 gave the city council power to license the retailing of ''ardent spirits within the limits of the corporation; and the proceeds of such licenses shall be appropriated, the one half for the benefit of said corporation, and one half to be paid into the county treasury.''[186] But an amendment of the Mount Pleasant charter passed in 1844 permitted the council ''to grant or withhold, at their discretion, all licenses for the retailing of ardent spirits . . . . and to appropriate the proceeds . . . . for the benefit of said corporation''.[187]

Keosauqua's charter of 1851 provided that the ''council shall have power and it is hereby made their duty to regulate by good and wholesome laws and ordinances, all taverns, ale, beer, cider and porter shops, and places where spirituous or vinous liquors are sold in less quantities than one gallon . . . . and the city council shall have full and exclusive power to grant or refuse license to tavern keepers''.[188] Although the Oskaloosa charter of 1855 contained no specific grant of power over the sale of liquor, the council was authorized to ''make any other ordinary, suit-

[186] *Laws of the Territory of Iowa,* 1841–1842, p. 120.

[187] *Laws of the Territory of Iowa,* 1843–1844, p. 103.

[188] *Laws of Iowa,* 1850–1851, p. 150.

able and proper police regulation'' and under this provision licenses could probably be issued to retailers of liquor.[189]

Furthermore, most of the charters permitted the council to regulate and license all theatrical exhibitions, and public shows and all exhibitions of whatever name or nature to which admission was obtained on the payment of money, but provision was made that no such license should extend to any entertainment of a scientific or literary character. Showmen, keepers and managers of theatrical exhibitions and other entertainments for money or other reward, auctioneers for the sale of horses and other domestic animals at public auction in the streets, and keepers of ferries were also generally subject to license and regulation. Moreover, the council could exact such reasonable terms and conditions as in their opinion the ''peace, quiet, and good order of society and the city may require''; and such licenses might be suspended or revoked whenever the general welfare of the city made such action necessary.

The council in Muscatine was authorized to ''impose license upon all persons exercising the business or calling of an auctioneer, within the said city, in such sum as the said council may determine, and upon such conditions as the said council may see proper to affix.'' In addition the council was given ''power to tax and regulate auctioneers in their calling, and to require each . . . . to execute to the said city a bond . . . . conditioned that he will render a true account of all sales made by him, and promptly pay over to the said city all taxes which may become due to the said city from the sales so made by him as auctioneer''.[190]

Broker and loan offices were also in several charters subject to regulation and license.[191] The Davenport charter of

[189] *Laws of Iowa,* 1854–1855, p. 126.

[190] *Laws of Iowa,* 1856–1857, pp. 24, 25.

[191] *Laws of the Territory of Iowa,* 1845–1846, p. 121; *Laws of Iowa,* 1846–1847, p. 111, 1848–1849, p. 25, 1850–1851, pp. 117, 152, 1854–1855, p. 29, 1856 (Extra Session), p. 23, 1856–1857, pp. 330, 425.

1842 provided for licensing bakers; and the price and weight of bread might be regulated by the council.[192] Moreover, Fort Madison's charter of the same year allowed the council "to prohibit the baking . . . . [of bread] for sale, except by those licensed",[193] and the same provision was incorporated in the next charter granted to Fort Madison in 1848.[194]

In 1853 an amendment containing a very comprehensive grant of power relative to licenses was passed by the legislature for the city of Keokuk. The council was given authority "to license, tax, and regulate agents or agencies of foreign insurance companies, hawkers or peddlers, and pawnbrokers . . . . to regulate, license, or prohibit butchers, and to revoke their licenses for malconduct in the course of trade, and to regulate, license and restrain, the sale of fresh meats and vegetables in the city."[195]

But the Burlington amendment of the same year contained a still more comprehensive section in which the council was authorized "to grant or refuse license to sell merchandize, real estate, money, and pawnbrokers, to storage and forwarding or commission merchants, to lumber merchants, auctioneers, to hawkers and peddlers, either of wholesale or retail, to insurance, except mutual insurance companies, to keepers of billiard tables, nine or ten-pin alleys, bagatelle tables, or shuffle boards, to livery stable keepers, and also for the running of carriages, or any other vehicles for conveying persons or property, for hire; for all public concerts, or exhibitions for the public entertainment or amusement, and to require and receive for each license such sums of money as they may deem expedient

[192] *Laws of the Territory of Iowa*, 1841–1842, p. 43.

[193] *Laws of the Territory of Iowa*, 1841–1842, p. 77.

[194] *Laws of Iowa*, 1848 (Extra Session), p. 67.

[195] *Laws of Iowa*, 1852–1853, p. 135.

and just. And all judgments rendered for violations of any ordinance in relation to licenses, shall be liens upon all the property used in violation of said ordinance, and the same may be sold to satisfy the execution."[196]

One charter made bankers and wagons subject to license and regulation; while another included eating-houses, hotel-keepers, boarding-houses, "bankers, dealers in money, warrants, notes and other evidences of indebtedness, and works of all kinds."[197] Still other charters provided for the regulation of gambling-houses, baudy-houses, weights and measures, and for the inspection of coal, hay, beef, pork, flour, butter, lard, and other provisions. A few charters made provision for the regulation of the "character and size of the foundation and other walls of buildings".[198] The rates charged for the carriage of persons and the drayage of property were also in some instances under the control of the council.

Most of the charters of the river towns provided for the establishment, regulation, and licensing of ferries. The first provision of this character was contained in the Fort Madison charter of 1842, authorizing the council to establish one or more ferries across the Mississippi River and to lease the same for one or more years.[199] Burlington's charter, which was granted three years later, allowed the council to license the keepers of ferries across the Mississippi River and exact such "sum or sums of money as they shall think fit and expedient".[200]

The city of Bloomington (now Muscatine) was given ex-

[196] *Laws of Iowa*, 1852–1853, p. 84.

[197] *Laws of Iowa*, 1856–1857, pp. 179, 348.

[198] *Laws of Iowa*, 1850–1851, p. 117, 1856 (Extra Session), p. 23, 1856–1857, pp. 116, 330, 349.

[199] *Laws of the Territory of Iowa*, 1841–1842, p. 77.

[200] *Laws of the Territory of Iowa*, 1845, p. 80.

clusive authority to establish, operate, or lease ferries, but if leased it should be for not more than ten years. In 1848 the charter was again amended, permitting the council to fine any person who should ferry people or property across the Mississippi River "in any boat or vessel used for the purpose of ferrying, with or without compensation therefor, having no license, leave or permission from the President and Trustees". This act also contained provisions for commencing the action and the details for recovering the boat or vessel if it were condemned and forfeited to the city.[201]

Keosauqua's charter of 1851 made possible the licensing of the keepers of ferries and bridges across the Des Moines River from the city to the opposite shore.[202] A similar provision was also contained in the Council Bluffs charter of 1857 relative to the ferries across the Missouri River.[203] In a few instances provision was made for the establishment and operation of free ferries.[204]

Municipalities are usually granted large powers in regard to the prevention and abatement of nuisances in order to promote the public health, safety, and convenience of the inhabitants. Thus the cities operating under special charters were in most instances given "the power to prevent and abate nuisances". After 1845, however, the practice seems to have been to enumerate certain definite and specific subjects which the council might regulate or prohibit. For example, the Des Moines charter of 1857 authorized the city council among other things "to prevent and regulate the rolling of hoops, playing of ball, flying of kites, or

[201] *Laws of Iowa*, 1848 (Extra Session), pp. 37, 38.

[202] *Laws of Iowa*, 1850–1851, p. 150.

[203] *Laws of Iowa*, 1856–1857, pp. 113, 114.

[204] *Laws of Iowa*, 1848 (Extra Session), p. 71, 1852–1853, p. 53, 1856–1857, p. 289.

any other amusements or practice having a tendency to annoy persons''.[205]

In general the powers of the council over nuisances were as follows: to remove buildings dangerous to health or the prevention of fire; to prohibit animals from running at large (limited in some charters to certain seasons of the year); to prohibit dogs from being kept within the city; to prohibit the discharge of fire arms within the limits of the corporation; to regulate the storage and sale of gunpowder; to prevent racing and immoderate driving on the streets; to regulate or prohibit gaming and gambling houses; to prohibit disorderly houses; to prohibit fireworks in the streets; to regulate or prohibit the sale of liquor, unless such prohibitions were repugnant to State law; and to prohibit the keeping of swine within the city.

In order to enforce the city ordinances relative to the matters above named the council was usually authorized to "make all needful by-laws and ordinances to enforce the foregoing powers". Two charters permitted the council to levy a fine of five dollars on persons who allowed swine to run at large, and such fine was to "be paid to the person making complaint."[206] According to other charters fines varying from ten dollars to one hundred dollars might be levied for the breach of city ordinances. A few charters provided either a fine or imprisonment in the city or county jail — the latter in most instances being limited to thirty days, although in one case the term was not to exceed seventy--five days.[207] These fines could be worked out by performing labor on the streets, the compensation in at least one instance being limited to one dollar per day.[208]

[205] *Laws of Iowa,* 1856–1857, p. 288.

[206] *Laws of Iowa,* 1856–1857, pp. 261, 271.

[207] *Laws of the Territory of Iowa,* 1843–1844, p. 150.

[208] *Laws of the Territory of Iowa,* 1839–1840, p. 159, 1841–1842, p. 108, 1843–1844, p. 150; *Laws of Iowa,* 1848 (Extra Session), p. 68, 1848–1849, p. 27, 1856 (Extra Session), p. 22, 1856–1857, pp. 153, 187, 295, 317, 346, 363.

Special charter cities usually constituted one road district, and the council was entrusted with the general care and improvement of streets and alleys within the corporate limits and of all roads leading from the city for a distance of one or two miles. The city authorities were usually given complete and exclusive jurisdiction over the road district thus formed. Furthermore, the council was authorized to appoint one or more road supervisors or commissioners and prescribe their duties.

In some instances general road taxes were levied by the city council, although a few charters provided that such taxes be levied and collected by the county officers and by them paid into the city treasury.[209] The council usually had the power to open, establish, alter, and vacate streets, and in a few cases they might extend streets through any territory that was added to the city. In such cases, however, the corporation was made liable for full compensation to the owners of property thus taken. Furthermore those charters granting to the council the power of eminent domain usually made provision for the assessment of damages by a specially appointed board or commission.[210] In one charter the council had the power to determine the damages by such method as they deemed proper.[211]

After 1846 the charters usually contained detailed provisions permitting the council to vacate, improve, light, grade, and pave streets and alleys. In regard to these matters the early charters were brief and granted power in very general terms. For example, the Burlington charter of 1838 granted the council the power to make regulations and ordinances for the "public improvement of said

[209] For such provisions see *Laws of Iowa,* 1856 (Extra Session), p. 50, 1856–1857, p. 94.

[210] See *Laws of Iowa,* 1856–1857, pp. 179, 337, 352, 353.

[211] See *Laws of Iowa,* 1856–1857, p. 337.

city''; and the Fort Madison charter of the same year specified the power to ''grade streets . . . . [and] to open and keep in repair, streets, avenues, lanes, alleys, drains and sewers''. In the same act further provision was made for the selection of a board or jury for the assessment of damages arising from the opening of streets, and for the levy and collection of labor to be performed upon the streets.[212]

Many of the special charters also provided for changing the grade of streets upon a petition of the owner or owners of ''two-thirds the value of the real property on both sides of the street where the change is desired.''[213] Furthermore, the council was usually given power to regulate and improve streets and alleys and determine the width of sidewalks, provided that no private property be taken without just compensation to be ascertained by a jury of freeholders chosen by the council or marshal. Notice had to be given to all persons whose property was to be appropriated, else the whole proceeding was invalid. If damages against the city were awarded they were to ''constitute a valid claim . . . . and may be sued for and collected as any other claim.''[214]

In most instances, however, the board making the assessment of damages arising from the opening or changing of streets was directed to take into consideration the advantages and disadvantages of such alterations and improvements. From the decision of this damage board appeal could be made to the district court, but its decision or judgment was final.[215] The most comprehensive scheme for the

[212] *Laws of the Territory of Wisconsin,* 1836–1838, pp. 472, 483–485.

[213] See *Laws of Iowa,* 1854–1855, p. 103, 147, 1856 (Extra Session), pp. 38, 58, 1856–1857, pp. 39, 48, 56, 138, 180, 224.

[214] *Laws of Iowa,* 1856–1857, pp. 352, 353.

[215] *Laws of Iowa,* 1856–1857, p. 397.

assessment of damages was contained in an amendment to the Burlington charter enacted in 1851.[216] Damages of this character were usually paid out of the general revenue of the corporation, although in a few instances the council was authorized to levy a special tax upon the real estate enhanced in value by the proposed change.[217]

A few charters permitted the council to vacate any street or alley "upon the petition of two-thirds the value of the real property on both sides of the street" where the change was desired. The Wapello amendment of 1857, however, made the city liable for damages.[218] The president and trustees of Bloomington (Muscatine) were authorized to permit "any person owning all the lots in any block in said town, to enclose and have the possession and use of the alley of said block, so long as such person may own every lot of such block."[219]

The erection and regulation of bridges was generally under the control of the council. In 1842 the city of Davenport received a charter giving the council the power "to erect and repair bridges". The same power was granted in the Farmington charter of 1847, in the Fort Madison charter of 1848, in the Davenport charter of 1851, and in the amendments enacted for Dubuque in 1855 and 1857.[220]

Provision was usually made in the charters enacted during the latter part of the period for the paving of streets

[216] *Laws of Iowa,* 1850–1851, pp. 83, 84. For other provisions relative to damages see *Laws of the Territory of Wisconsin,* 1836–1838, pp. 483, 484; *Laws of Iowa,* 1850–1851, pp. 84, 198, 1852–1853, pp. 53, 90, 133, 1854–1855, pp. 76, 77, 139, 1856 (Extra Session), p. 47, 1856–1857, pp. 94–98, 119, 146, 179, 240, 241, 251, 352–353, 364, 397.

[217] For such a provision see *Laws of Iowa,* 1856–1857, pp. 240, 241.

[218] *Laws of Iowa,* 1856–1857, p. 71.

[219] *Laws of the Territory of Iowa,* 1841–1842, p. 121.

[220] *Laws of the Territory of Iowa,* 1841–1842, p. 43; *Laws of Iowa,* 1846–1847, p. 98, 1848 (Extra Session), p. 67, 1850–1851, pp. 117, 157, 1854–1855, p. 15, 1856–1857, p. 348.

and alleys, the construction of sidewalks, sewers, and public wells, the erection of street lights, and the establishment of night watches and police. The council was in most instances authorized to require the owners of adjacent lots to pave one-half of the width of the street or such paving could be done by the city and the expense assessed upon the lots. Such assessment had the effect of a special tax, and the property could be sold by the collector in the same manner as real and personal property for general taxes. The expense of constructing sewers was generally met by an assessment "upon the property benefitted thereby".

For the care and improvement of streets and alleys the council was authorized to levy a tax on the property within the corporation. The amount of the tax was usually limited to three mills on the dollar's worth of such property. Poll taxes were also provided for, varying from one to three dollars. Special treatment has been given both road taxes and poll taxes in a preceding section, so that further consideration of them in this connection is unnecessary.

POWER TO AMEND THE CHARTER

Previous to 1855 the legislature retained the power to amend the charters which it had enacted. In 1855 the city council of Oskaloosa was given the authority to propose amendments to the charter, and it was provided that the proposed amendment should "be submitted to the legal voters at the annual election; and if a majority of the votes cast for and against the amendment be for it, the amendment shall thereupon become a part" of the charter of the municipality.[221]

Similar provisions were incorporated in the Newton and Tipton charters of 1857.[222] Thus, throughout the entire

[221] *Laws of Iowa*, 1854–1855, p. 129.

[222] *Laws of Iowa*, 1856–1857, pp. 148, 165.

period of special legislation in Iowa only three municipalities were authorized to amend or change their charters.

VII

THE MAYOR IN SPECIAL CHARTER CITIES

The mayor, or president as he was sometimes called, was always elected by the qualified voters of the city for a term of one year — except in one instance when the term was extended to two years.[223] Although none of the charters definitely fixed or specified the compensation of the mayor, as a member of the council he may be presumed to have received whatever salary or fees were granted by the electors. The charters did, however, provide that for his judicial duties the mayor should receive the same compensation as was allowed the justices of the peace for similar services.

The qualifications of the mayor varied widely, although in most instances he was required to be a citizen and also a resident of the city for a period of from one to three years. A few of the charters required candidates for the office to be twenty-one years of age, and in one case the necessary age was twenty-five years.[224] The bond of the mayor was fixed at the discretion of the council, although one charter provided that a bond of one thousand dollars should be required.[225] Furthermore, the mayor was required to take an oath to support the Constitution of the United States and the Constitution and laws of the State or Territory, as the case might be, and to faithfully perform the duties of his office.

Vacancies in the office of mayor, caused by death, resig-

[223] *Laws of Iowa*, 1854–1855, p. 9.

[224] *Laws of the Territory of Wisconsin*, 1836–1838, p. 471.

[225] *Laws of Iowa*, 1848–1849, p. 33.

nation, or removal from the city, were filled by special election in most instances. A few charters, however, provided that the council might choose one of their own members to fill out the unexpired term. Temporary vacancies in the office were usually filled by the senior trustee or by the president *pro tem;* but such appointees could not perform any of the mayor's judicial functions.

The duties which the mayor promised "to faithfully perform" were many and somewhat varied in their character. He was always the presiding officer of the council and the chief administrative officer of the city. In the council the mayor usually voted in case of a tie, although during the early years of the period the mayor and recorder voted upon all measures and their presence was necessary to a quorum. The duty of calling special meetings of the council usually devolved upon the mayor, but in some instances the call was subject to the approval of a majority of the members.

The seal of the city was usually given into the custody of the mayor, and the records of the municipality were likewise entrusted to his keeping. Furthermore, all by-laws, ordinances, tax duplicates, commissions, and licenses, as well as all orders of the council upon the city treasury required the signature of the mayor. Most of the charters provided that the mayor should be the chief executive officer of the council, the conservator of the peace, and the overseer of the official conduct of all subordinate officers.

The mayor was usually required to publish all ordinances at least six days before they went into operation, to issue all processes against offenders, and according to most of the charters to hear all trials for offences against the city ordinances. He was ex officio justice of the peace and had concurrent jurisdiction of offences against the State law committed within the limits of the corporation. When act-

ing in the capacity of a judicial officer he was subject to the same regulations as a justice of the peace.

A jury was not required in the mayor's court, although a jury of six persons could be impanelled if requested by one of the parties to a suit. The mayor was directed to keep a record of all proceedings held before his court. Moreover, in his administrative capacity, the mayor was authorized to cause the neglect of subordinate officers to be punished. In one instance the mayor was subject to indictment and trial in the district court, and if convicted was liable to a fine not to exceed two hundred dollars. Furthermore, he was liable to removal from office by the court on the recommendation of the jury.[226] The amendment granted to the Keokuk charter in 1856 provided that "the Mayor . . . . shall exercise no judicial functions whatever, but shall be the executive officer of said city, and as such shall have the right to remit fines and pardon offences committed against the municipal ordinances and regulations of said city."[227] All judicial functions of the mayor were by this act conferred upon the recorder's court.

The Farmington charter of 1847 provided that "the mayor shall nominate, and with the concurrence of the Board of Aldermen, appoint all officers within the city, which are not ordered by law or ordinance to be otherwise appointed. It shall be his duty to enforce the laws of the State, and ordinances of the city, within the corporate limits thereof. He may, with the advice of the Board of Aldermen, remove from office any person holding office created by ordinance; he shall have power to fill all vacancies that may happen in any office, other than aldermen".[228] Such powers were, however, the exception and not the general rule.

[226] *Laws of Iowa*, 1850–1851, p. 120.

[227] *Laws of Iowa*, 1856 (Extra Session), p. 43.

[228] *Laws of Iowa*, 1846–1847, p. 97.

VIII

THE RECORDER IN SPECIAL CHARTER CITIES

The recorder, or clerk as he was sometimes called, was generally elected by the qualified electors of the corporation, although a few charters permitted the appointment of the recorder by the council and in one instance — that of Farmington in 1847 — the mayor was authorized to appoint the clerk "with the consent of the Board of Aldermen".[229]

Except in one instance, the term for which the recorder was chosen was one year.[230] The qualifications necessary for the office varied in no essential particulars from those of other elective officers — the council prescribing the qualifications of the clerk when filling the office by appointment.

The council was usually authorized to fix the compensation of the recorder in such sum as was by them deemed expedient; but some of the charters provided that such compensation should not exceed the amount paid by the township or county for similar services. Moreover, the fee system of compensation was generally employed. In no charter was there provision for the payment of a salary.

During the first few years of the period the recorder seems to have been exempt from giving a bond for the faithful performance of his duty; but after 1846 the council was usually authorized to require a bond from all subordinate officers. The general rule, however, seems to have been to leave the matter of bonds very largely to the discretion of the council. At the same time a few charters required the

[229] *Laws of Iowa*, 1846–1847, p. 99.

Seven other charters authorized the council to appoint the recorder.— *Laws of Iowa*, 1846–1847, pp. 156–157, 1848 (Extra Session), p. 66, 1848–1849, p. 20, 1850–1851, pp. 85–86, 144, 1852–1853, p. 52, 1856–1857, p. 284.

[230] *Laws of Iowa*, 1854–1855, p. 9.

recorder and other officers to give a bond, the amount of which was under the control of the council.[231]

The recorder was generally required to take an oath of office, as were the other officers of the corporation. Before entering upon the duties of the office he was required to take an oath to support the Constitution of the United States and of the State and the laws passed under them. He must promise to perform faithfully the duties of his office.

Vacancies in the office of recorder were usually filled by the council — except in a few cities where the charters required the filling of vacancies by special election. The recorder was permitted by several charters to appoint a deputy whose duty it was to fill the office in the absence of the recorder, but for the acts of the deputy the recorder was responsible.

The charters, except in a few instances, did not specifically enumerate the duties of the recorder, but provided that the council should require the performance of duties which were not inconsistent with State law. Particularly was this true under those charters which permitted the council to appoint the recorder and prescribe his duties.

The duties which the recorder was generally required to perform were the following: keep a true record of the proceedings of the council, attend all meetings, appoint a deputy and be responsible for his acts, make out and sign tax duplicates, attest the annual financial report of the city council, countersign and publish all ordinances, keep ordinances in a book provided for the same, keep a record of elections and notify elected persons, post election notices, call meetings of the council in the absence of the mayor, sign all orders for money, and sign all bonds, contracts, and deeds.

[231] *Laws of Iowa*, 1850–1851, p. 87, 1852–1853, pp. 102, 112, 1854–1855, pp. 100, 125, 1856 (Extra Session), pp. 34, 55, 1856–1857, pp. 211, 222, 327.

Other duties of the recorder, not generally mentioned in the charters or contained in amendments thereto, were as follows: preside at the meetings of the council in the absence of the mayor or president *pro tem;* furnish rooms and stationery for the use of the council; preserve all public papers and keep the seal of the corporation; keep the accounts of the city; record all oaths and administer them; serve ex officio as assessor (for the first time in 1838);[232] make out a list of delinquent taxes and add them to the list for the current year for collection; keep a record of the returns of the city marshal and a list of all lots sold by him; keep a separate account of all money paid into the city treasury for school purposes; keep a record of the proceedings of the commissioners and the amounts paid out of the treasury at their order to compensate the owners of property damaged by changing the grade of streets; make out tax lists from the assessor's report; receive the purchase money arising from the sale of lots for taxes; index city ordinances in a separate volume; give notice in the newspapers of assessments; and make out a special tax list and give it to the treasurer.

From the powers and duties mentioned above it is evident that the clerk was the recording officer of the city. Some of the charters provided that he should act as assessor or as treasurer — duties clearly outside the usual sphere as laid down by the general incorporation acts of the period. Indeed, the recorder may be considered second in importance among the executive officers under the special charter regime. Particularly during the early years of the period, the recorder's presence was necessary to a quorum in meetings of the council, and in many instances he was authorized to vote on all measures.[233]

[232] *Laws of the Territory of Wisconsin*, 1836–1838, pp. 473, 474.

[233] *Laws of the Territory of Wisconsin*, 1836–1838, pp. 481, 482.

IX

THE TREASURER IN SPECIAL CHARTER CITIES

The treasurer was usually elected by the qualified voters of the city, although a few charters provided for his appointment by the city council. In a few instances the council was authorized to "provide for the election" of subordinate officers. The Burlington charter of 1838 — the first to be granted to an Iowa town — provided for the election of the treasurer "by the free white citizens of said city". This charter also required the treasurer and other officers to "be commissioned by the governor of the territory".[234] The Fort Madison charter, approved on the same day, permitted the council to "provide in said ordinances for the election of a treasurer".[235]

The provision of the Davenport charter of 1839 clearly means that the council should appoint the treasurer, since it grants that power in specific terms.[236] Indeed, about ten of the charters seem to have copied this provision from the act mentioned above.[237] The Centerville charter of 1857 did not provide for a treasurer. In fact one mayor, six councilmen, and one marshal were the only officers mentioned, although the duties of a recorder were prescribed.[238]

The term of the treasurer was for one year, except in a single instance. The qualifications of the treasurer were the same as those of the other subordinate officers. He was invariably required to give bond in such sum as the council might prescribe. Moreover, the oath which he was required

[234] *Laws of the Territory of Wisconsin*, 1836–1838, p. 471.

[235] *Laws of the Territory of Wisconsin*, 1836–1838, p. 483.

[236] *Laws of the Territory of Iowa*, 1838–1839, p. 266.

[237] *Laws of the Territory of Iowa*, 1838–1839, p. 266, 1839–1840, pp. 93, 161, 1840–1841, pp. 35, 98, 1841–1842, pp. 15, 43, 76; *Laws of Iowa*, 1846–1847, p. 50, 1856–1857, pp. 145, 161.

[238] *Laws of Iowa*, 1856–1857, pp. 108, 109.

to take was usually left to the discretion of the council. His compensation was in no instance a specified sum, but was to consist of such fees as the council deemed necessary. Indeed, the provision of the charters relative to subordinate officers was usually as follows: the council "shall have power . . . . to prescribe their duties and decide their qualifications and period of service, fix their fees and compensation, and require them to take an oath or affirmation faithfully to discharge the duties of their respective offices, and may request of them security for the performance of their official duties." Vacancies were generally filled by the council, although a few charters prescribed that all vacancies should be filled at a special election called for that purpose.

As may be seen from the quotation given above, the charters usually authorized the council to prescribe the duties of subordinate officers. Particularly was this true in those instances in which they were chosen by the council. Furthermore, when subordinate officers were elected by the qualified voters the council was often permitted to require any additional duties not inconsistent with State law. But in general it may be said that the duties of the treasurer were not specifically enumerated.

The Burlington charter of 1838 provided that "the duties of said marshal, recorder, and engineer of the streets shall be defined by the mayor and aldermen in common council", but no provision was made for any duties of the treasurer. Although a treasurer was elected, the charter provided "that the city marshal be ex-officio collector for said city".[239] Just what the status of the treasurer was under this charter would be difficult to determine.

The first charter to enumerate the duties of the treasurer was the one granted to Dubuque in 1840, which provided

[239] *Laws of the Territory of Wisconsin*, 1836–1838, pp. 471, 474.

that he "shall receive and safely keep all moneys which may come into his hands, and when he receives moneys from the marshal, collector or clerk, he shall give a receipt for the same, he shall, once in every three months, make out a list of all moneys by him received and paid out, and make a complete settlement with the board, he shall not purchase, buy or in any way trade for any city orders at a less value than the amount called for by the same, he shall give to the board a bond with security to their satisfaction, and be in all things governed by the by-laws and ordinances."[240]

Dubuque's new charter, granted seven years later, provided that the treasurer should "perform such duties and exercise such powers as may be lawfully required . . . . by the ordinances of said city."[241] Fort Madison's revised charter, enacted in the following year, provided for the appointment of "a marshal, who shall be assessor, collector and treasurer", whose duties were prescribed by the council.[242]

In some of the charter amendments provision was made for particular duties of the treasurer. He was authorized to pay the interest on the loan to a plank road out of the dividends which the city had received;[243] to give receipts for all money paid to the corporation; to register and countersign all outstanding demands on the treasury and report the same to the council;[244] to keep a separate account of the school moneys paid into the treasury and pay no money therefrom except for the specific purpose for which it was appropriated or collected;[245] and to receive the

[240] *Laws of the Territory of Iowa,* 1839–1840, p. 161.

[241] *Laws of Iowa,* 1846–1847, p. 106.

[242] *Laws of Iowa,* 1848 (Extra Session), p. 66.

[243] *Laws of Iowa,* 1850–1851, p. 166.

[244] *Laws of Iowa,* 1852–1853, p. 92.

[245] *Laws of Iowa,* 1854–1855, p. 16.

money arising from the redemption of property sold for taxes.[246]

The amendment to the Cedar Rapids charter in 1856 provided that the duties of treasurer and collector should be performed by the same person.[247] One charter provided that "it shall be the duty of the treasurer to receive and safely keep, without using or lending, any and all money which may come into his possession by virtue of his office, and shall pay none out, except by order of the council, signed by the mayor and countersigned by the recorder; he shall keep a book in which he shall keep a correct account of all money by him received, and from whom received, and on the payment of money, the order shall be delivered up to the treasurer, to be cancelled, and shall be his voucher on settlement; he shall make settlement with [the council] whenever required so to do by the council."[248] In one instance he was authorized to collect the special tax resulting from the benefits of certain changed streets.[249]

Although the authority to sell real estate for the nonpayment of taxes on property within the municipal corporation was usually given to the marshal, in the Des Moines charter of 1857 this power was conferred upon the treasurer. Furthermore, upon the payment of a fee of one dollar he was required to issue a deed to the purchaser.[250]

Again, the revised charter enacted for the city of Dubuque in 1857 made it the duty of the treasurer "to take charge of and keep the funds and monies of the city; he shall keep the same in three separate funds, to be denominated the 'general fund,' the 'road fund,' and the 'school

[246] *Laws of Iowa*, 1854–1855, p. 151.

[247] *Laws of Iowa*, 1856 (Extra Session), p. 31.

[248] *Laws of Iowa*, 1856–1857, p. 162.

[249] *Laws of Iowa*, 1856–1857, p. 242.

[250] *Laws of Iowa*, 1856–1857, p. 292.

fund,' and shall pay out money only upon orders from the city council, signed by the mayor and attested by the recorder, and countersigned by the auditor, or upon orders from the board of education under authority of ordinance, which orders shall specify the fund drawn upon. He shall keep an account with each fund, and shall from time to time report his receipts and expenditures, as required by the city council.''[251]

X

THE ASSESSOR IN SPECIAL CHARTER CITIES

The assessor, like the recorder and treasurer, was usually an elective officer, although he was in several instances appointed by the council. His term was for one year, except in the Bloomfield charter of 1855 — although the assessor was not specifically mentioned. The first charter granted to an Iowa municipality did not provide for an assessor as such but consolidated the offices of recorder and assessor[252] — a principle which was copied in a few of the charters of later years. But in one instance the marshal was ex officio assessor, collector, and treasurer.[253]

The compensation of the assessor was usually fixed by the council, as was also the amount of his bond — when one was required. A period of residence was required in most instances, and the candidate had to be a legal voter of the city. An oath of office was prescribed at the discretion of the council. Vacancies were generally filled by appoint-

[251] *Laws of Iowa*, 1856–1857, p. 351.

One charter provided for an auditor who should keep ''a full and fair exhibit of the finances of the city, its revenues, expenditures, indebtedness and audits. He shall countersign all orders on the treasury . . . . and shall perform such other duties as the council may by ordinance or resolution require.''— *Laws of Iowa*, 1856–1857, p. 351.

[252] *Laws of the Territory of Wisconsin*, 1836–1838, pp. 473, 474.

[253] *Laws of Iowa*, 1848 (Extra Session), p. 66.

ment, although special elections were provided by some charters. In general the provisions relative to the assessor were in no essential particulars different from those affecting the other subordinate officers.

The duties and powers of the assessor, like those of the other subordinate officers, were usually not enumerated in the charters, but the council was authorized to "prescribe their duties". The Fort Madison charter of 1838 allowed the board to appoint two assessors — a provision that was copied in several of the later acts.[254] The Dubuque charter, enacted two years later, provided for the appointment of one or more assessors who should assess the property within the city "in such manner and under the same regulations as are or may be provided by law for the assessment . . . . of county taxes".[255]

During the next eight years the charters or their amendments contained relatively little in regard to the duties of the assessors. In 1849, however, an amendment to the Bloomington charter contained a section which reads as follows: "the assessors, in making out an assessment of real estate within said town, for corporation purposes, shall return the assessed value of the same irrespective of improvements thereon."[256] This amendment raised the tax rate from one and one-half to two per cent — which would seem to indicate that the city wished to increase its revenue and at the same time make the assessments by the assessor legal.

The Muscatine charter of 1851 limited the power usually granted to the assessor by providing that "the latest county assessment roll shall form the basis of the assessment, but

[254] *Laws of the Territory of Wisconsin*, 1836–1838, p. 483; *Laws of the Territory of Iowa*, 1839–1840, p. 93, 1840–1841, p. 35.

[255] *Laws of the Territory of Iowa*, 1839–1840, p. 160.

[256] *Laws of Iowa*, 1848–1849, p. 68.

the city assessor may add thereto any property omitted, assessing the same himself.''[257] Similar provision was contained in the Lyons charter of 1855, but the word ''county'' was omitted.[258]

In the Mount Pleasant charter of 1856 the assessor was authorized to determine the value of property ''either direct or by duplicate from the township assessment''. He was permitted to add thereto any property omitted and also all additional taxable property. Furthermore, he was required to return the assessment roll to the city recorder.[259] In one instance the assessor was required to ''make just and true assessment of the taxable property''.[260] The city council of Council Bluffs was authorized to levy a tax on real estate and personal property within the city subject to county taxes, ''including money at interest or on deposit, not exceeding five mills on the dollar''. Furthermore, it was made the duty of the assessor before the first day of July in each year ''to list and value all the taxable property above specified . . . . and he shall . . . . have all the power and authority conferred upon county assessors by law''. ''On the first Monday of July, he shall attend at some public place, to hear the complaints of any person concerning [considering] himself aggrieved by his assessment, and may, if he deems proper, correct the same. Immediately thereafter, he shall make his returns to the city council''.[261] The council, however, was also given the power to correct and confirm the assessment roll — complete authority in the matter not being given to the assessor.

In one case the assessor was required to make the re-

[257] *Laws of Iowa*, 1850–1851, p. 66.

[258] *Laws of Iowa*, 1854–1855, p. 150.

[259] *Laws of Iowa*, 1856 (Extra Session), p. 24

[260] *Laws of Iowa*, 1856 (Extra Session), p. 35.

[261] *Laws of Iowa*, 1856–1857, pp. 116, 117.

turns of the taxable property in each ward separately in order to form a basis for appropriating money to be expended in each.[262] Special duties such as those just mentioned were the exception rather than the rule. Their enumeration hardly seems necessary since the council invariably had the power to prescribe the duties of the assessor.

XI

THE MARSHAL IN SPECIAL CHARTER CITIES

The marshal was usually elected by the qualified voters of the city, although during the early years of the period it was not uncommon for the council to appoint him as well as the other subordinate officers. His compensation was generally fixed at such sum as the council deemed necessary — a few charters requiring that his compensation should be the same as that of the township constable. The term of the marshal was one year, except in the Bloomfield charter of 1855.

The marshal was required to take an oath to faithfully perform the duties of his office, and in some cases he was required to take an oath to support the Constitution of the United States and of the State of Iowa and the laws enacted under them. His bond was to be in such sum and under such regulations as the council might prescribe. Furthermore, he was usually required to be a legal voter of the city. Vacancies in the office, as in the case of other subordinate officers, were usually filled by the council, although a few charters provided for special elections for that purpose.

The marshal was the peace officer of the city, being authorized to arrest all offenders against the ordinances or the peace of the citizens and perform such other duties as

[262] *Laws of Iowa,* 1856–1857, p. 149.

were imposed upon him by the council. Moreover, he was the executive officer of the mayor's court and was required to execute and return all processes directed to him by the mayor in the name of the mayor and aldermen.

Indeed, as an executive officer his duties were similar to those of a constable in a township, some of the charters providing that he should have the same power and be subject to the same regulations as constables. In other instances he was vested with the same rights within the city as the sheriff had in counties; and with the consent of the council he could appoint one or more deputies and require the aid of citizens in the performance of his duties.[263]

The Farmington charter of 1847 provided for a "city constable" who was given the same power and "duties within said city, as the constables in the different townships".[264] Similar provision was contained in the Keokuk charter of 1848, giving him the same power as constables over "matters of a criminal nature arising under any law of the State".[265] This charter was amended in 1851 with the provision that "in all suits and prosecutions before the mayor where the city of Keokuk is a party, the marshal of said city, or any constable of Jackson township, shall have power to serve subpoenas, or other process".[266] Dubuque's revised charter of 1857 made it the "duty of the city marshal to attend the meetings of the city council, to execute its orders, to arrest and bring before the proper court, with or without warrant, all whom he shall find in the actual violation of any ordinance, and to perform such

[263] *Laws of the Territory of Iowa,* 1839–1840, p. 160; *Laws of Iowa,* 1850–1851, pp. 62, 87, 1852–1853, pp. 102, 110, 1854–1855, pp. 100, 145, 1856 (Extra Session), p. 26, 1856–1857, pp. 154, 162, 182, 211, 221, 247, 294.

[264] *Laws of Iowa,* 1846–1847, p. 99.

[265] *Laws of Iowa,* 1848–1849, p. 27.

[266] *Laws of Iowa,* 1850–1851, p. 94.

other duties as may be devolved upon him by law or ordinance."[267]

In a few instances the marshal was authorized and required to execute notices to elected persons — a duty which was usually performed by the recorder as clerk of elections. Moreover, one charter required the marshal to act as assessor and treasurer.[268]

Not only was the marshal in most instances the ministerial officer of the mayor's court, but he was also ex officio collector of the taxes of the corporation; and yet the office of collector was separately provided for in a few instances. The first charter granted to an Iowa municipality provided that "the city marshal be ex-officio collector".[269] But the second charter approved upon the same day provided that after the tax duplicates had been delivered to the marshal he should "collect the same within such time and such manner as the ordinance shall direct. And the said collector shall have power to sell personal estate, and for the want thereof, to sell real estate, for the non-payment of taxes within said town, and in the case of real estate, the said collector shall prosecute the sale in the same manner . . . . as is provided by law for the sale of real estate by sheriffs".[270]

Before collecting taxes by sale of property the marshal was usually required to give notice of the assessment of the tax. Such regulations varied in the charters as to the period of such notification but the general provision may be illustrated by the following quotation from the Keokuk charter of 1847:

> No real estate shall be sold for the non-payment of such taxes,

[267] *Laws of Iowa*, 1856–1857, p. 351.

[268] *Laws of Iowa*, 1848 (Extra Session), p. 66.

[269] *Laws of the Territory of Wisconsin*, 1836–1838, p. 474.

[270] *Laws of the Territory of Wisconsin*, 1836–1838, p. 484.

unless the assessment of such tax or taxes shall have been duly notified by publication for at least six consecutive weeks before the day when the said taxes are payable, in some newspaper published in said city, or by notice posted for the same length of time in some public place in each ward thereof, nor unless the intended sale of such real estate shall have been notified in the same manner and for the same length of time prior to such sale.[271]

The marshal was usually required to make a personal demand of every resident charged with a tax, and if the taxes were not paid within a certain specified time, the property of such delinquents could be sold; and he was required to give "to each purchaser at such sale a certificate, containing the number of the lot . . . . the price paid therefor, and the day of sale, and at the expiration of the time hereinafter limited for the redemption thereof";[272] and if the same was not redeemed, the marshal (sometimes the mayor) would issue a deed to the purchaser. The period of redemption was usually two years, and the rate of interest charged by the corporation varied from ten to fifty per cent — the latter rate being the one usually charged. The sales were to be conducted as at a public auction and the marshal was authorized to sell the property to the bidder who would take the least quantity of land in order to satisfy the taxes and cost of the sale.

In addition to the foregoing powers the marshal was in many instances authorized to summon a jury of disinterested freeholders, varying in number from three to twelve, for the purpose of ascertaining the value of property taken by the city and determining damages arising from the changes made in the grade of streets.[273]

[271] *Laws of Iowa,* 1846–1847, pp. 158, 159.

[272] *Laws of Iowa,* 1848 (Extra Session), p. 69.

[273] *Laws of the Territory of Iowa,* 1838–1839, p. 250, 1839–1840, p. 94, 1840–1841, pp. 35, 98, 1841–1842, p. 15; *Laws of Iowa,* 1856–1857, p. 251.

XII

THE STREET COMMISSIONER IN SPECIAL CHARTER CITIES

The street commissioner, or road overseer or supervisor as he was sometimes called, was usually chosen by the city council, although in a few instances he was elected by the qualified voters.[274] The term of the commissioner was not to exceed one year and the council was authorized to prescribe the term and to require his resignation at any time.

The qualifications, compensation, bond, and oath of the commissioners — there were often two — were prescribed by the council. Vacancies in the office were filled by appointments of the council. Indeed, the street commissioner was completely under the control and subject to the regulations of the city council.

The charters usually gave the street commissioners authority to supervise the work which was done upon the streets and roads within the district. Moreover, all money appropriated for the repair and grading of streets was to be expended under his supervision, subject to such regulations as the council saw fit to impose — some charters requiring him to report whenever in the opinion of the council it was deemed expedient.

As a rule the duties of the commissioner were not specifically enumerated by the charters — only general provisions being set forth. The council was authorized to require any duties not inconsistent with the laws of the State. In a few instances the street commissioner was authorized to "act as though appointed by the county commissioners."[275]

[274] *Laws of the Territory of Wisconsin,* 1836–1838, p. 471; *Laws of Iowa,* 1854–1855, p. 29, 1856–1857, pp. 419, 425.

[275] *Laws of the Territory of Iowa,* 1838–1839, p. 268, 1841–1842, pp. 46, 79; *Laws of Iowa,* 1848 (Extra Session), p. 70.

The Keokuk charter of 1847 required the road overseer to "collect a road tax from all inhabitants of the said city liable to work upon the roads, in the same manner as is now provided by law for supervisors of road districts in the several townships."[276] An amendment of the Fort Madison charter enacted in 1851 provided that the "supervisor shall be responsible to the authorities . . . . in the same manner that supervisors of townships are responsible".[277]

In one instance the supervisor's usual powers were limited by the provision that he "shall not have the disposal of any funds raised or appropriated by the city council, and shall in no way interfere with the grade of streets, or with any drains, culverts, bridges, side-walks, pavements or sewers established by the council, and shall, when repairing or working upon any streets where a grade has been established, conform to and expend the labor as far as possible, in accordance with such grade."[278]

In general, however, the street commissioner was given control over the streets and alleys of the municipal corporation and all roads leading therefrom for a distance of from one to two miles. In fact, his duties were not unlike those of the road overseer in the townships, although the city council was usually given complete supervisory power over his actions.

XIII

THE CITY ATTORNEY IN SPECIAL CHARTER CITIES

In only about four or five of the charters was provision made for a city attorney, or solicitor or prosecutor as he was sometimes called. The Burlington charter of 1838, enacted by the Territorial legislature of Wisconsin, pro-

[276] *Laws of Iowa*, 1846–1847, p. 159; also *Laws of Iowa*, 1852–1853, p. 138.

[277] *Laws of Iowa*, 1850–1851, p. 167.

[278] *Laws of Iowa*, 1856–1857, p. 186.

vided that "the common council shall appoint a city solicitor, whose duty it shall be to prosecute in behalf of said city, and who shall from time to time be allowed such compensation for his services as the common council shall deem just and proper."[279]

While the Fort Madison charter of the same year, approved on the same day as that of Burlington, contained no specific provision for an attorney, it did allow the council to "provide in said ordinances for the election of . . . . other subordinate officers, which may be thought necessary, for the good government and well being of said town". Furthermore, the council was authorized "to prescribe their duties, declare qualifications, and determine the period of their appointment, and the fees they shall be entitled to receive for their services, and to require of them to take an oath or affirmation, faithfully and impartially to discharge the duties of their respective offices, and may require of them such security, for the performance of the duties of their respective offices, as shall be thought necessary."[280] Provisions of this character were contained in most of the charters of the period, in accordance with which a city attorney could have been appointed for any of the special charter cities.

The next charter in which specific provision was made for a city attorney was that granted to Fort Madison in 1848. Section twenty-three provided that "the mayor and aldermen shall have authority to appoint an attorney for the prosecution and defense of suits in the corporation name, but in the prosecution of suits for breaches of, and penalties accruing under the town ordinances, he shall be entitled to no fee or fees, except such as he may by ordinance be entitled to recover of the defendant upon his con-

[279] *Laws of the Territory of Wisconsin*, 1836–1838, p. 474.

[280] *Laws of the Territory of Wisconsin*, 1836–1838, p. 483.

viction."[281] In the following year the Fort Madison charter was amended so as to provide that the "prosecuting attorney, shall be allowed the same fees as . . . . prosecuting attorneys for the counties are allowed for similar services, to be taxed in no case when the mayor and aldermen are plaintiffs against the corporation."[282]

From 1845 until 1855 none of the charters specifically authorized the election or appointment of an attorney; but in 1855 the Bloomfield charter — the briefest one enacted during the period — provided that "in order to carry out the regulations and enforce the ordinances of said town, the Councilmen may appoint a Prosecutor for the town, or employ one at their own discretion."[283] This charter was amended in the following year at the extra session of the legislature. Section three of the act authorized the council to "appoint a Prosecuting Attorney for said town, and pay him from the Treasury of the corporation such sum as may be reasonable."[284]

The revised charter of Dubuque of 1857 also provided for a city attorney who was to be elected by the qualified voters of the city for a period of one year and until a successor was elected and qualified. He, as well as all city officers, was required to "take an oath or affirmation to support the constitution of the United States and of the State of Iowa, and faithfully and impartially to perform the duties of the offices to which they may be elected or appointed, and when required by the council shall . . . . give bonds". Furthermore, he was required to be a citizen of the State and a qualified voter of the city. A vacancy

[281] *Laws of Iowa,* 1848 (Extra Session), pp. 71, 72.

[282] *Laws of Iowa,* 1848–1849, p. 137.

[283] *Laws of Iowa,* 1854–1855, p. 10.

[284] *Laws of Iowa,* 1856 (Extra Session), p. 52.

in the office was to be filled by the council until the next regular election.[285]

The charter further provided that "it shall be the duty of the city attorney to appear for the city in the city court and all other courts; to take charge of the legal business of the city; to give his written opinion whenever called upon by the city council; to give legal advice to all officers of the city, and to perform such other duties as may be devolved upon him by law or ordinance."[286]

XIV

THE OTHER SUBORDINATE OFFICERS IN SPECIAL CHARTER CITIES

The charters usually provided for the election or appointment of other subordinate officers, who were in most instances not specifically named. In general the duties, fees, period of appointment, qualifications, bond, and oath of such officers were subject to the regulations of the council.

The first charter containing provisions for such officers was the one granted in 1838 to Fort Madison. Here the council was authorized to provide by ordinance "for the election of . . . . other subordinate officers, which may be thought necessary, for the good government and well being of said town; to prescribe their duties, declare qualifications, and determine the period of their appointment, and the fees they shall be entitled to receive for their services, and to require of them to take an oath or affirmation, faithfully and impartially to discharge the duties of their respective offices, and may require of them such security, for the performance of the duties of their respective offices, as shall be thought necessary."[287]

[285] *Laws of Iowa*, 1856–1857, pp. 344, 345, 346.

[286] *Laws of Iowa*, 1856–1857, pp. 351, 352.

[287] *Laws of the Territory of Wisconsin*, 1836–1838, p. 483.

The Muscatine charter of 1851 permitted the council "to appoint in such manner as it determines and during pleasure, one or more street commissioners, a clerk of the market, city surveyor, health officers and such other officers as it deems advisable, and may prescribe their duties, powers and qualifications, and may provide for the election of any of those officers by the citizens."[288] Similar provision was contained in most of the charters granted during the later years of the period, although in a few instances all officers were made elective.

Several charters provided for a wharf-master. This was an elective officer and subject to the same regulations and qualifications as the other more important elective officers.[289] His duties were not enumerated in the charters, which made it necessary for him to be subject to such regulations, not inconsistent with the laws of the State, as the council deemed necessary to prescribe.

In the 1856 amendment to the Cedar Rapids charter provision was made for city supervisors. Just what the nature of these officers was is not clear. The section containing this provision is almost identical with that of the Muscatine charter mentioned above — with the exception that the words "city supervisors" are substituted for "city surveyor".[290] The Sioux City charter of 1857 contained a similar provision — only one supervisor being authorized.[291] In the Des Moines charter of the same year this officer was designated as a "city engineer".[292]

[288] *Laws of Iowa,* 1850–1851, p. 64.

[289] *Laws of Iowa,* 1850–1851, p. 60, 1854–1855, p. 143, 1856–1857, pp. 134, 361.

[290] *Laws of Iowa,* 1856 (Extra Session), p. 35; see also *Laws of Iowa,* 1856–1857, p. 317.

[291] *Laws of Iowa,* 1856–1857, p. 55.

[292] *Laws of Iowa,* 1856–1857, p. 284.

XV

THE JUDICIARY IN SPECIAL CHARTER CITIES

The special charter cities as corporations had the "power to sue and be sued, plead and be impleaded"; and they were authorized to pass ordinances and to enforce obedience to them by the levy of fines and forfeitures. In order to effectually carry out these powers courts were established in most of the cities, and these tribunals were usually presided over by the mayor or a justice of the peace.

THE JUDICIAL FUNCTIONS OF THE MAYOR

The first instrument to authorize the mayor to exercise judicial functions was the Farmington charter of 1847, which provided that "the mayor shall be *ex officio* a conservator of the peace throughout the city; he shall have the powers and jurisdiction vested in justices of the peace, in matters of a criminal nature, and shall receive the same fees as . . . . justices of the peace for like services".[293] The Keokuk charter of 1848 permitted the mayor "to issue all needful process to arrest any offenders against the criminal laws of the State, and shall proceed to try said person or persons by the same rules that govern justices of the peace." This charter further provided "that all trials for the violation of the by-laws, ordinances and regulations, shall be in a summary manner, and that no person shall for any offence, be deprived of his or her liberty, or be fined in any sum not less than one, nor more than fifty dollars, unless convicted by a jury of six citizens of said city qualified to vote".[294]

In the Muscatine charter of 1851 the mayor was vested with "exclusive original jurisdiction of cases arising under

[293] *Laws of Iowa,* 1846–1847, p. 97.

[294] *Laws of Iowa,* 1848–1849, p. 27.

the ordinances of the city; with criminal jurisdiction of offences against the laws of the state committed within the city, and with civil jurisdiction limited to the city, in the same manner as that of justices is or may be limited to their townships''. Furthermore, it was provided that ''appeals to the district court in the same county shall be allowed from the judgment and decisions of the Mayor in the same cases, time and manner as they are at the time allowed by law from those of other justices, and they shall be tried in the same manner.''[295]

Similar provision was also incorporated in the Iowa City charter of 1851;[296] but the amendment granted in the same year to the Keokuk charter provided that ''in the trial of causes before the mayor of said city, it shall not be necessary to impanel a jury, unless it shall be demanded by one of the parties to such suit, before it is submitted to the mayor.'' The act further provided that ''when imprisonment shall constitute a portion or all the punishment of offenders against the by-laws and ordinances of said city, such offenders on conviction, may be committed to the city calaboose or county jail at the discretion of the mayor''.[297]

In 1851 a new charter was enacted for the city of Davenport the provisions of which relative to the judicial functions of the mayor were as follows:

> He shall by virtue of his office be a justice of the peace for said city . . . . and shall have power and authority to administer oaths, issue writs and processes under the seal of the city, to take depositions, the acknowledgments of deeds, mortgages and all other instruments of writing, and certify the same under the seal of the city, which shall be good and valid in law, he shall have exclusive jurisdiction in all cases arising under the ordinances of the cor-

[295] *Laws of Iowa*, 1850–1851, p. 61.

[296] *Laws of Iowa*, 1850–1851, p. 86.

[297] *Laws of Iowa*, 1850–1851, p. 94.

poration, and concurrent jurisdiction with all other justices of the peace in all civil and criminal cases within the county of Scott, arising under the laws of the state; and shall receive the same fees, and compensation, for his services in similar cases. He shall also have such jurisdiction as may be vested in him by ordinance of the city in and over all places within five miles of the boundaries of the city, for the purpose of enforcing the health, quarantine ordinances and regulations thereof and the protection of cemeteries or grave yards and enclosures.

Provision was also made in this charter for a bond, and for the removal of the mayor upon the recommendation of the jury if convicted of "palpable omission of duty, or shall willfully and corruptly be guilty of oppression, mal-conduct or partiality, in the discharge of the duties of his office". The mayor could be fined, if convicted, a sum not exceeding two hundred dollars.[298]

The Keosauqua charter of 1851 further provided that "the same right of appeal or writ of certiorari from the judgment of said mayor in civil cases, shall be allowed as is now or hereafter may be authorized by law from the judgment of justices of the peace within this State".[299] Two years later the Keokuk charter was amended providing that "persons charged with public offences before the said mayor, shall have the same rights and remedies as they are entitled to by law in criminal proceedings before justices of the peace."[300]

In a few instances the mayor was given "exclusive jurisdiction over all crimes committed in the corporate limits of said town, which have heretofore been punishable before Justices of the Peace".[301] A jury of six citizens qualified to vote was usually necessary in order to levy a fine of more

[298] *Laws of Iowa*, 1850–1851, pp. 120, 121.

[299] *Laws of Iowa*, 1850–1851, p. 147.

[300] *Laws of Iowa*, 1852–1853, p. 136.

[301] See *Laws of Iowa*, 1854–1855, p. 9, 1856–1857, p. 361.

than fifty or one hundred dollars. Change of venue from the mayor's court to the courts of justices of the peace was allowed and specifically provided for in at least one instance.[302] Furthermore, almost every charter provided that the mayor should not be disqualified from acting in his "judicial capacity by any proceedings being in the name or in behalf of the city."

THE RECORDER'S COURT

A recorder's court was established in the city of Keokuk in 1856. The recorder, who presided over this court, was to be elected by the qualified voters of the city for a period of two years. Furthermore, he was required to take the usual oath of office and to furnish a bond of one thousand dollars to be approved by the mayor and also a bond to be approved by the county judge. His compensation was to be the same as allowed justices of the peace for similar services and "such additional compensation as the City Council shall from time to time, by ordinance determine; but said compensation shall not be increased or diminished, so as to affect the person then in office, during the term for which he is elected."

The act provided that this court "shall have within said City of Keokuk, all the jurisdiction, both civil and criminal, with the rights, powers and authority of a Justice of the Peace, and all the judicial authority, rights and powers now by law or by city ordinance vested in the Mayor of said City; and that after the said Recorder shall be elected and qualified as hereafter directed, the Mayor of the said city shall exercise no judicial functions whatever, but shall be the executive officer of said city, and as such shall have the right to remit fines and pardon offences committed against the municipal ordinances and regulations of said city."[303]

[302] *Laws of Iowa,* 1856 (Extra Session), pp. 51, 52, 1856–1857, p. 109.

[303] *Laws of Iowa,* 1856 (Extra Session), pp. 43, 44.

A similar provision was also incorporated in the Council Bluffs charter of 1857.[304]

THE CITY COURT

The revised charter enacted in 1857 for the city of Dubuque provided for a city court. The detailed provisions of the act relative to this institution are as follows:

> SEC. 28. There shall be and is hereby established in the city of Dubuque a court, to be denominated the city court; which court shall be a court of record and have a seal, and the officers thereof shall be a judge, clerk, and the city marshal. Said court shall hold a session every day during the year, except Sundays, the fourth of July, Thanksgiving day, Christmas day and New Year's day; but its session shall be divided into monthly terms, commencing on the first Monday of each month. It shall be held at some suitable place to be provided by the city council.
>
> SEC. 29. The judge of the city court shall be elected at the annual election in said city for city officers, and shall hold his office for a term of four years; he shall be a qualified elector of said city, and learned in the law; he shall take and subscribe in writing the same oath required by the judges of the supreme and district courts, and file the same with the recorder, and shall likewise be commissioned by the mayor. His salary shall be fixed by the city council, and shall not exceed fifteen hundred dollars per annum, payable out of the city treasury.
>
> SEC. 30. The clerk of said court shall be elected at the annual election; shall be a qualified voter of said city and shall hold his office for the term of two years; he shall give bond to the city of Dubuque in the sum of five thousand dollars, with a condition in substance the same as required by law of the clerk of the district court, and on the back thereof shall subscribe the same oath, required of the clerk of the district court. His salary shall be fixed by the city council, and shall not exceed one thousand dollars per annum payable out of the city treasury.
>
> SEC. 31. The powers, duties and responsibilities of the judge, clerk and marshal in said court, shall correspond to those of the

[304] *Laws of Iowa*, 1856–1857, p. 114.

judge, clerk and sheriff in the district court, and the authority of the process of said court shall have the same extent and limitation as that of the district court, and may be served by the city marshal or by any sheriff; but the marshal shall not have power to serve process, other than subpoenas, beyond the limits of said city.

SEC. 32. Said court shall have jurisdiction of all offences and suits under city ordinances, and shall have general jurisdiction concurrent with the district court in all civil cases, and shall have concurrent jurisdiction with justices of the peace in all criminal cases. In civil cases the defendant must reside, or if a non-resident of the State, must be found in the city of Dubuque, or in cases of attachment of property where the defendant is not served, or in cases where the suit is brought to obtain possession of personal property, or to enforce a lien or mortgage, or when it relates to real property, such property or some part thereof must lie in said city, or some part of the personal property must be found therein; when by its terms a contract is to be performed in the city of Dubuque, suit for the breach thereof may be brought in said court. Suit may be brought in divorce cases in said court, if the plaintiff resides in said city. Appeal from the city court lies directly to the supreme court of the State of Iowa.

SEC. 33. The rules and regulations of law which govern the district court, shall govern the city court as far as applicable. In order to provide juries for said court, the clerk thereof, at least ten days prior to the commencement of each term, shall issue a venire to the marshal, who shall, within five days thereafter, summon twenty-four jurors, qualified electors of said city, and otherwise qualified to serve as jurors in the courts of this State, to appear in said court on the second day of the next term thereof. The jurors summoned for any term may be dismissed as soon as the docket of jury cases for that term is disposed of; and if a jury shall afterwards be required to try any cause coming before the court for such term, a special venire shall issue. If a jury cannot be obtained otherwise, talismen may be summoned by the marshal from the city or the bystanders. If any juror fail to appear in obedience to summons, he may be brought into court by attachment, and if he fail to show reasonable excuse, he may be fined as for contempt, in any sum not more than ten dollars and costs. No man shall be required to serve as regular juror at more than one term in

any one year. When a jury is demanded, a jury fee of three dollars shall be taxed among the costs.

SEC. 34. Actions for the violation of city ordinances shall be brought in the name of the State of Iowa, for the use of the city of Dubuque. The proceeding shall be by information sworn to, which shall be filed with the clerk of the city court, or with any justice of the peace having his office within said city, whereupon said clerk or justice of the peace shall issue a warrant for the apprehension of the accused. But the city council may by ordinance provide that certain designated officers may arrest any person actually found violating any ordinance, and commit them for trial without warrant; the trial shall be in a summary manner, and without the intervention of a jury, unless demanded by the defendant.

SEC. 35. The fees in the city court shall be the same as in the district court, and the same, and all fines and forfeitures shall be accounted for by the clerk of said court to the city of Dubuque, and shall be paid into the city treasury as often as the city council may direct. The fees of the marshal and other officers serving the process and executing the orders of said court, belong and are payable to the officers serving the same.

SEC. 36. In case of the absence or disability of the city judge, the criminal business pending in the city court shall be transferred to some justice of the peace having jurisdiction of the subject matter, by a delivery to him of all papers relating to the same, who shall proceed to dispose of the same as if the prosecution had originally commenced before him; and all civil business shall be continued as in like cases in the district court.[305]

XVI

SPECIAL CHARTERS AND THE GENERAL INCORPORATION ACT OF 1858 — A COMPARISON

The general incorporation act for cities and towns enacted in 1858 — the year following the adoption of the present Constitution which prohibited the special incorporation of municipalities by legislative act — contained one hundred and thirteen sections, covering forty-seven

[305] *Laws of Iowa*, 1856–1857, pp. 355–357.

pages in the printed statutes. This law is by far the most detailed and comprehensive act relative to cities and towns ever enacted in Iowa.[306]

Elections under the general act, instead of being held at any time as under the special charters, were to occur on the first Monday in March of each year. These elections were to be conducted and regulated in a manner similar to other elections for State and county purposes — a provision not unlike that contained in most of the charters. Special elections were to be held for filling vacancies in the council and in some of the other important offices.

Municipal offices under the general act varied but little from those provided for under special charters. The mayor was in both cases the chief executive officer. The number of councilmen varied in the different classes of cities, while under the special charters the number ranged from three to fourteen. The general law also provided for cities of the first and second class such officers as an auditor, city engineer, police judge, and city attorney — officers which by a few of the special charters were authorized for some of the larger cities. The term of officers was usually one year under the charters, but under the general act the term was two years for the most important positions.

The powers granted to municipalities by the general act were very similar to those conferred upon special charter cities. Power was granted to pass ordinances and by-laws for the preservation and promotion of the safety, health, prosperity, order, comfort, and convenience of the citizens and for the improvement of the morals of the community and its inhabitants. Regulations for the prevention and removal of nuisances, the control of slaughter-houses, burial of the dead, and the filling and draining of low-lying lots were authorized. Extensive licensing power was also

[306] *Laws of Iowa*, 1858, pp. 343–390.

granted. Furthermore, cities were permitted to pave, clean, repair, and light the streets and to furnish water and sewer facilities. The organization of fire companies — their support and regulation — was also authorized. The council was allowed to provide penalties for the breach of the peace, but such penalties were limited to one hundred dollars or thirty days in jail.

One of the most important differences between the provisions of the general act of 1858 and those of the special charters was in the restrictions placed upon the taxing and borrowing power. The general act limited the rate of taxation to ten mills on the dollar and an additional one mill tax for the creation of a sinking fund for the gradual extinguishment of the bonds or funded debts of the corporation; while under the charters the rate was generally much higher, being two per cent in some instances.[307]

The borrowing power of municipalities under the general act was limited to four per cent of the value of the taxable property; while under the charters the limit was relatively much higher, since even very small towns were permitted to contract debts in a lump sum without reference to the value of the property of the corporation.[308] Charles City was at one time authorized to issue bonds to the amount of two hundred and fifty thousand dollars and Dubuque to the amount of five hundred thousand dollars for the purpose of subscribing to the capital stock of railway companies.

Another difference between the general law and the charters is seen in the collection of municipal taxes. In the former the county treasurer was the collector; while in the latter the city collector, who was usually the marshal, collected all the taxes due the corporation and paid them into the city treasury.[309] Again, the general act did not provide

[307] *Laws of Iowa*, 1858, pp. 384, 385.

[308] *Laws of Iowa*, 1858, p. 385.

[309] *Laws of Iowa*, 1858, p. 385.

for the regulation or support of public schools as did many of the special charters — particularly after 1846.

Section 111 of the general act provided a means whereby the people of any municipal corporation could amend their charter or act of incorporation.[310] Thus after the adoption of the general law municipalities were in this particular more free from legislative control than they were under the special charter regime.

In conclusion it may be said that the general incorporation act did not materially add anything to the government of cities and towns which had not already been granted to some of the municipalities under the charters. On the other hand, the liberality of the general act encouraged its acceptance within a comparatively few years by most of the special charter cities. It is evident, however, that some of those municipalities, whose charters were particularly liberal and satisfactory to the inhabitants, would not adopt the general act as long as the necessity for the change was not imminent.

XVII

A GENERAL SUMMARY

During the period from 1836 to 1858 there were sixty special charters granted to forty cities and towns of Iowa. The first two charters were enacted by the Territorial legislature of Wisconsin for the towns of Burlington and Fort Madison. During the Iowa Territorial period, 1838-1846, there were fourteen charters granted by the Legislative Assembly; while during the remainder of the period, 1846-1858, forty-four municipal charters were voted by the General Assembly.

Many cities and towns received more than one charter. Of the forty municipalities receiving special charters, twen-

[310] *Laws of Iowa*, 1858, p. 390.

ty-seven received but one, eight received two, three received three, and two received four charters. Furthermore, there were about ninety amendments enacted by the legislature remedying defects which arose in the actual administration of the charters or granting additional powers. In addition to these amendments there were a great number of special acts passed relative to cities and towns — acts changing the name of the town, vacating town plats, and legalizing acts.

The amount of special legislation seemed to increase with each successive legislature from 1836 to 1846. The last session of the legislature in which special laws could be enacted — just previous to the adoption of the present Constitution — was the most prolific in the granting of special charters. During this session, 1856-1857, there were enacted sixteen municipal charters and about forty special laws relative to particular cities and towns. Indeed, about two hundred and sixty pages of the four hundred and seventy pages of the laws for that session are filled with special legislation for particular municipalities.

It appears that there was little if any attempt to limit the granting of special charters to towns because of the lack of population. But in general it seems that the municipalities which were granted charters were among the important ones of that time, in location if not always in population. The important cities and towns of Iowa during the early years were to be found, for the most part, along the rivers. This is but another illustration of the tendency of peoples everywhere — inland settlements being of a later development. Indeed, twenty-four of the forty special charter cities were located upon rivers, several of which were navigable in the early days. More than half of these towns were upon the banks of the Mississippi River. Moreover, the special charter cities were grouped in the southeastern part of the State.

The population of these river towns grew rapidly and perplexing questions arose relative to the control of docks, ferries, ships, shipping, vending, and traffic which must be governed and controlled by municipal authorities. Thus arose a need for a more flexible form of city government than was provided by the general incorporation acts of the period. These matters were of local importance only, and the enactment of special charters and special legislation was considered as the easiest, if not the only method of settling them.

George F. Robeson

West High School
Des Moines Iowa

APPENDIX

REFERENCES TO SPECIAL CHARTERS FOR IOWA TOWNS

Albia, Monroe County: *Laws of Iowa,* 1856–1857, p. 208.

Bellevue, Jackson County: *Laws of Iowa,* 1850–1851, p. 206.

Bloomfield, Davis County: *Laws of Iowa,* 1854–1855, p. 9.

Bloomington (now Muscatine), Muscatine County: *Laws of the Territory of Iowa,* 1838–1839, p. 248; *Laws of Iowa,* 1850–1851, p. 59.

Burlington, Des Moines County: *Laws of the Territory of Wisconsin,* 1836–1838, p. 470; *Laws of the Territory of Iowa,* 1845, p. 73.

Burris City, Louisa County: *Laws of Iowa,* 1856–1857, p. 313.

Camanche, Clinton County: *Laws of Iowa,* 1856–1857, p. 359.

Cedar Rapids, Linn County: *Laws of Iowa,* 1848–1849, p. 116; *Laws of Iowa,* 1856 (Extra Session), p. 29.

Centerville, Appanoose County: *Laws of Iowa,* 1856–1857, p. 107.

Charles City, Floyd County: *Laws of Iowa,* 1856–1857, p. 325.

Clinton, Clinton County: *Laws of Iowa,* 1856–1857, p. 132.

Council Bluffs, Pottawattamie County: *Laws of Iowa,* 1852–1853, p. 108.

DAVENPORT, Scott County: *Laws of the Territory of Iowa,* 1838–1839, p. 265; *Laws of the Territory of Iowa,* 1841–1842, p. 41; *Laws of Iowa,* 1850–1851, p. 110.

DES MOINES, Polk County: *Laws of Iowa,* 1852–1853, p. 49; *Laws of Iowa,* 1856–1857, p. 281.

DUBUQUE, Dubuque County: *Laws of the Territory of Iowa,* 1839–1840, p. 124; *Laws of the Territory of Iowa,* 1845–1846, p. 114; *Laws of Iowa,* 1846–1847, p. 104; *Laws of Iowa,* 1856–1857, p. 343.

EDDYVILLE, Wapello County: *Laws of Iowa,* 1856–1857, p. 245.

FAIRFIELD, Jefferson County: *Laws of Iowa,* 1846–1847, p. 49.

FARMINGTON, Van Buren County: *Laws of the Territory of Iowa,* 1840–1841, p. 33; *Laws of Iowa,* 1846–1847, p. 95.

FORT MADISON, Lee County: *Laws of the Territory of Wisconsin,* 1836–1838, p. 481; *Laws of the Territory of Iowa,* 1841–1842, p. 74; *Laws of Iowa,* 1848 (Extra Session), p. 64.

GLENWOOD, Mills County: *Laws of Iowa,* 1856–1857, p. 33.

GUTTENBERG, Clayton County: *Laws of Iowa,* 1850–1851, p. 100.

IOWA CITY, Johnson County: *Laws of the Territory of Iowa,* 1840–1841, p. 97; *Laws of Iowa,* 1850–1851, p. 84; *Laws of Iowa,* 1852–1853, p. 99.

KEOKUK, Lee County: *Laws of Iowa,* 1846–1847, p. 154; *Laws of Iowa,* 1848–1849, p. 18.

KEOSAUQUA, Van Buren County: *Laws of the Territory of Iowa,* 1841–1842, p. 107; *Laws of Iowa,* 1850–1851, p. 142.

KNOXVILLE, Marion County: *Laws of Iowa,* 1854–1855, p. 97.

LE CLAIRE, Scott County: *Laws of Iowa,* 1854–1855, p. 20.

LYONS, Clinton County: *Laws of Iowa,* 1854–1855, p. 142.

MAQUOKETA, Jackson County: *Laws of Iowa,* 1856–1857, p. 176.

MOUNT PLEASANT, Henry County: *Laws of the Territory of Iowa,* 1841–1842, p. 14; *Laws of Iowa,* 1850–1851, p. 195; *Laws of Iowa,* 1854–1855, p. 136; *Laws of Iowa,* 1856 (Extra Session), p. 18.

NASHVILLE, Lee County: *Laws of the Territory of Iowa,* 1840–1841, p. 88.

NEWTON, Jasper County: *Laws of Iowa,* 1856–1857, p. 143.

OSKALOOSA, Mahaska County: *Laws of Iowa,* 1854–1855, p. 123.

OTTUMWA, Wapello County: *Laws of Iowa,* 1856 (Extra Session), p. 63.

PRINCETON, Scott County: *Laws of Iowa,* 1856–1857, p. 416.

SALEM, Henry County: *Laws of the Territory of Iowa,* 1839–1840, p. 72; *Laws of Iowa,* 1854–1855, p. 162.

SIOUX CITY, Woodbury County: *Laws of Iowa,* 1856–1857, p. 51.

TIPTON, Cedar County: *Laws of Iowa,* 1856–1857, p. 159.

WAPELLO, Louisa County: *Laws of Iowa,* 1856 (Extra Session), p. 52.

WASHINGTON, Washington County: *Laws of Iowa,* 1856–1857, p. 219.

WINTERSET, Madison County: *Laws of Iowa,* 1856–1857, p. 41.

REFERENCES TO AMENDMENTS TO THE SPECIAL CHARTERS

BLOOMFIELD, Davis County: *Laws of Iowa,* 1856 (Extra Session), p. 51, 1856–1857, p. 67.

BLOOMINGTON (now Muscatine), Muscatine County: *Laws of the Territory of Iowa,* 1840–1841, p. 13, 1841–1842, p. 120, 1845–1846, p. 61; *Laws of Iowa,* 1848 (Extra Session), p. 37, 1848–1849, p. 68, 1852–1853, p. 137, 1854–1855, p. 76, 1856 (Extra Session), p. 49, 1856–1857, pp. 24, 149.

BURLINGTON, Des Moines County: *Laws of the Territory of Iowa,* 1838–1839, p. 71, 1840–1841, p. 86; *Laws of Iowa,* 1846–1847, p. 91, 1848 (Extra Session), p. 17, 1848–1849, pp. 33, 146, 1850–1851, p. 80, 1852–1853, p. 84, 1854–1855, pp. 56, 211, 1856–1857, pp. 128, 240, 261.

COUNCIL BLUFFS, Pottawattamie County: *Laws of Iowa,* 1854–1855, p. 3, 1856–1857, pp. 112, 270.

DAVENPORT, Scott County: *Laws of the Territory of Iowa,* 1843–1844, p. 149; *Laws of Iowa,* 1846–1847, p. 88, 1848–1849, p. 44, 1852–1853, p. 117, 1854–1855, p. 83, 1856–1857, p. 92.

DUBUQUE, Dubuque County: *Laws of the Territory of Iowa,* 1840–1841, p. 11, 1842–1843, p. 27; *Laws of Iowa,* 1848 (Extra Session), p. 74, 1850–1851, pp. 46, 142, 1852–1853, p. 89, 1854–1855, pp. 15, 175, 1856–1857, pp. 270, 339.

FAIRFIELD, Jefferson County: *Laws of Iowa,* 1848 (Extra Session), p. 26, 1850–1851, p. 107, 1856–1857, p. 28.

FARMINGTON, Van Buren County: *Laws of the Territory of Iowa,* 1842–1843, p. 23, 1843–1844, p. 113; *Laws of Iowa,* 1848 (Extra Session), p. 9, 1850–1851, p. 177.

FORT MADISON, Lee County: *Laws of the Territory of Iowa,* 1842–1843, p. 38, 1843–1844, p. 152; *Laws of Iowa,* 1846–1847, p. 149,

1848–1849, p. 137, 1850–1851, p. 166, 1852–1853, p. 57, 1854–1855, p. 169, 1856 (Extra Session), pp. 18, 73.

GUTTENBERG, Clayton County: *Laws of Iowa,* 1854–1855, p. 45, 1856–1857, p. 152.

IOWA CITY, Johnson County: *Laws of the Territory of Iowa,* 1843–1844, p. 158; *Laws of Iowa,* 1854–1855, p. 179, 1856 (Extra Session), p. 61, 1856–1857, p. 435.

KEOKUK, Lee County: *Laws of Iowa,* 1848 (Extra Session), p. 61, 1848–1849, p. 18, 1850–1851, p. 93, 1852–1853, p. 132, 1856 (Extra Session), p. 42, 1856–1857, pp. 18, 301, 396, 399, 402.

KEOSAUQUA, Van Buren County: *Laws of the Territory of Iowa,* 1842–1843, p. 44, 1845–1846, p. 102.

LYONS, Clinton County: *Laws of Iowa,* 1856 (Extra Session), p. 62, 1856–1857, p. 65.

MOUNT PLEASANT, Henry County: *Laws of the Territory of Iowa,* 1842–1843. p. 32, 1843–1844, p. 103; *Laws of Iowa,* 1852–1853, p. 39, 1856–1857, p. 201.

OSKALOOSA, Mahaska County: *Laws of Iowa,* 1856–1857, p. 60.

OTTUMWA, Wapello County: *Laws of Iowa,* 1856–1857, p. 85.

SALEM, Henry County: *Laws of the Territory of Iowa,* 1842–1843, p. 40; *Laws of Iowa,* 1854–1855, p. 162.

WAPELLO, Louisa County: *Laws of Iowa,* 1856–1857, p. 71.