

## CONSTITUTIONAL LIMITATIONS ON INDEBTEDNESS IN IOWA

The Constitution of the State of Iowa places specific limitations upon the power of the legislature to incur State indebtedness and the power of the counties and other political or municipal corporations to become involved in debt beyond a certain per cent of their taxable property has also been curbed by the Constitution. These provisions are very important in maintaining the stability and credit of the State and in protecting the just and lawful rights of the citizens. Every dollar of expenditure and indebtedness of the State must be paid out of the revenues and taxes collected and if these fail to meet the needs of the State or its political sub-divisions increased revenues must be raised and higher taxes levied. These limitations are, therefore, significant to the taxpayer. The constitutional limitation, however, applies only to bonded indebtedness, and the treasury deficit of Iowa has frequently exceeded the amount fixed as the maximum of the bonded debt.<sup>1</sup>

For this reason, the occasion which gave rise to the placing of such a provision in the Constitution is interesting and may be understood by a careful survey of the development of constitutional government in Iowa.

### PUBLIC FINANCE IN THE TERRITORY OF IOWA

The first independent government in Iowa was that provided for in the Organic Act, passed by Congress on June 12, 1838,<sup>2</sup> which divided the Territory of Wisconsin, and

<sup>1</sup> *Report of the Treasurer of the State of Iowa, 1918-1920*, pp. 23, 24.

<sup>2</sup> *Laws of the Territory of Iowa, 1838-1839*, p. 40.

out of that portion lying west of the Mississippi River created the Territory of Iowa, and provided a temporary government for the new Commonwealth. The new government thus created was closely modeled upon that of the Territory of Wisconsin, although some minor changes were made.<sup>3</sup> According to this act the salaries of the officials and the general and contingent expenses of the Territory were to be paid out of the Treasury of the United States. Moreover, an appropriation of \$20,000 was made for the erection of government buildings and \$5000 was provided for the purchase of a library to be kept at the seat of the government.<sup>4</sup> Little wonder then, under such circumstances, that many of the inhabitants of Iowa Territory even in 1845 were still opposed to the idea of statehood, since the State would be expected to pay the expenses of its own administration.<sup>5</sup>

The Organic Act of June 12, 1838, also provided for the annual appropriation by Congress of a sufficient sum of money for defraying the expenses of the territorial legislature, the printing of the laws, and other incidental expenses. This money was to be expended by the Secretary of the Territory and he was to account for its disbursement to the Secretary of the United States Treasury.<sup>6</sup> There was no limitation as to the amount that might be spent, an omission which perhaps explains in part at least the liberal spirit manifested by the members of the first territorial legislature in Iowa. Money was lavishly expended and a number of unnecessary officials employed, contrary to the

<sup>3</sup> Shambaugh's *History of the Constitutions of Iowa*, pp. 105, 106.

<sup>4</sup> *Laws of the Territory of Iowa, 1838-1839*, pp. 37, 39.

<sup>5</sup> Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 215-217, 400.

<sup>6</sup> *Laws of the Territory of Iowa, 1838-1839*, p. 37.

wishes of Governor Robert Lucas.<sup>7</sup> Just how all of these expenditures were accounted for it is difficult to state, but shortly after James Clarke was appointed Secretary of the Territory, he reported that the deficiency of the year previous, that is the claims against the Territory still unsettled, amounted to from four to five thousand dollars.<sup>8</sup> Had there been a limitation on the amount of money that might be expended by the Secretary of the Territory, this default might never have occurred.

## THE CONSTITUTIONAL CONVENTION OF 1844

One of the first acts of the Constitutional Convention of 1844, after permanent organization had been effected, was the designation of a number of standing committees, each of which was to assume responsibility for a particular phase of the constitution to be drafted. The last of these eleven committees was the one on State debts.<sup>9</sup> On Wednesday morning, October 9th, Shepherd Leffler, President of the Convention, announced the following as members of this committee, namely, O. S. X. Peck, Samuel W. Bissell, Robert Brown, Theophilus Crawford, Geo. Hobson, Thos. J. McKean, and Samuel W. Durham. Of these men, five were Democrats and two were Whigs; two were farmers, one a lawyer, one a physician, one a civil engineer, one a surveyor, and one a merchant; all had been in Iowa at least four years and none more than six years; their ages ranged from twenty-seven to forty-three years, and their average age was approximately thirty-two years.<sup>10</sup> Upon

<sup>7</sup> Parish's *Robert Lucas*, pp. 220-222.

<sup>8</sup> Parish's *Robert Lucas*, pp. 225, 226.

<sup>9</sup> *Journal of the Constitutional Convention*, 1844, p. 12.

<sup>10</sup> Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 408-410; *Journal of the Constitutional Convention*, 1844, p. 15.

this group of men devolved the duty of drawing up a proviso for the limitation of State indebtedness and the determination of the extent to which the State might borrow upon the public credit.

The first report of the Committee on State Debts was made on Thursday, October 10th, and read as follows:

1. The Legislature shall not in any manner create any debt or debts, liability or liabilities which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion, suppress insurrection, unless the same shall be authorized by some law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people and have received a majority of all the votes cast for and against it at such election, and all money raised by authority of such law shall be applied only to the specified object therein stated or to the payment of the debt thereby created, and such law shall be published in all the newspapers in the State for three months preceding the election at which it is submitted to the people.

Upon motion of George Hepner, this report was laid upon the table, and one hundred copies of it were ordered to be printed.<sup>11</sup>

On Tuesday morning, October 15th, the reports of the Committee on Internal Improvements and the Committee on State Debts were again taken up for consideration, but upon the motion of Mr. Hepner the report of the former committee was again laid upon the table. Andrew W. Campbell then moved to amend the report on State debts by striking out the words, "singly or in the aggregate, with

<sup>11</sup> *Journal of the Constitutional Convention, 1844, p. 18.*

any previous debts or liabilities, exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion, suppress insurrection, unless the same shall be authorized by some law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrevocable until the principal and the interest thereon shall be paid and discharged; but no such law shall take", and to insert in lieu thereof the words, "not necessary to defray the expenses of the government, unless the Legislature shall have authorized and the Governor approved the same, for some single object, and the same not to go into".

Following the proposal of Mr. Campbell, Elijah Sells offered to amend the proposed amendment by inserting after the words "expenses of the government" the words "and to secure the property of the State against loss." The proposal of Mr. Sells was, however, rejected.<sup>12</sup>

Mr. Chapman then expressed his desire to know "the object of giving the Governor the power proposed in the amendment." The Governor's power was in fact already equal to that of the legislature and of the people. "If the Legislature proposed a plan, he might destroy at once what the Legislature had done, and the people themselves could

<sup>12</sup> *Journal of the Constitutional Convention, 1844*, pp. 60, 61. In the *Journal of the Convention*, pages 60 and 61, it is stated that Mr. Campbell, of Scott, moved to amend the report, by striking out all that occurs between the word "shall" at the commencement, to the word "shall" in the eleventh line, and insert "not be necessary to defray the current expenses of the government, unless the same shall be authorized by an act of the legislature, for some specific object or work which shall be distinctly specified therein, but no such act". This does not agree exactly with the amendment quoted from the *Fragments of the Debates*; the latter, however, is evidently correct.

do no more." Later Mr. Chapman explained that "he came pledged to vote against letting the Legislature create indebtedness, without the people sanctioned it." In his opinion this "was the true Democratic principle". Personally he was confident that the people could be trusted with the question of indebtedness, and he believed that it was a wise provision "to let the people decide upon questions of this character."

Mr. Peck opposed the proposal of Mr. Campbell, asserting that "It would give the Legislature the right to create debts, and borrow to pay it, and to borrow money to pay the interest on what they had borrowed."

Richard Quinton was likewise opposed to the proposition. "He was pledged against allowing any such opportunity to create indebtedness. The Legislature might authorize any amount, if the people would vote for it." Like Mr. Chapman, he too had great confidence in the people, "but political gamblers and speculators would get up schemes that would dazzle and deceive them into running in debt."

Robert Lucas was of the opinion that the provision which required the legislature to provide means for the payment of any debt or liability that might be incurred was important. This would furnish the people with information as to how the liability was to be met. He, however, opposed the plan of extending a debt over a period of thirty-five years. This "was more than a generation — and he was opposed to creating a debt for posterity to pay." To him nineteen years represented about the average lifetime, and the "existence of a debt should be limited to 20 years."

Jonathan C. Hall then entered the discussion and stated that "when he first saw in the report of the Committee the proposition to submit questions to the people, he thought it a splendid spectacle — to let the voice of the people decide. It excited his imagination — the idea seemed magnificent."

But upon reflection he found himself opposed to the policy. "He had confidence in the people — but it was a step that struck at the representative form of our government. It was taking from the Legislature what had been its right, and its province." If this policy were continued the time would come when the only business of the legislature would be "to offer projects to the people." He also declared: "Like persons alarmed, we were fleeing, not from danger, but into it . . . . He took the position before the people that the Legislature should not create a debt without providing means to pay it . . . . If the Legislature passed a law that made taxes oppressive, the people would not elect them or any others to do the same thing again. That was the proper remedy. He would not throw this matter into the field of speculation and excitement, where gamblers and designing men might have opportunity of deceiving the people to their ruin."

A few further remarks were made by ex-Governor Lucas and then, upon motion of Lyman Evans, the Convention adjourned. The question of adopting Mr. Campbell's amendment, however, was taken up shortly after the opening of the afternoon session and decided in the negative. A motion by Ralph P. Lowe of Muscatine to have the report engrossed and read a third time on the following day was then adopted.<sup>13</sup>

Although the motion of Mr. Lowe on October 15th called for a third reading of the report on State debts on the following day, it was not until the afternoon session of October 29th that the report was read a third time before the Convention. On motion of Mr. Hepner the article was referred to a select committee with instruction to strike out "thirty-five" and insert "twenty" in its place. The effect of this change was to greatly reduce the time for which

<sup>13</sup> Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 47-50.

authorized indebtedness might run. The motion was agreed to, and George Hepner, James Grant, and Joseph C. Hawkins were appointed as members of the committee by the chair. Shortly after their appointment, the special committee, through their chairman, Mr. Hepner, reported the Article on State Debts back to the Convention with the changes as ordered. The corrected report was read a first, second, and third time, following which the question was put upon the final passage of the article. It was decided in the affirmative, the vote being fifty-seven to twelve.<sup>14</sup>

This provision, which became Article VIII of the Constitution, read:

OF PUBLIC DEBTS AND LIABILITIES

1. The Legislature shall not in any manner create any debt or debts, liability or liabilities which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion, suppress insurrection, unless the same shall be authorized by some law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interests of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrevocable until the principal and the interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people and have received a majority of all the votes cast for and against it at such election, and all money raised by authority of such law shall be applied only to the specific object therein stated or to the payment of the debt thereby created, and such law shall be published in newspapers in the State for three months preceding the election at which it is submitted to the people.<sup>15</sup>

The article as thus incorporated in the Constitution of

<sup>14</sup> *Journal of the Constitutional Convention, 1844*, pp. 166, 167.

<sup>15</sup> *Journal of the Constitutional Convention, 1844*, p. 199.



1844 aroused very little press comment. Quite naturally, however, the friends and opponents of the new instrument of government saw in the provision something that would lend strength to their arguments. *The Iowa Capital Reporter*, speaking in this connection, said: "The provision in relation to the State indebtedness, cannot be spoken of in too high terms; and we see in this, the first serious attempt on the part of Iowa, to escape that abyss which has engulfed many of our sisters in the confederacy." At another time *The Iowa Capital Reporter* quoted the objections of the Whigs to the Constitution, taken from an article in the *Iowa Standard*. Among other objections the following was offered: "Because it took from the people the right they possess *individually*, and ought to enjoy *collectively*, to borrow money, if they desire it, for the improvement of the country, and the development of its natural resources."

James M. Morgan in a speech before the territorial House of Representatives on May 31, 1845, stated that one of the reasons for the popularity of the Constitution of 1844 was the fact that the people "are protected against the possibility of the perpetration of any of the Bank Charter and Internal Improvement and State Debt frauds, which have in times past been sprung like deadfalls upon the people of other States through the action of purchased, perjured and corrupt public agents."<sup>16</sup>

Thus, what to one group of individuals appeared to be an advantage and safeguard to the people, by another was considered as a handicap to progress and a check to prosperity. The Constitution, however, failed of adoption, and the limitation of the State debt was thus left for another Convention.

<sup>16</sup> Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 224, 225, 265, 266, 275.

The Constitution of 1844 having been twice rejected by the people of the State, it was decided that a Convention should be called for the purpose of drawing up a new Constitution. The delegates to this Convention accordingly met at Iowa City on May 4, 1846, pursuant to directions, and immediately set about framing a Constitution that would, if possible, meet the approval of the people.<sup>17</sup>

The number of delegates to this Convention was less than one-half the number who gathered at the Old Capitol building in 1844, for the same purpose. The number of standing committees was also reduced from eleven in 1844 to six in 1846.<sup>18</sup>

Among the six standing committees in the Convention of 1846 was one on "Incorporations, Internal Improvements, and State Debts". The members appointed to this committee by the President were: Curtis Bates, Thos. Dibble, James Grant, David Olmsted, and Sulifand S. Ross. All were Democrats and two, Grant and Ross, had been members of the Constitutional Convention of 1844. Of these five members, two were lawyers, two were farmers, and one was a trader. All had been in Iowa from five to eight years.<sup>19</sup>

This committee, to whom was referred the Article on State Debts, made its first report on Thursday morning, May 7th, reporting the article as it had been incorporated in the Constitution of 1844, without change except that it was entitled "STATE DEBTS" instead of "OF PUBLIC DEBTS

<sup>17</sup> *Journal of the Constitutional Convention, 1846*, p. 23.

<sup>18</sup> *Journal of the Constitutional Convention, 1844*, p. 12, 1846, pp. 25, 26; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 408-415.

<sup>19</sup> Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 408-415; *Journal of the Constitutional Convention, 1846*, pp. 25, 30.

AND LIABILITIES". The report was not discussed, but the usual number of copies was ordered to be printed.<sup>20</sup> On Wednesday, May 13th, the report on State debts was again taken up and read a second time. Following its reading, John J. Selman moved to amend the Article by striking out the word "Legislature" in the first line and inserting in its place the words, "General Assembly". This motion was agreed to and the amendment adopted.

Henry P. Haun then proposed to amend the Article by striking out the words "in newspapers" in the clause which reads, "and such law shall be published in newspapers in the State for three months preceding the election at which it is submitted to the people", and to insert in their stead the words "each Judicial District". This proposal was not agreed to. It was, however, an attempt to fix rather definitely the number of places in which a law, proposing to increase the indebtedness of the State beyond a specified amount, must be published within the time limit set preceding the election at which it is submitted to the people for their approval. Following the defeat of this proposal, George W. Bowie offered to insert the word "twelve" so as to fix the number of places even more definitely, but his proposition was also decided in the negative. Still another motion was made to fix the number at not less than three different places in the State, but it was defeated also.

Mr. Selman then moved to strike out, "and such law shall be published in newspapers in the State for three months preceding the election at which time it is submitted to the people." This would do away with the necessity of publication at all. The amendment when put to a vote was not agreed to.

Somewhat later in the course of discussion Mr. Haun

<sup>20</sup> *Journal of the Constitutional Convention, 1846, pp. 38, 39.*

proposed to strike out the words, "newspapers in", in the clause above referred to by Mr. Selman, and to insert the following: "At least one newspaper in each Judicial District, if one is published therein, throughout". This amendment embodied the same intent as that previously offered by Mr. Haun, and when the question was put upon its adoption, it was agreed to.

During the discussion of this Article a number of amendments were offered which proposed to raise the limitation on the power of the legislature to contract debts from one hundred thousand dollars, to two, three and five hundred thousand dollars, but all were defeated. Stephen B. Shelledy<sup>21</sup> proposed to strike out the whole report dealing with limitations on State debts and to substitute the following: "The people have a right to contract debts by their representatives whenever in their opinion the public interest require it." This amendment was likewise defeated, the vote being nine for and twenty-two against.

George Hobson then moved to amend the report by striking out as follows, "which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrevocable until the principal and the interest thereon shall be paid and discharged". This proposal was defeated by a large majority vote. Thus, out of thirteen proposed amendments or amendments to amendments to the Article under consideration only two were adopted and the report remained practically unchanged.

<sup>21</sup> There is a disagreement among writers in regard to the spelling of the name of Stephen B. Shelledy. He was a member of two Constitutional Conventions, that of 1844 and of 1846. The journal of 1844 has his name attached to the Constitution as "Shelledy", although throughout the journal it is spelled "Shelleday". The journal of 1846 uses the latter form.

On motion of J. Scott Richman the report was ordered to be engrossed and referred to the Committee on Revision. On Thursday afternoon, May 14th, the Committee on Engrossment reported the Article on State Debts correctly engrossed, but no further action was taken in regard to this report before adjournment. The article was again taken up for consideration late Saturday afternoon, May 16th, read a third time, and adopted by the Convention.<sup>22</sup> In its final form the Article read:

## STATE DEBTS

1. The General Assembly shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by some law for some single object, or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrevocable until the principal and the interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election, and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each judicial district, if one is published therein, throughout the State, for three months preceding the election at which it is submitted to the people.<sup>23</sup>

This part of the new Constitution, while designed for the purpose of safeguarding the finances and credit of the State, was looked upon by many as a block to progress and

<sup>22</sup> *Journal of the Constitutional Convention*, 1846, pp. 79, 80, 81, 82, 89, 102.

<sup>23</sup> *Journal of the Constitutional Convention*, 1846, p. xiv.

a hindrance to the development of internal improvements. Very few of the debates and press comments of this period have been preserved, but fortunately there is just enough on both sides of the issue to lend color to the situation.

*The Iowa Capital Reporter*, a Democratic publication, in discussing the Article on State Debts, on May 27, 1846, said:

## STATE DEBTS

The attention of our readers is invited to the very judicious provision engrafted upon our Constitution, under the above head.

The limitation to, and checks upon the debt creating power of the General Assembly, it will be seen, are the same as those contained in the constitution submitted last year. So far from their forming a new feature, similar provisions, almost in the precise terms, have since been engrafted upon the revised constitutions of N. Jersey, Missouri, Louisiana, and Texas.

Though it is a provision which sufficiently recommends itself, yet, strange as it may appear, there was an organized opposition to it in the Convention.<sup>24</sup>

Since the great majority of the members of the Convention and all of the members of the Committee on State Debts were Democrats, it was only natural that the Democratic publications should speak well of the work of the Convention. The other side of the question is, however, well presented in a public address by Wm. Penn Clarke, published in the *Iowa Standard*, a Whig newspaper, on July 20, 1846. Mr. Clarke was at this time a candidate for a seat in the Council or upper house of the territorial legislature. In discussing the various features of the Constitution of 1846, he dwelt at some length upon the subject of internal improvements and State debts. He opposed the Constitution because it prohibited banks and other corporations and presented his opinion in the following words:

<sup>24</sup> Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, p. 341.

The inventive spirit of the age is at work to annihilate time and space and bring the markets of the East and South to the doors of the Western Agriculturist. If we would maintain our proper position in the Union, we must march in the footsteps of our Western sisters, and engage in these undertakings.— To refuse, is to exclude our products from the great markets of the world. The 8th article of the proposed Constitution, headed "State debts," and the second section of the article on Incorporations, relate to this subject. The article on State Debts is tantamount to an inhibition of the construction of such works by the State government. It is such, because it restrains the government from anticipating the revenue of the work, and borrowing money, as is usual all the world over, for its creation. It requires, then, that such improvements shall be made by *direct taxation*, and that taxation is to commence, and continue with the progress of the work. This is impolitic, for the reason that it is using capital which might be employed to greater immediate advantage in other ways. It not only deprives us of the use of foreign capital, which might easily be obtained at a reasonable interest, but it throws the whole burden of the construction of such works upon the citizens of the State. It deprives the people collectively of a right they possess individually—the right to throw their credit and character into market, and make them serve the purposes of capital. The State government is but an aggregate individual, is subject to the same laws of finance, which govern single persons, and should possess the same liberty to make contracts that individual citizens enjoy. But could this obstacle be removed, the subsequent provisions of the same article, would defeat the construction of works of Internal Improvement. The work of Legislation is taken out of the hands of the law-making department, and referred to the great mass of the people. The question of sectional interests, is now transferred from the few to the many, and it now becomes, *not a question of State Policy*, designed to benefit the whole community, but is narrowed down to a simple question of *individual interest*. Every voter will examine whether the proposed work will enhance the value of his location, directly leaving out of view, great and fundamental principles and their results, direct and remote; and if he is satisfied that it will put money into his pocket, and take but little out, he will vote for the measure, and *vice versa*. Thus, that sectional interest, which com-

mands the bulk of population, will get the desired improvements, whilst the minority will be burdened with taxation, and receive no benefit. This measure cannot fail to destroy every thing like a uniform and permanent system of Internal Improvements, and involve the people in questions of finance, which they have neither the time or inclination to investigate. This provision, while it will secure but a doubtful good, will certainly be productive of a great deal of evil.<sup>25</sup>

The Constitution as drafted by the Convention of 1846, was finally submitted to the people on August 3, 1846, and was ratified by a small majority of four hundred and fifty-six votes. On September 9th, following, Governor James Clarke issued a formal proclamation declaring that the Constitution had been ratified and adopted. Soon after the election of State officers and the inauguration of the new Governor, a copy of the Constitution was presented to the House of Representatives at Washington and after several days was approved by Congress. The official sanction of President James K. Polk was received on December 28, 1846. Accordingly Iowa was admitted to full membership into the Union and for the first time constitutional restrictions were placed upon the power of the Iowa legislature to create a State debt or liability beyond a definitely specified amount.<sup>26</sup>

#### THE CONSTITUTIONAL CONVENTION OF 1857

When the Constitution of 1846 was submitted to the people for their approval, much of the opposition offered to it was due to the fact that it greatly restricted the activities of corporations and thereby delayed the economic and industrial development of the State. The general sentiment throughout the Territory, however, favored the adop-

<sup>25</sup> Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 351-355.

<sup>26</sup> Shambaugh's *History of the Constitutions of Iowa*, pp. 324, 325, 326, 327.



tion of the Constitution as the shortest and quickest means of gaining admission to the Union. The people were aware of the fact that the new Constitution was not without its faults, but at the same time these defects were not considered as serious enough to warrant its rejection — they could be remedied later after statehood had been obtained. With such sentiment prevailing the Constitution was adopted by a small majority.<sup>27</sup>

Immediately following the ratification of the Constitution, however, agitation was started for its modification, but the procedure for its amendment was rather difficult. Article XI of the Constitution read as follows:

If at any time, the General Assembly shall think it necessary to revise or amend this constitution, they shall provide by law for a vote of the people for or against a convention, at the next ensuing election for members of the General Assembly, in case a majority of the people vote in favor of a convention, said General Assembly shall provide for an election of Delegates to a convention, to be held within six months after the vote of the people in favor thereof.<sup>28</sup>

Although attempts were made in every session of the legislature to pass an act providing for the calling of such a convention to revise or amend the Constitution, it was not until 1855 that this was actually accomplished. Thus, before the delegates assembled to effect the desired changes in the Constitution of 1846, it had already been in operation for a period of ten years.<sup>29</sup>

Shortly after permanent organization of the Convention of 1857 had taken place, it was decided that there should be twelve standing committees of five members each to carry on the work. Among these was a Committee on State

<sup>27</sup> Shambaugh's *History of the Constitutions of Iowa*, pp. 329-331.

<sup>28</sup> Article XI of the Constitution of 1846 in the *Journal of the Constitutional Convention*, 1846, p. xvii.

<sup>29</sup> Shambaugh's *History of the Constitutions of Iowa*, pp. 331-336.

Debts. On this committee the President appointed James F. Wilson, H. D. Gibson, William A. Warren, Squire Ayers, and Alpheus Scott. The Committee on State Debts represented five different lines of work, consisting of a lawyer, merchant, mail contractor, real estate agent, and a farmer. To the combined genius of these men was entrusted the task of drawing up regulations to limit the borrowing power of the State.

## STATE DEBTS

The first report of the Committee on State Debts was made on January 27, 1857, and in part related to the expediency of prohibiting counties, cities, and other corporations from becoming stockholders in joint stock companies. Mr. Wilson, the chairman of the committee, recommended that the Convention should take no action upon this matter. Amos Harris, however, moved that it be referred to the Committee on Incorporations for their consideration. William Penn Clarke of Johnson County moved to amend this motion by having the report referred to the Committee on Miscellaneous Matter. The former motion, however, prevailed, and the report was referred to the Committee on Incorporations.<sup>30</sup>

Mr. Wilson, chairman of the Committee on State Debts, then submitted to the Convention the following report which, he announced, had received the unanimous approval of the members of the committee:

1. The credit of this State shall not in any manner be given or loaned to, or in aid of any individual, association or corporation; and the State shall never assume, or become responsible for, the debts or liabilities of any individual association or corporation.

2. The State may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided

<sup>30</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 52; Journal of the Constitutional Convention, 1857, pp. 25, 26, 53, 54.*

for; but the aggregate amount of such debts, direct or contingent, whether contracted by virtue of one or more acts of the General Assembly, or at different periods of time, shall never exceed the sum of One Hundred Thousand Dollars; and the money arising from the creation of such debts shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

3. In addition to the above limited power, to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the debts so contracted shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

4. Except the debts specified in the second and third sections of this Article no debt shall be hereafter contracted by, or on behalf of this State, unless such debt shall be authorized by some law for some single work or object to be distinctly specified therein: and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within twenty years from the time of contracting thereof; but no such law shall take effect until at a general election it shall have been submitted to the people and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt created thereby, and such law shall be published in at least one newspaper in each county, if one is published therein, throughout the State for three months preceding the election at which it is submitted to the people.

5. The Legislature may at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such law, in proportion to the debt and liability which may have been contracted in pursuance of such law shall remain in force and be irrevocable, and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability.

6. Every law which imposes, continues or revives a tax shall

distinctly state the tax and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

Immediately following the reading of this report Sheldon G. Winchester moved that it be laid upon the table and that one hundred copies be printed.<sup>31</sup>

This report was again taken up by the Convention on February 5th and each section thereof considered individually.

Section one was read and passed without discussion or amendment. Section two, which set the amount of indebtedness that might be incurred at one hundred thousand dollars, was then taken up and discussed at great length. Many of the members contended that the limit set was altogether too low, and that as a consequence the State would be so helpless that it could not make necessary and needed improvements. For instance, it was felt that a new capitol building would soon have to be built, and under this restriction a number of the delegates could not understand how this could be accomplished. A difference of opinion as to what actually constituted an indebtedness according to the provisions of the Constitution of 1846, and the recommendations of the Committee on State Debts was largely responsible for the divided opinion as to what should constitute the maximum amount of indebtedness that the State might incur. To make clear the significance of this provision in the Constitution, the debates in the Constitutional Convention upon this question may be quoted at some length.

Mr. Wilson, in presenting this report, stated that he had "consulted with a majority of the members of the Convention before drawing it up, and the several matters set out

<sup>31</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 52, 53; Journal of the Constitutional Convention, 1857, pp. 54, 55.*

in the different sections, seemed to meet with the views of members so universally", that he did not consider it necessary to explain the reasons for making such provisions, but would answer objections as they were proposed. Robert Gower moved to change the limitation from one hundred thousand to three hundred thousand dollars but Mr. Wilson was opposed to the State having any indebtedness at all and was convinced that no greater amount than that proposed by the committee should be allowed. This in his estimation would certainly be sufficient.

Following this expression of opinion, J. A. Parvin said:

I consider that the clause in the present constitution, upon this subject, has been the salvation of our State. I am satisfied that the mania for building railroads has prevailed so extensively in this State, within the last five or six years, that without such a clause in our constitution, we would have been in debt, at least, a million of dollars . . . . That sum was large enough at the time this provision was adopted, but three, four, or five hundred thousand dollars would not be so much now, perhaps, as one hundred thousand dollars was at that time. Cases might arise, in which it will be necessary to run the State in debt; and I do not think it expedient to submit the question to the people every time they wish to contract a debt for over one hundred thousand dollars.

Like Mr. Wilson, he too favored restrictions, but he believed the limitation must be much more liberal than it was under the existing Constitution.

George Gillaspv took the stand in defence of the report, his speech including the following statements:

The gentleman from Muscatine, (Mr. Parvin), in my judgment, made a very appropriate remark, when he said that the clause in the present constitution, in relation to State indebtedness had been the salvation of the State . . . . The people of this State, I believe, are almost crazy upon the subject of speculation.

This Convention is about to adopt a provision here, that will allow banking in the State of Iowa. My opinion is, that if we in-

crease the amount of this restriction, the next general assembly will not adjourn until they have made appropriations for various purposes to the full amount that they are allowed to contract debts by the constitution. If we adopt a provision here of that kind, it would be hailed with acclamation by every broker in the State, and the bonds of the State would offer the best security for banking that could be possibly presented, and by that very inducement you could persuade every body in the community to sign petitions asking the legislature to make appropriations for building a new capitol, asylums, and various other public institutions. What would be the result of all this? Why, the issue of bonds upon the treasury of the State, which the speculators might buy up for the purposes of banking. I undertake to say, had it not been for the provision in the constitution upon this subject, that the people ere this would have voted appropriations for railroads of upwards of ten millions of dollars.

J. C. Traer favored raising the limit of indebtedness: he did not wish to cramp the hands of the State in such a way that the ordinary expenses of the government could not be met without first submitting this question to the people. He also called attention to the fact that the last message of the executive showed that the total indebtedness of the State amounted to \$128,000. Speaking in this connection he said:

It appears to me, that when the constitution provides that the indebtedness of the State shall not exceed, in the aggregate, the sum of \$100,000, and when the executive tells us that the State has incurred a debt of \$128,000, we had better amend the constitution so as to give the officers of the State an opportunity of meeting the ordinary expenses of the government. . . . There is no doubt that we will soon be called upon to erect public buildings for the use of the State, and I would ask gentlemen how they can be erected with such a clause as that on State indebtedness contained in the present constitution?

As the debate thus proceeded, Mr. Wilson was induced to discuss the subject at great length, and to define the term

“debt” in the light that it was used in the section proposed by the committee. His discussion, although lengthy and detailed, is very important because it expresses very clearly what is and what is not a part of the indebtedness of the State. Among other things he said:

I wish to submit my views briefly upon this subject. I will state that this question of building a new State capitol, asylums, and other public buildings, was fully discussed by the committee before they agreed upon their report. It was with a view to the necessity of erecting these various public buildings, that the committee reported this sum of one hundred thousand dollars. We wished to prevent, if possible, the legislature from commencing a set of buildings that would cost to complete them from one to two millions of dollars. We wanted to have it understood before they were commenced, how much they would cost, and then let the people pass upon that question. Some states have commenced erecting their public buildings without limiting in the first place, the amount of the expenditure, and the consequence has been, that it has cost more to complete them than was originally intended. This was the case with the building of the new state house in Ohio, and it was found before its completion, that it would cost from four to five millions, an expense which the people of the State never contemplated should be incurred by the State. If you increase the amount of State indebtedness to three hundred thousand dollars, I ask you whether that will be sufficient, of itself, to cover the probable amount that these buildings will cost? You may commence building your capital, blind and deaf asylums, and before they are completed it will be found that three hundred thousand dollars will not be sufficient to complete them, and operations will have to be suspended until the question is submitted to the people. I think the best plan is to submit this question to the people in the first place, and let them determine what the buildings and their cost shall be, and then make the necessary provision accordingly, and not permit the legislature to go on and make such appropriations as they please. I believe with the gentleman from Wapello (Mr. Gillaspy), that at the very first session of the legislature after the adoption of this constitution, they will provide for the consumption of the

entire amount, even if you increase it to three hundred thousand, or five hundred thousand dollars.<sup>32</sup>

*The terms "debt or liability" in this clause do not mean warrants that the State may issue upon the treasury. The State may issue her warrants upon the treasury even beyond the amount specified.*<sup>33</sup>

Mr. Traer then asked, "Does the gentleman mean to put the same construction upon the present constitution?"

To this Mr. Wilson replied: "I do. I cannot see how the term 'debt or liability' can mean anything but a bonded debt. The state may draw her warrants upon the treasury, but if there is not money there, they cannot be paid, and those who hold them will have to wait."

Following this Mr. Traer read the first part of the section relating to the subject under discussion—"The General Assembly shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars." He then stated that he did not "understand that this means issuing the bonds of the State."

Mr. Wilson replied: "The only construction that can be placed upon that article in the Constitution is, that it applies to the bonded debt of the State . . . . If we are compelled to run the State in debt in order to meet the exigencies of the government, why not wipe away the restriction entirely, in order that the legislature may have full play?"

Mr. Parvin in turn stated that if the views of Mr. Wilson were correct, then he, himself, did not understand what a

<sup>32</sup> *Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 260-264.*

<sup>33</sup> *Herriott's Iowa's Treasury Deficit in the Light of the Constitutional Debates in the Annals of Iowa (Third Series), Vol. III, p. 636.*



debt is. According to the construction placed upon this term by Mr. Wilson, the State could issue warrants for any amount and yet at the same time not violate this section of the Constitution. "I do not wish to see such a state of things", said Mr. Parvin, "and I want this constitution to mean just what it says, that this State shall never go into debt, or be liable beyond a certain amount, unless the question is first submitted to the people as provided for in this second article."

Mr. Traer then wanted to know if Mr. Wilson put the same construction upon the section proposed by the Committee on State Debts as he did upon the article in the Constitution of 1846. Mr. Wilson answered: "That is the only construction I put upon either of the articles."

"Suppose", said Mr. Traer, "we incorporate into the Constitution a provision preventing the State from running into debt, what is to prevent the State from running into debt for putting up State buildings, and issuing her warrants?"

To this Mr. Wilson replied: "There is just this about it. — I presume in relation to debts contracted by the State, that parties will take the same position that they would in contracting with individuals. They will endeavor to ascertain in the first place, whether the parties with whom they contract can pay. Before making a contract for the erection of public buildings, you will have to determine when the payments are to be made. If the State cannot create the debt and meet the payments, then as a matter of course, no contract will be made."

Further discussion of this section and of the question as to what constituted a debt of the State within the meaning of the Constitution followed and a vote was then taken upon a motion to strike out the words "one hundred thousand". It was agreed to by a vote of eighteen to nine.

Motions were then made to substitute for the omitted words "two hundred and fifty thousand" and "five hundred thousand". Concerning these proposals Mr. Wilson said:

I hope this amount of five hundred thousand dollars will be voted down. And I perceive there is a misapprehension in the minds of some members I have conversed with, in relation to my position upon this matter. I will state that my position is this; the State can issue her warrants to the full extent of the probable amount of her revenue for the coming year, whether two, five or even ten millions of dollars, without coming within the operation of this article of the constitution. But should she exceed that revenue, then she is creating a debt within the contemplation of this article.

Among the arguments made upon the subject the following speech by Wm. Penn Clarke of Johnson County may be quoted:

I have but few words to say upon this subject, and I should not say these words did I not conceive that there was a very radical difference in the minds of the members of this convention as to the nature of government, and what it is proper for us to do here. I understand it to be a well settled axiom, to which all parties agree, that the people are the source of power; that all political power comes from them. We are sitting here by virtue of that power, and are to make a government to be carried on by virtue of that power. We are to make a representative government in which the public voice is to be expressed, and through which the people are to act. This proposition is what? It is a proposition to tie up, not the hands of this government, but the hands of the people. We are called upon to put a check, not upon the government, but upon the people themselves. If there must be a check, I am willing to give the government a very large latitude here. I shall vote, perhaps, to make the sum to be inserted here five hundred thousand dollars, for the simple reason that five hundred thousand dollars now is not larger, in comparison, than the one hundred thousand dollars which we had ten years ago, when the present constitution was framed and adopted. I hope we shall make a constitution here under

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which the government shall be established, and under which it will be enabled to work so that in ten years we shall not find ourselves, as we are now, under a government so cramped as to be inadequate to the wants and necessities of the people. I can conceive of many things which will call for the expenditure of money, that are vital to the protection, happiness and prosperity of our people. There are many matters far more important than that of building a State House, or any kind of institution. And I do not desire, when the time comes and the emergency arrives, to have this constitution so arranged as to stand in the way of the progress and prosperity of the people.

Now I am afraid that some members of this convention are not so willing to trust the people after all. If the people send foolish men here to represent them and make laws for them, who will spend their money for them unnecessarily, it is their business, not ours. We are not sent here to guard and watch the people, and place a check upon them and prevent them from acting for their own good. And yet it seems to be the idea of many members of this convention that unless we so check the government we are not doing our duty. I shall vote for the largest amount here, for I believe the time will come in less than ten years, when circumstances will arise that will require this State to go into debt to the amount now named. If those circumstances do not arise, then the debt need not be incurred, and no harm will be done.

The position taken by Mr. Clarke induced Edward Johnstone, one of the leading lawyers of the Convention,<sup>34</sup> to remark:

I differ in *toto* from my friend from Johnson, (Mr. Clarke,) when he says we are not sent here to place limitations and restrictions upon the future action of the legislature. I think that is our business, and I think it is highly important that we should do so,

<sup>34</sup> Herriott's *Iowa's Treasury Deficit in the Light of the Constitutional Debates* in the *Annals of Iowa* (Third Series), Vol. III, p. 639.

The name of Edward Johnstone has been spelled with and without "e" by different writers. The journal of the Constitutional Convention of 1857 does not use the "e" except where Mr. Johnstone's name is attached to the Constitution. The debates of this Convention do not use the "e" at all. However, most articles written in regard to Mr. Johnstone, spell his name with an "e".

if we are to believe the half that has been said in this hall about the rascality and villainy of the legislature. I regret that the sum of one hundred thousand dollars was stricken out of this section. I am in favor of that sum, and think it is amply sufficient for all our purposes. My reason for thinking so is this: Gentlemen will recollect that this State is growing and progressing rapidly, and if they will look at the last report of the auditor, they will find for the next two fiscal years the estimated amount of receipts over the estimated expenditures is two hundred and fifty thousand dollars, which added to the one hundred thousand dollars which the state would go into debt under this provision as it was reported, would afford over three hundred thousand dollars for the expenditure of the State every year for these extraordinary objects. The rate of taxation now is forty mills on every one hundred dollars. That can be changed at any time, and if the State desires to raise a larger amount of money by taxation at any time than it now raises, it can easily do so. There has never been a time in the history of our State when it was so important that some restrictions should be placed upon the subject of state indebtedness, than the present. The people are all wild, all crazy upon the subject of making money. We all deem ourselves rich, or soon about to be. Probably two years hence it will be otherwise. And I tell you, gentlemen, that this is the sheet anchor of the security of this State, and we ought to cling to it.<sup>35</sup>

*I believe with the gentleman from Jefferson, (Mr. Wilson,) that the true interpretation of the words "debt or liability" is a bonded debt. It is so considered by all the lawyers with whom I conversed during the session of the legislature just adjourned, except Mr. Cloud of Muscatine. And if gentlemen will observe the article reported for our consideration by the Committee on State Debts they will perceive that it is in a much more contracted form than the old constitution. The old constitution says "debt or debts, liability or liabilities," while the provision under consideration says 'the credit of the State shall not, in any manner, be given or loaned to, or in aid of,' &c. That provision could not be interpreted as the gentleman from Benton, (Mr. Traer,) interprets it. And I say again that there never has been any time when it was more neces-*

<sup>35</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 264-268.*

sary to throw these restrictions about the legislature than it is now.<sup>36</sup>

A number of amendments were then proposed and discussed at length and finally it was agreed to set the limit of indebtedness at two hundred and fifty thousand dollars. This proposal was passed by a vote of sixteen to eleven. One other amendment to this section was offered at this time but failed of adoption.<sup>37</sup>

Mr. Hall then proposed to add a new section to be inserted immediately following section two. His proposal read as follows:

That all losses to the government, school, or university funds of this State, which losses shall have been occasioned by the mismanagement or fraud of the agents, or officers, controlling or managing the same, shall be audited by the proper authorities of the State, and the amount so audited shall be a permanent bonded debt against the State in favor of these respective funds, upon which six per cent., annual interest shall be paid, for school and university purposes; the amount of liability so created shall not be accounted as a part of the indebtedness authorized by the second section of this article.

This amendment was designed to make the State responsible for these funds just the same as a private individual would be. At the same time it was hoped that it would make the people more watchful, for if they were compelled to pay taxes to make up the interest on these losses, naturally they would be more careful as to the selection of individuals for the safekeeping of such property.

An amendment to the proposed section was then offered and accepted changing the rate of interest to be charged

<sup>36</sup> Herriott's *Iowa's Treasury Deficit in the Light of the Constitutional Debates* in the *Annals of Iowa* (Third Series), Vol. III, p. 637.

<sup>37</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 260-272.

from "six" to "ten" per cent. In this form the new section was adopted by the Convention.<sup>38</sup>

Section three of the Article as reported by the committee was then passed without discussion and section four was taken up. Mr. Hall moved to amend this section by striking out of the first line the words "specified in the second and third sections of this article", and inserting, "herein specified", which motion was adopted. This change was made necessary by the insertion of the new section which also changed the numbers of the sections after section two. The remaining sections were then read and passed without alteration or amendment.

D. P. Palmer then proposed the following as an additional section:

Section —. Every contract made, or entered into, which either directly, or indirectly, increases the State debt, above the limit in this article prescribed, shall be null and void.

The aim of this section appeared to be the repudiation of all debts of the State which might be incurred beyond the prescribed limit. After thorough discussion it was rejected and upon motion of Mr. Clarke the report was laid upon the table. Before this was done, however, the Committee on State Debts was discharged. No further business being brought before the Convention, it adjourned for the day.<sup>39</sup>

The report of the Committee on State Debts, together with the amendments offered in the Committee of the Whole, was further considered by the Convention on the following day. Each section was again read with corrections or alterations as determined on the day previous. Section one was agreed to without change. The amendment

<sup>38</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 273.*

<sup>39</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 274, 275.*

offered in the Committee of the Whole to section two, substituting two hundred and fifty thousand in place of one hundred thousand, was accepted by a vote of eighteen to fourteen. No further amendments being offered, the new section (Section 3) offered by Mr. Hall, relating to the State's responsibility for the University and school funds in case of defalcation on the part of its agents into whose care it had been entrusted, was taken under consideration. The question as to what should be the proper rate of interest for the State to pay in cases arising under this provision was discussed in detail and finally it was decided that the State, like any other trustee, should not be compelled to pay exorbitant rates, and so it was moved and agreed to that the words "ten per cent" should be stricken out and the clause "not less than six per cent" inserted in lieu thereof.<sup>40</sup>

No amendments were offered to section four and section five was also agreed to after the amendment offered in the Committee of the Whole to strike out the words "the second and third sections", and to insert between the words "debts" and "specified" the words "hereinbefore" had been accepted. Next in order was the reading of section six. Mr. Wilson moved that all after the word "until" be stricken out and the following inserted in place thereof: "the principal and interest are fully paid". This amendment was agreed to. Section seven was passed without change. Wm. Penn Clarke then offered the following additional section:

Sec. 8. Every contract made or entered into which, either directly or indirectly, violates the provisions of this article, shall be null and void.

Mr. Palmer supported this measure because he believed

<sup>40</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 277-279.*

that it would prevent the State from violating section two of this Article which sets the limit of State indebtedness at two hundred and fifty thousand dollars. "Let every person understand", he said, "that if he loans this State any money, in violation of this article, the State and the people of the State, do not hold themselves responsible for the repayment of that money."

On the other hand Mr. Parvin opposed the measure because he believed that the innocent dealer should not be made to suffer in case the agents of the State exceeded their constitutional authority. It was his opinion that the State should hold her agents responsible for their actions rather than shifting the responsibility on to innocent individuals.

Mr. Traer likewise opposed the measure, for to him it appeared that if this clause should be incorporated in the Constitution, the State would repudiate such debts and not hold the officials responsible for the misuse of their constitutional powers.

After similar discussion by the very ablest delegates the proposed section was put before the Convention for its acceptance or rejection: it was rejected by a vote of eighteen to thirteen. Following this vote the Article on State Debts was ordered to be engrossed and read a third time.<sup>41</sup> The Committee on Revision reported the Article back to the Convention on March 4th with unimportant amendments.

The words "unless incurred in time of war for the benefit of the state" were added to section one and section six was amended by having the words "by law" stricken out, and the word "thereof" substituted for "of such law", near the close of the section. The Article on State Debts as thus

<sup>41</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 280-284.*



amended was finally put before the Convention and approved by a unanimous vote. In its completed form, this part of the Constitution read:

## ARTICLE VII. STATE DEBTS

Section 1. The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the State shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the State.

Sec. 2. The State may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the General Assembly, or at different periods of time, shall never exceed the sum of two hundred and fifty thousand dollars; and the money arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

Sec. 3. All losses to the permanent, School, or University fund of this state, which shall have been occasioned by the defalcation, mismanagement or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the State. The amount so audited shall be a permanent funded debt against the State, in favor of the respective fund, sustaining the loss, upon which not less than six per cent, annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized by the second section of this article.

Section 4. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the debts so contracted shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Section 5. Except the debts hereinbefore specified in this article, no debt shall be hereafter contracted by, or on behalf of this State, unless such debt shall be authorized by some law for some single work or object, to be distinctly specified therein; and such law shall

impose and provide for the collection of a direct annual tax, sufficient to pay the interest on such debt, as it falls due, and also to pay and discharge the principal of such debt, within twenty years from the time of the contracting thereof; But no such law shall take effect until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt created thereby; and such law shall be published in at least one newspaper in each county, if one is published therein, throughout the State, for three months preceding the election at which it is submitted to the people.

Section 6. The Legislature may, at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may, at any time, forbid the contracting of any further debt, or liability, under such law; but the tax imposed by such law, in proportion to the debt or liability, which may have been contracted in pursuance thereof, shall remain in force and be irrepealable, and be annually collected, until the principal and interest are fully paid.

Section 7. Every law which imposes, continues, or revives a tax, shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.<sup>42</sup>

Although this Article differed in minor details from the corresponding Article in the Constitution of 1846 the most important change made was the raising of the limitation on State debts from one hundred thousand dollars to two hundred and fifty thousand dollars. This limitation, however, refers only to the bonded and not the floating indebtedness of the State, as may be well understood from the debates. Furthermore the refusal of the delegates to add any amendments which included unpaid warrants under the provisions of Section 2 is evidence in itself that only bonded indebtedness was referred to by the Convention, although it

<sup>42</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. II, pp. 1020, 1021.*

has sometimes been interpreted as including floating debts as well. That this view has not generally been accepted, however, is shown by the fact that the State of Iowa has, at different times, had a treasury deficit which exceeded \$250,000.<sup>43</sup>

## COUNTY AND MUNICIPAL INDEBTEDNESS

The Constitution of 1846 provided ample safeguards for the protection of the State against indebtedness, but it failed to place any limitations upon the amount of debt that might be contracted by a county or municipal corporation. Before the members of the Constitutional Convention had assembled in January, 1857, the evils of this lack of restriction had manifested themselves in various counties and cities throughout the State. "One of the great and pressing political evils of the time was the reckless and extravagant use of the funding power by minor civil corporations for the promotion of banks, industrial organizations and internal improvements."<sup>44</sup> This matter was called to the attention of the legislature by Governor James W. Grimes in his message to the General Assembly which convened at Iowa City on December 1, 1856. Speaking in this connection Governor Grimes said:

The constitution wisely provides that the State shall not in any manner create a debt exceeding one hundred thousand dollars. The framers of that instrument did not imagine that there was as great a necessity to prohibit the counties from creating large public debts, for the reason that the history of the country did not then present the case of a county becoming a large stockholder in private corporations.

Within the past few years, however, so great has been the anxiety

<sup>43</sup> Herriott's *Iowa's Treasury Deficit in the Light of the Constitutional Debates* in the *Annals of Iowa* (Third Series), Vol. III, p. 631.

<sup>44</sup> Herriott's *Iowa's Treasury Deficit in the Light of the Constitutional Debates* in the *Annals of Iowa* (Third Series), Vol. III, p. 638.

to procure the construction of works of internal improvement, that many counties and cities in this State have adopted the very doubtful policy of creating municipal debts, for the purpose of becoming stockholders in railroads and other private corporations. The amount of municipal indebtedness already voted by the different cities and counties exceeds seven million dollars.

Without stopping to inquire into the authority under which the loans have heretofore been voted, it seems to me that prudence and sound policy require that some check be imposed upon the future exercise of this power to create public indebtedness. It is true that many investments made by the counties and cities may result profitably to the stockholders; but, it is equally true that many will prove disastrous, as some have already done.

Municipal corporations are designed for local and limited purposes, and it is a perversion of their organization when they are embarked in internal improvement beyond their jurisdiction. Nor is that an equitable principle which allows the people of one portion of a county to fasten an indebtedness upon a remote portion of the county, for other than legitimate county purposes. Equally unjust is it to allow the property of one man to be heavily burdened by taxation, imposed by the vote of another man, who is without property, without a household, and who sustains none of the burdens of government. There is a manifest propriety in allowing every man the right of suffrage, under ordinary circumstances. It is proper that every man should have the privilege to join in the selection of his own law-makers, and his own executioners, but there is not the same propriety in allowing to every man the privilege of creating an indebtedness for others to pay.

It occurs to me that too many checks and safeguards cannot be thrown around this power, if such power exists at all, of creating municipal indebtedness for purposes of internal improvements. It is a dangerous power, and liable to the grossest abuse.<sup>45</sup>

This message, which was quite generally read throughout the State, left a lasting impression upon the public mind and caused people to think more seriously upon this question than ever before. As a result many who favored the bonding of the counties and cities for the purpose of pro-

<sup>45</sup> Salter's *Life of James W. Grimes*, pp. 87, 90, 91.

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moting railroad schemes and the like were now convinced of the possible evils of this procedure and openly arrayed themselves against any scheme to involve the counties or cities in debt for other than governmental purposes.<sup>46</sup> Public and private discussions upon this issue were frequent and when the matter came before the Constitutional Convention in 1857 there was a difference of opinion among its members. Some of them were imbued with the speculative spirit of the times and were in favor of leaving the cities and counties free to incur any bonded indebtedness they wished, while others with perhaps greater experience and broader vision presented many arguments in favor of limiting such debts. More time was consumed in discussing this subject than any other single matter that came before the Convention, with the exception of banking.<sup>47</sup>

That the question of county and municipal indebtedness deserved the serious consideration of the Constitutional Convention is evident from the fact that, according to information in the hands of the delegates, the counties of Iowa had already contracted debts the total of which ranged from six to eleven millions of dollars.<sup>48</sup> This was only the beginning of the period of speculation, for the first railroad in Iowa, running from Davenport to Iowa City and only sixty-seven miles in length, was completed on January 1, 1856. The bonded indebtedness on this road alone amounted to nearly one million dollars. The building of this railroad aroused widespread interest and every county and town in the State talked railroads: all kinds of promoters appeared and counties were extravagantly voting bonds to

<sup>46</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, p. 290.

<sup>47</sup> Herriott's *Iowa's Treasury Deficit in the Light of the Constitutional Debates* in the *Annals of Iowa* (Third Series), Vol. III, p. 638.

<sup>48</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, p. 292.

promote railroad projects in their direction.<sup>49</sup> Newspapers greatly aided in encouraging such enterprises. The spirit which pervaded these newspaper articles may be illustrated by the following quotation:

Mills county, away out towards sunset, a new county, with less than 500 voters, has voted a loan of her credit to the Burlington and Missouri River Railroad for \$250,000, by a majority of 265! Well done, Mills! — That's the right kind of spirit, and her citizens will reap their reward in the future by having their county fill up rapidly with an enterprising, intelligent and thrifty population. How much longer will Washington county suffer her energies to be clogged and her resources undeveloped by an unwise policy with regard to railroad matters? Not longer we trust, than the 11th of December instant.<sup>50</sup>

Some counties and towns, it is true, prospered greatly as a result of this sort of speculation, but others suffered proportionately. Private property was heavily taxed and bonds were authorized by small majority votes without regard to the rights of the individual. The bonds already issued by the political subdivisions far exceeded the limit to which the State itself might bond its resources. It was evident that many of these subscriptions would be total losses and prove ruinous to the county which had incurred them.<sup>51</sup> Under the existing circumstances the recommendation of Governor Grimes in his message to the legislature in December, 1856, "that too many checks and safeguards cannot be thrown around this power", was also timely advice for the delegates to the Constitutional Convention which assembled on January 19, 1857.

The question of county and city indebtedness was first

<sup>49</sup> Cole's *A History of the People of Iowa*, pp. 280, 281.

<sup>50</sup> *The Washington Press*, December 3, 1856.

<sup>51</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, p. 292.

brought to the attention of the Convention on January 23rd when John A. Parvin offered the following resolution and moved its reference to the Committee on State Debts:

*Resolved*, That the Committee on State Debts be requested to inquire into the expediency of preventing Counties and Cities from creating a debt for the purpose of aiding incorporated companies in work of Internal Improvement.<sup>52</sup>

This resolution was adopted and the inquiry referred accordingly.

On Monday, January 26th, a similar resolution, offered by Squire Ayers, was passed. This resolution requested the Committee on State Debts to inquire into the expediency of adding the following as an amendment to the Article on State Debts:

That the State shall never assume the debts of any county, city, town or township, or of any corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection, or defend the State in war.

The General Assembly shall never authorize any county, city, town or township by vote of its citizens or otherwise to become a stockholder in any joint stock company, corporation, or association whatever, or to raise for, or loan its credit to, or in aid of, any such company, association or corporation.<sup>53</sup>

On the following day the Committee on State Debts reported unfavorably upon both resolutions and recommended that the Convention take no action in regard to the matter, but on a motion by Amos Harris the resolutions were referred to the Committee on Incorporations for its consideration. Sections four and five of the report of the Committee on Incorporations made on January 30th referred to these resolutions in the following words:

<sup>52</sup> *Journal of the Constitutional Convention, 1857, pp. 38, 39.*

<sup>53</sup> *Journal of the Constitutional Convention, 1857, p. 49.*

Sec. 4. No political or municipal corporation shall become a stockholder in any banking corporation, directly or indirectly; nor in any other corporation or corporations to an amount exceeding, at one time, two hundred thousand dollars; nor shall the bonds or other evidences of indebtedness of any municipal or political corporation be issued or granted, or its credit loaned, directly or indirectly, or pledged as security, to an amount in the aggregate exceeding two hundred thousand dollars, at any one time.

Sec. 5. It shall be the duty of the General Assembly to provide by law for the restraint of municipal and political corporations in regard to assessments, taxations, borrowing money, contracting debts, issuing bonds, and loaning their credit, so as to prevent, as far as possible, unnecessary burdens and unjust taxation and frauds.<sup>54</sup>

The reading of this report was dispensed with, it was laid on the table, and one hundred copies of it ordered to be printed.<sup>55</sup>

On February 6th the report of the Committee on Incorporations was taken up for consideration before the Convention sitting as a Committee of the Whole. Sections four and five, relating to city and county indebtedness, were debated for nearly three days without a single change although a number of amendments were proposed, some of which were later adopted.<sup>56</sup> The question at issue was, shall such political corporations be limited in their power to contract indebtedness, and if so, to what extent? It was quite generally agreed that there should be a limitation, for it was evidently ruinous to permit the counties and cities to continue their policy of speculation. The craze for building railroads, incorporating banks, and other speculative projects made this a matter of no small importance to the Constitution framers, but there was a difference of

<sup>54</sup> *Journal of the Constitutional Convention*, 1857, pp. 53, 93.

<sup>55</sup> *Journal of the Constitutional Convention*, 1857, p. 95.

<sup>56</sup> *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. I, pp. 290-344.



opinion as to whether there should be a provision in the Constitution limiting county and municipal indebtedness, or whether this subject should be left for legislative action. Some counties were already heavily bonded, some were about to take similar steps, while a number of counties, which were just being organized, had had no opportunity of voting bonds for such improvements. Would it be just to place a restriction in the Constitution which would deny to these newer counties the privileges enjoyed by the older counties? Was it fair to the older counties, already heavily bonded, to encourage internal improvements, which would unquestionably benefit the neighboring counties if the newer counties were denied the right to continue the good work already begun? On the other hand, should property be subjected to heavy taxation because the owners were outvoted by the majority, who in many instances were not property owners at all? Would not such a doctrine be contrary to that section of the Bill of Rights which reads, "All men are, by nature, free and equal, and have certain inalienable rights . . . among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness"? Confronted by such questions as these it is not at all surprising that much time was consumed in deciding this matter.

To present the position of the delegates upon this subject, quotations from the debates will be made at some length.

John Edwards, delegate from Lucas County, was inclined to favor the idea of leaving the counties unrestricted in regard to subscriptions for internal improvements, for although he knew personally of cases where railroad stock had greatly depreciated in value, yet in his opinion the additional facilities for getting to market and the rise in real estate value amply compensated for this loss. Another

argument, he declared, "in behalf of the counties taking stock, is the fact that in my county about one-half of the land is owned by non-residents, a class of men who contribute nothing to the advancement and prosperity of the State. While the pioneers who have settled the State have done much in developing the resources and increasing the value of the lands of the State, these nonresidents have done nothing in this respect; and this mode of county subscriptions is the only way to reach them, and make them pay their proportion towards those improvements, which will contribute so much to the interest of the State."<sup>57</sup>

George Gillaspay stated that when the question of voting bonds came up in Wapello County he was among the first to favor this idea, but since that he had become convinced that the whole thing was wrong. But, he added, "I do not believe that we, of the eastern part of the State, should now come up and decide this question for the people of the western counties."

Speaking in this same connection, H. D. Gibson said:

It strikes me that it would be wrong to prohibit those counties from becoming stock-holders in works of internal improvements, if they see fit to do so. It occurs to me, that it would be wrong even to restrict them to the ten per cent upon the taxable property of cities, counties and towns.<sup>58</sup>

It has been urged by some gentleman that even our State cannot contract indebtedness of over one hundred and twenty-five thousand dollars, under the present arrangement, and that it would be bad policy for a county to take that amount or more, as some counties have already done. You will find a provision reported in the constitution, that the State may become a stockholder in corpora-

<sup>57</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 293, 294.*

<sup>58</sup> The ten per cent here mentioned refers to a proposal by Mr. Hall to allow cities having a population of five thousand or over and taxable property exceeding two millions of dollars to issue bonds to the extent of ten per cent of their taxable value.

tions for certain purposes, to any amount, provided the people vote in favor of it. It seems to me, that we ought to give the same privilege to counties that we do to the State, and leave the people of the respective counties to determine this matter for themselves.<sup>59</sup>

After discussing at length the folly of permitting counties to contract enormous debts, D. P. Palmer answered the argument advanced by John Edwards that county subscriptions were a means of taxing the property owned in the State by non-residents in the following words:

I say that non-residents should be compelled to bear a proportion of that debt; but I think that if the people should vote a tax upon the counties for that purpose, they will defeat the object they had in view. Suppose they do contract a debt? Why the very fact of a contemplated improvement will have the effect to enhance the value of the property of the non-residents; and they will immediately sell out at a great profit, and the real burthen of the improvement will after all be borne by the permanent residents. It will have exactly the contrary effect to that which I understand the voters of these northern counties had in view.<sup>60</sup>

Among those favoring the proposition of limiting county and municipal indebtedness was Hosea W. Gray. In discussing this subject he said: "I heard it stated last fall, that three counties in the north-west had voted four hundred thousand dollars each, in aid of railroads." This would average about two hundred dollars for every man, woman, and child in each of these counties. "I think", he said, "that, the public mind is carried away with a kind of mania upon this subject of county indebtedness, which may lead, if not checked, to disastrous consequences and which may seriously affect the prosperity of the State. Our policy should be, therefore, to restrict the exercise of a passion,

<sup>59</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 295.*

<sup>60</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 298.*

which may become dangerous, which is liable to abuse, and may involve us ultimately, in ruin."

Amos Harris presented one aspect of the problem in the following words:

It strikes me, that gentlemen are involving themselves in difficulty, when they say that there is no necessity for submitting this question to the population of the whole State to determine, because we can refer it to the counties to determine, individually, for themselves. Let me suppose, to make my meaning clear, that in the district represented by my friend from Lucas, [Mr. Edwards] his own county has taken one hundred thousand dollars worth of stock, and Monroe county refuses to take any. They cannot build the road which is to pass through Monroe county, without benefiting it as much as it will Lucas county. The result is, you saddle a debt of one hundred thousand dollars upon the people of Lucas county, for the purpose of building a road, which will prove as great a benefit to the people of Monroe county as to the people of Lucas county. I ask, therefore, whether it would be just to the people generally, to inaugurate a system which will work so unfairly.<sup>61</sup>

J. H. Emerson of Dubuque County, himself a director in the Pacific and Dubuque Railroad Company,<sup>62</sup> strongly opposed the idea of the majority contracting debts for the minority to help pay, particularly for projects of this kind. In referring to this subject he said:

I am opposed, Mr. Chairman, to this whole system of county and city indebtedness; to the ten per cent proposition; to the two hundred thousand dollars restriction proposed by the committee, and to all other propositions which allow cities and counties to incur a debt for purposes of internal improvements, either with or without a vote of the people. While I am in favor of, and fully recognize the right of the government to tax for the legitimate support thereof, I deny that the power exists anywhere to tax for any other pur-

<sup>61</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 296.*

<sup>62</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 317.*

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pose. The taxing power would never have been conferred on the Government, if Government could have existed without the surrender of that right.

Now, sir, it is said by members, that counties and cities may, by a majority vote of the citizens of such municipal corporations, contract debts, take stock, or loan their credit to railroad projects, thereby subjecting the people to grievous and unlimited taxation. Now, sir, I hold that that mode of taxation is not necessary to the support of Government, and hence is wrong in principle and practice; that it is an unrighteous exercise of power over the dearest rights of the minority; that you compel the minority against their will to embark their means in railroad projects, in the success of which they have no confidence, nor in the honesty or capacity of the projectors to carry the work forward.

It is urged by friends of this measure, that as railroads benefit all, hence it is right and proper to tax all for their construction. Now, if this doctrine proves anything, it proves too much; for if correct in regard to railroads in this State, it is equally true in regard to roads extending through other States to our eastern border; I suppose it will be conceded by every member upon this floor, that Iowa owes much of her present prosperity to the net work of railroads approaching us from the East. Yet, I apprehend no gentleman will contend that this State, either by cities, or counties, should have taken stock in those projects, in order to secure their construction. Again, we all derive a common benefit from the labor of others in the improvement of the country. Will gentlemen contend that we should therefore make common cause, and improve the country by county and city taxation? A case involving the principle now under consideration, has recently been decided in the fifth Judicial District of New York; in which case the court held that the taking of stock in, or loaning the credit of municipal corporations to railroad projects, by a majority vote of the electors thereof was void. And the court further held that the legislature did not possess the power to confer such right upon the electors of municipal corporations.<sup>63</sup>

Jonathan C. Hall of Des Moines County, who at one time

<sup>63</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 297, 298.*

strongly advocated the system of county subscriptions, now opposed the whole scheme from the standpoint of individual rights. In regard to forcing the minority to assume a portion of the burdens voted by the majority, he said:

If this demand upon me and my property was for the purpose of securing to the people the right of enjoying liberty and property, it would then be well enough, and I would be equally interested with others to secure a proper enjoyment of what I possessed. I would be willing to contribute my proportion of the means necessary to protect any citizen in the enjoyment of what he possessed, for this is a duty which government imposes upon us all. But when a majority of the citizens of a county desire to go into a partnership, to form themselves into a corporation and subscribe capital for speculating enterprises, for purposes of gain, is it right to allow them to take a portion of my property and put it into that speculation without my consent? This is an encroachment upon my idea of liberty, which I could never reconcile. And I have always contrived some way to waive that question when I was arguing for these contributions, and say it was too abstract for the occasion, or something of that sort.

Now I do not think any gentleman here has the right, or that all of them, or the majority in the county where I live, have the right to take one dollar of my property and devote it to any purpose, except to sustain the great principles and objects of municipal government. They have no right to take it and invest it in a mercantile business; that would be monstrous. Now I may not want to engage in railroading, or in a mercantile business, but may prefer to keep what I have, and use it as my judgment may dictate. But here comes up a system which has crept on us, and declares that by a vote of the people this thing shall be done. But, it is said, you live in a republic; do you not believe that the majority should rule? No, sir; I do not believe that the majority should rule under these circumstances. I believe that liberty consists in the fact that I shall be free from this rule of the majority, and that no human power shall touch me or my property, but for the sole purpose of supporting the government. I agreed to that when I came under the government. And this is an argument when fairly presented no man can answer upon principle.

And how is it in this matter? Must we bow to the dictates of the majority, and submit to what they may determine? I suppose that in some of the counties one-fourth of the population have never contributed anything of any amount to the purposes of government. And yet they can under this system involve all we possess, and then leave the county, and leave all this tax to be paid by those who remain there. This tax and this debt necessarily falls more directly upon the real estate of the county, than upon anything else. A man who has real estate in one of these counties cannot escape the consequences of this debt in which he has been involved without his consent, and his property must remain under, as it were, a perpetual mortgage. There may be men in a county, who never had a cent of property subject to taxation, and will never be called upon to discharge one iota of this debt. They come up to another man, who, in consequence of his industry and success in business, has got a few hundred acres of land. They propose to him to subscribe for a railroad. He says that he does not want to invest his money in an enterprise of that kind. The others say they are the majority, and he must contribute what he has; for they have nothing; he must contribute for their benefit.

Now I hold that doctrine is a wrong one, and will produce disastrous results to the State. In place of doing good, it will work mischief in proportion to the importance of the principle it violates.<sup>64</sup>

Rufus L. B. Clarke of Henry County,<sup>65</sup> a member of the Committee on Incorporations, explained that the object of a restriction was to prevent the whole State as a community of counties from becoming financially embarrassed in this matter. He also stated that it was the object of the Committee to place all the counties of the State upon an equality in regard to subscribing money for such enterprises. He recognized the democratic spirit of the principle that would allow new counties to have the same right to act in this

<sup>64</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 299.*

<sup>65</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 301, 302.*

particular as the older counties had had, but at the same time he favored restrictions.

John T. Clark of Allamakee County in referring to the county subscriptions said: "This mania has now gone beyond the bounds of reason and prudence. Every nerve has been strained, and every inducement brought to bear, to stimulate this mania for railroad improvements. And as true as is that law of nature, that everything must find its level, so true will this thing react upon itself, and those who originated it."<sup>66</sup>

From the debates quoted it may be seen that most of the delegates favored restricting the action of counties in subscribing loans to railroads and similar projects. The question which caused the most difficulty was, shall the restriction be total or partial? Again, the debates indicate that the majority of members favored only partial restriction. The difficulty then lay in determining what that limitation should be. A number of amendments and proposals were offered in this connection. Mr. Hall proposed to strike out all after the word "indirectly", where it first occurred in section four of the committee's report and to insert the following:

And no county or other political or municipal corporation, shall in any manner become stockholders in any corporation; provided that cities having a population of five thousand inhabitants, and a taxable property exceeding two million dollars, may become stockholders and loan their aid to incorporations for internal improvement, to an amount not exceeding ten per cent on the assessed value of property for State and county purposes.<sup>67</sup>

This proposal caused considerable protest, some delegates favoring a higher limitation and others a lower one.

<sup>66</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 320.*

<sup>67</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 292, 293.*



The limit specified, however, referred only to cities having a population of five thousand, and an assessed valuation exceeding two million dollars: all other political corporations including counties, apparently, would be barred from similar privileges on any scale whatever. To meet some of these objections Mr. Edwards proposed to amend the section so that it would read:

No political or municipal corporation shall become a stockholder in any banking corporation, directly or indirectly; nor in any other corporation or corporations, provided it shall exceed ten per cent of the taxable property of any city or county.

This also caused considerable opposition because it denied to the newer counties which as yet had had no opportunity to invest in railroad bonds, the right to enjoy the same privileges in regard to this matter that the older counties had enjoyed.<sup>68</sup> Before the vote upon Mr. Edwards's proposition, Mr. Hall offered the following substitute:

Sec. 4. Counties, cities, towns, and all other political and municipal corporations, are prohibited from taking stock, or in any manner becoming interested in any bank or banking institution, authorized by the laws of this State.

Sec. 5. For the purpose of aiding works of internal improvement that shall pass through counties, or terminate within any county of this State, such counties, and towns, and cities, within the same, may be authorized to take stock to create debts, by a vote of the property holders residing in such county, city, or town, who are charged with an annual tax for county and State purposes, of not less than five dollars, or who are the owners of real estate in said county, town and city, of the value of two hundred dollars.

Sec. 6. The general assembly shall provide by law the manner and mode by which counties, towns and cities may create corporate debts for internal improvements under the fourth and fifth sections of this article; but no debt shall be authorized, or permitted, which

<sup>68</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 295.*

shall at any time exceed the sum of two hundred thousand dollars for any county, city or town, nor shall said debt in any case exceed ten per cent upon the taxable property in such county, city or town, to be ascertained by the assessment for State and county purposes.

The chief objection to Mr. Hall's substitute was that it limited the debts for internal improvements in newer counties to ten per cent of their taxable value and restricted the wealthier counties to two hundred thousand dollars. Then, too, the property qualification for those who could vote upon the question of incurring such debts proved odious to several delegates.<sup>69</sup> Mr. Hall later proposed to modify section five of his amendment by striking out the specified amounts of taxes and property and inserting the clause, "assessed for taxes for county or State purposes." This would have made that part of the section read "by a vote of the property holders residing in such county, city, or town, and who are assessed for taxes for county or State purposes." The substitute proposed by Mr. Hall, together with the amendment thereto, was withdrawn during the afternoon session of February 9th, in order that Mr. Johnstone might offer an amendment he had formulated.<sup>70</sup>

Mr. Johnstone's amendment was to strike out all after the word "indirectly" in line two of section four of the original report so that the section would then read: "No political or municipal corporation shall become a stockholder in any banking corporation, directly or indirectly."

<sup>69</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 303.* See also speeches of Mr. Edwards and Mr. Hall, pp. 303, 307, and of Mr. Parvin, pp. 305, 306, Mr. Harris, p. 306, Mr. Gillaspay, p. 307, Mr. Solomon, p. 311, and Mr. Skiff, pp. 311, 312.

<sup>70</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 325, 343.* The statement of the corrected amendment as found in the debates of the Convention is confusing, and is not strictly in accordance with the amendment agreed thereto. Therefore, the change which was evidently intended has been set forth in this discussion.

"This", said he, "will leave the whole question of county indebtedness just as it stands in the present constitution." This amendment was adopted.<sup>71</sup> A few other proposals were offered to amend section four but they were not accepted by the Convention.

Section five of the report was then read and the only amendment made to it was that offered by Mr. Palmer to strike out of line six the words "as far as possible". The section then read:

It shall be the duty of the General Assembly to provide, by law, for the restraint of municipal and political corporations, in regard to assessments, taxations, borrowing money, contracting debts, issuing bonds, and loaning their credit, so to prevent unnecessary burdens, and unjust taxation and frauds.

Two other proposals were offered but neither carried.<sup>72</sup> The remainder of the report of the Committee on Incorporations was taken up and the report, together with the amendments made in the Committee of the Whole, was offered for further amendment or revision. Several amendments and substitutes were again offered to section four, but only a part of that offered by James A. Young was accepted. Mr. Young's proposal was to strike out the word "five" and to insert the word "eight" in the latter part of section four, so that this part would read, "to an amount in the aggregate, exceeding eight per cent on the taxable property, &c." Upon a division of the question it was agreed by a vote of thirteen to eleven to strike out the word "five". Successive amendments were then offered proposing to fill in this blank with "eight", "seven", "six", "four", "eleven", and "nine" but all of these motions

<sup>71</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 343, 344.*

<sup>72</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 344.*

were defeated. The third motion, proposing to fill the blank with the word "six", so as to make the limitation six per cent of the taxable property, came the nearest to being adopted, the vote being sixteen to sixteen.<sup>73</sup> Thus, without having set any limitation, this part of the report was passed by and the remaining sections taken under consideration.

Two weeks later, on February 25th, the question of county and municipal indebtedness was again brought before the Convention and after brief discussion and the defeat of a few proposed amendments, a vote was taken upon the report of the Committee on Incorporations upon this subject. It was rejected by a vote of eighteen to nineteen.<sup>74</sup> Thus nearly three whole days of the Convention's time was spent without placing any limitations upon corporate indebtedness. On the following day, however, when the report of the Committee on Miscellaneous Matter was under discussion, Mr. Clarke of Henry County proposed the following as an additional section to this article:

No county, or other political or municipal corporation, shall hereafter issue its bonds or other evidences of debt, or loan its credit, or become directly or indirectly liable as surety, or in any other manner become indebted, to an amount in the aggregate, exceeding six per centum on the value of the taxable property within such county or corporation — to be ascertained by the last state and county tax lists.

After some discussion this proposed section was defeated by a vote of eight to fourteen.<sup>75</sup>

Several other subjects were then discussed briefly and at the conclusion of the debate relating to "Submitting Laws

<sup>73</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 421, 422, 423, 425, 427.*

<sup>74</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. II, pp. 775-779.*

<sup>75</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. II, pp. 805-810.*

to the People", Mr. Edwards submitted the following section as an addition to the Article on Miscellaneous Matter:

No county, or other political or municipal corporation shall be allowed to become indebted in any way, for any purpose, to an amount in the aggregate exceeding five per cent upon the value of the taxable property within said county or corporation, to be ascertained by the last state and county tax lists.

This substitute was adopted without discussion by a vote of nineteen to sixteen.<sup>76</sup> No further amendments or proposals being offered on county and municipal indebtedness, the discussion of the miscellaneous subjects was continued for a short time. Then upon motion of Mr. Harris the Article on Miscellaneous Matter as amended was ordered to a third reading, and referred to the Committee on Revision, Engrossment and Enrollment.<sup>77</sup>

During the morning session of Tuesday, March 5th, the Article on Miscellaneous Matter was reported for its third reading to the Convention by Mr. Clarke of Henry County, of the Committee on Revision. Section three of this article was the addition proposed by Mr. Edwards which had been added in the Committee of the Whole. This section limited the indebtedness of counties and cities to five per cent of their taxable property. In its final form as approved by the Convention it read:

No county, or other political or municipal corporation, shall be allowed to become indebted in any manner, or for any purpose, to an amount in the aggregate exceeding five per centum on the value of the taxable property within such county or corporation — to be ascertained by the last State and county tax lists, previous to the incurring of such indebtedness.

<sup>76</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. II, p. 812.*

<sup>77</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. II, p. 813.*

The whole Article on Miscellaneous Matter was finally adopted by a vote of twenty-six to four, and the vote upon the final adoption of the Constitution as a whole was twenty-five for and seven against.<sup>78</sup>

A comparison of section three as it was finally adopted and the form in which it was referred to the Committee on Revision and Engrossment shows that the clause, "previous to the incurring of such indebtedness", was added by this committee. However, upon its third reading no remarks were made in regard to this change and the article was approved.<sup>79</sup>

So, after long and careful deliberation, the Convention incorporated into the new Constitution, not only a provision for the limitation of State indebtedness but also one for the limitation of this same power of counties, cities, and other political corporations. The significance of this measure should not be underestimated for the "proneness of municipalities to incur indebtedness, especially if its burden can be thrown upon posterity, is well known, and needs, in the interest of the public welfare, to be regulated and restricted."<sup>80</sup>

Chief among the various devices that have been employed to check the borrowing power of municipal corporations is that of constitutional limitation, and the provision incorporated into the Constitution of Iowa by the members of the Constitutional Convention of 1857 is among the first, if not the first, provision of its kind.<sup>81</sup> Although it has caused

<sup>78</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. II, pp. 1033, 1034, 1054.

<sup>79</sup> *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. II, pp. 812, 1033, 1034.

<sup>80</sup> Dillon's *Commentaries on the Law of Municipal Corporations* (Fifth Edition), Vol. I, p. 336.

<sup>81</sup> Dillon's *Commentaries on the Law of Municipal Corporations* (Fifth Edition), Vol. I, p. 337.

much popular discontent, especially on the part of city and county officials,<sup>82</sup> it remains to the present day without alteration or change, and no doubt has been greatly to the advantage of the counties and cities of the State.

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<sup>82</sup> Herriott's *The Constitution of 1857 and the People in the Annals of Iowa* (Third Series), Vol. VIII, p. 70.