

THE LEGISLATIVE DEPARTMENT AS PROVIDED BY THE CONSTITUTION OF IOWA

It is generally accepted that the most important department in any system of government is that which is concerned with the making of laws. Legislatures, however, very commonly exercise powers which are executive rather than legislative in character. Many of the American Constitutions provide that some executive powers shall be exercised only with the consent of the legislative branch, or else vest the exercise of such powers in the legislature alone. The object in such a grant of powers to the legislature has been to provide some means whereby the administration of the government might be subjected to control.

In the Constitution of the United States and the earlier State Constitutions the functions of government have been set forth as falling within three distinct groups — legislative, executive, and judicial. The object of this separation of power was to maintain a system of checks and balances as a guarantee of the rights and liberty of the individual. This is evidenced by the fact that the keynote of the various American Bills of Rights was a distrust of all grants of power.

In the Ordinance of 1787 and in the organic acts for the government of the Territories established since that time, this clear line of separation has not, however, been maintained. This may be accounted for in several ways. In the first place the Federal government exercised executive authority and control over its Territories, and the chief executive of the Territory, being selected by the central government, naturally became its agent. Secondly, the

population of the early Territories was usually so sparse that legislative assemblies were unnecessary and unwarranted. For this reason the Ordinance of 1787 provided that there should be no legislative assembly until there were at least five thousand free male inhabitants of full age in the Northwest Territory. Until this time arrived, the Governor and judges of the Territory were authorized to adopt from the laws of the original States such civil and criminal laws as would be necessary and best suited to the needs of the new Territory. Such laws, however, were always subject to disapproval by Congress and liable to change as soon as a legislative assembly was organized.¹ The relation of the Federal government to its Territories was colonial in its character, and the Governor was the true executive and ruler.²

When Iowa was formed into a separate and independent Territory it possessed a population of 22,859.³ The size of the population, which was rapidly increasing through immigration from other States, properly warranted a legislative assembly for the making of laws.

The Organic Act passed in 1838 provided that the legislative power should be vested "in the governor and a legislative assembly",⁴ and that the Legislative Assembly should be composed of two houses, the Council, or upper house, and the House of Representatives, or lower house. The Council was to consist of thirteen members chosen for a term of two years. The House of Representatives was to be made up of twenty-six members, chosen for a term of one year. The qualifications for members of both houses were the same as those prescribed for voters. According

¹ *Laws of the Territory of Iowa, 1838-1839*, pp. 25, 26.

² Shambaugh's *History of the Constitutions of Iowa*, pp. 105-112.

³ *The Iowa State Almanac and Statistical Register for 1860*, p. 26.

⁴ *Organic Act of 1838, Sec. 4*, in the *Laws of the Territory of Iowa, 1838-1839*, pp. 32, 33.

to the provisions of the Organic Act a voter must be a free, white, male citizen of the United States, twenty-one years of age, and an inhabitant of the Territory at the time of its organization. The act provided that after the first election the Legislative Assembly should prescribe the qualifications of voters.⁵ Thus, the Legislative Assembly was given the unusual power of prescribing the qualifications for its own membership. The membership of both houses was to be apportioned as nearly as possible among the several counties, so that each section of the Territory would be represented as nearly as possible according to the ratio of its population, Indians excepted. The compensation for members of either house was three dollars per day during attendance and three dollars for every twenty miles in going to and returning from a legislative session, to be estimated according to the nearest usually traveled route.⁶

Certain disqualifications for membership in the Legislative Assembly were laid down by the Organic Act of 1838. No person holding a commission or appointment "under the United States or any of its officers, except as a militia officer" could be a member of the Council or House of Representatives.⁷

Under the provisions of the Organic Act the Legislative Assembly was given extensive and unusual power. According to the provisions of this act the Legislative Assembly was granted the following powers and duties: (1) to legislate on all rightful subjects of legislation; (2) to make laws apportioning representation in the several counties to the Council and the House of Representatives according to

⁵ *Organic Act of 1838*, Sec. 5, in the *Laws of the Territory of Iowa*, 1838-1839, pp. 33, 34.

⁶ *Organic Act of 1838*, Secs. 4, 11, in the *Laws of the Territory of Iowa*, 1838-1839, pp. 32, 33, 36, 37.

⁷ *Organic Act of 1838*, Sec. 8, in the *Laws of the Territory of Iowa*, 1838-1839, p. 34.

population; (3) to make laws concerning the time, place, and manner of holding and conducting all popular elections; (4) to set by law, the date for the commencement of the annual session of the Legislative Assembly; (5) to prescribe the qualifications of voters at all elections following the first; (6) to make laws for the election of township and county officers, except judicial officers, justices of the peace, sheriffs, and clerks of the courts; (7) to approve appointments by the Governor of judicial officers, justices of the peace, sheriffs, militia officers, and civil officers not provided by the Organic Act; (8) to prescribe the time and place of meeting for the district courts of the Territory; (9) to define what should constitute the bounds of the appellate and original jurisdiction of all courts provided for by the Organic Act, and of all probate courts, and justice of the peace courts; (10) to prescribe by law the method whereby writs of error, bills of exception, and appeals in chancery causes, might be appealed from the decisions of the district court to the Supreme Court; (11) at the first session the Legislative Assembly together with the Governor was to locate and establish the seat of government which should be subject to change in the same manner that it was established; (12) the Legislative Assembly and Governor were given the authority to use the sum of \$20,000, for the purpose of erecting public buildings at the seat of the government; (13) to take an oath of office to support the Constitution of the United States and to faithfully discharge the duties of the office.⁸

The Organic Act providing a government for Iowa Territory was not, however, without limitations upon the power of the Legislative Assembly. It was not to remain in session over seventy-five days in any year and it was

⁸ The Organic Act does not specifically state that members of the Legislative Assembly shall take the oath of office, but that all civil officers before they act as such shall take the prescribed oath.

forbidden to pass laws interfering with the primary disposal of the soil, to impose a tax upon the property of the United States, or to levy a higher tax upon the land and property of non-residents than upon that of residents of the Territory. All laws made by the Governor and Legislative Assembly were subject to approval by Congress, and if disapproved by Congress were null and void. The Legislative Assembly was also prohibited from granting to justice of the peace courts the power to try cases in which the title of land was in dispute or where the sum in controversy exceeded fifty dollars, and it was not permitted to grant the right of trial by jury in cases appealed from the district court to the Supreme Court of the Territory. It could not legislate so as to deny to its citizens any of the rights, privileges, and immunities granted to the citizens of Wisconsin Territory. No member of the Legislative Assembly could hold, or be appointed to, any office created or the salary or emoluments of which were increased during the term for which he was elected to the Legislative Assembly, or for one year after the expiration of his term of office.

These prohibitions were both of a general and specific character. Although they constituted real checks and restrictions upon the legislative power of the Territory, the sphere of legislation still remained greater in its scope than that which was later granted to the State government under the Constitution of 1846.⁹

THE LEGISLATIVE DEPARTMENT AS PROVIDED BY
THE CONSTITUTION OF 1844

The Territory of Iowa had been organized but a short time when a movement for State organization was started by Robert Lucas, Governor of the Territory. This move-

⁹ Shambaugh's *History of the Constitutions of Iowa*, p. 115.

ment was somewhat checked in August, 1840, by the overwhelming defeat at the polls of the proposition to call a constitutional convention, and when the proposition was again submitted in 1842, it was again defeated by every county in the Territory. Finally, in 1844, a change of sentiment had developed, and in the April election a large majority was returned in favor of a convention to draw up a Constitution preparatory to admission to the Union.¹⁰

According to the provisions of the act of February 12, 1844, which provided for the reference to the people of the question of a constitutional convention, and the act of June 19th, amending the former, seventy-three delegates to a constitutional convention were chosen at the election in August, 1844.¹¹ The delegates so chosen assembled at the Capitol in Iowa City on October 7, 1844. The meeting was first called to order by Francis Gehon, immediately following which temporary organization was effected. Ralph P. Lowe was chosen to act as President *pro tem*, James W. Woods, Secretary *pro tem*, and Frederick M. Irish, Sergeant-at-Arms, *pro tem*. After these selections had been made, the Convention of 1844 was opened with a prayer by Rev. Snethen. The roll was then called by counties, and sixty-six of the seventy-three delegates were found to be present. The remaining delegates, except Mr. Morton of Van Buren County who was permanently

¹⁰ Shambaugh's *History of the Constitutions of Iowa*, pp. 145-174.

¹¹ Shambaugh's *History of the Constitutions of Iowa*, p. 175; Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 149.

The number of delegates provided for in the amendatory act of June 19, 1844, was seventy-three, but when the Convention assembled in October, 1844, only seventy-two of the delegates appeared, Mr. Morton of Van Buren County being absent. He did not put in his appearance during the Convention, and consequently his name is not included among the signers of the Constitution of 1844. Seventy-three names, however, appear attached to this instrument. That is due to the fact that the Convention voted in George S. Hampton, the Secretary, as a member, and his name appears among those of the delegates who signed the Constitution.

absent, presented themselves during the early days of the Convention. When the roll had been called, a Committee on Credentials consisting of three members and a Committee on Rules consisting of five members were appointed. No further business having been announced the Convention adjourned until the following day.¹²

The only business of importance transacted on Tuesday was the election of permanent officers, the adoption of rules, and the consideration of a few preliminary motions. Shepherd Leffler of Des Moines County was unanimously elected President of the Convention, George S. Hampton of Iowa City technically not a member of the Convention was chosen as Secretary. The remaining officers appointed were: Alexander B. Anderson of Dubuque County, Assistant Secretary; Warren Dodd of Lee County, Sergeant-at-Arms; and Ephraim McBride of Van Buren County, Doorkeeper. Mr. Leffler in addressing the Convention after being conducted to the chair expressed the hope that the Convention in framing the Constitution would draw up such an instrument that "in all its essential provisions, be as wise and as good if not wiser and better than any other instrument which has ever yet been desired for the government of mankind".¹³

Among the rules adopted by the Convention that are important in this study are the following: rule six, which gave the President power to appoint all committees unless otherwise ordered by the Convention; rule seven, which provided that the first named member of any committee should be its chairman, and in case of his absence, the next

¹² *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 3, 4; *Shambaugh's Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 7, 8.

¹³ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 5-9; *Shambaugh's Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, p. 8.

named and so on unless the committee by a majority vote of their number selected a different chairman; rule nine, which provided that upon the request of two members the yeas and nays should be taken; rule eleven, which provided for eleven standing committees, the number of members to serve upon each, which was to be not less than five, and the subject with which each committee was to deal; rule sixteen, which made it possible to reconsider a vote regardless of whether it was negative or affirmative; and rule seventeen, which stated that in all cases where applicable, and where not inconsistent with the standing rules, Jefferson's *Manual of Parliamentary Practice* should be the guide for the proceedings of the Convention.¹⁴

The names of the members appointed to serve upon each of the standing committees were announced by President Leffler on Wednesday morning, October 9th. The third committee provided for in the rules of the Convention was that on the Legislative Department. To this committee were appointed Ralph P. Lowe, Wm. W. Chapman, Andrew Hooten, Wm. L. Toole, J. C. Hall, Elijah Sells, and James I. Murray. The membership of this committee consisted of three lawyers, three farmers, and one farmer and merchant. The report of the Committee on the Legislative Department was made on Saturday following their appointment, and included also a report — *Of the Distribution of Powers*. As presented this report read:

1. The powers of the government of Iowa, shall be divided into three separate departments, the legislative, the executive and judicial; and no person charged with the exercise of powers properly belonging to one of those departments, shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

¹⁴ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 10-13, 15, 212-215. Additional standing committees were later added to those provided for in the rules of the Convention.

LEGISLATIVE DEPARTMENT

1. The legislative authority of this State shall be vested in a Senate and House of Representatives; which shall be designated the "General Assembly of the State of Iowa," and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The meeting of the General Assembly shall be limited to biennial sessions, which shall commence on the first Monday in January next ensuing the election of its members, unless the Governor of the State, with the concurrence of the Lieutenant Governor, and the last Speaker of the House of Representatives, shall be of the opinion that the exigencies of the State and the public welfare demand a session in the interim, in which event the Governor may, by proclamation, call a special session of the General Assembly, at such time as he may deem advisable, and at the usual place of holding the same, designating specifically the object or objects of such call; but in no case shall there be more than one special session between the regular meetings of the Legislature, except it should be for purposes of war, to repel an invasion, or suppress an insurrection.

3. The members of the House of Representatives, shall be chosen every second year, by the qualified electors of their respective districts, on the ———, whose term of office shall continue two years from the day of the general election.

4. No person shall be eligible to a seat in the House of Representatives unless he shall have attained the age of twenty-one years, and shall be a citizen of the United States, and an inhabitant of this State, (or the Territory of which the State is composed,) two years, and shall have resided within the limits of the district in which he shall be chosen, one year next preceding his election, if the election district shall have been so long established, but if not, then within the limits of the district or districts out of which it shall have been taken, unless he shall have been absent on the public business of the United States or of the State.

5. The Senators shall be elected for the term of four years, and in the same manner, and at the same time and place of the Representatives, but shall not be eligible to a membership in the Senate unless they shall have attained the age of thirty years, and possess the qualifications of the Representatives as to residence and citizenship.

6. The number of Senators shall not be less than one-third, nor more than one-half, of the Representative body, and at the first session of the General Assembly, after this constitution takes effect, the Senators shall be divided, by lot, as equally as may be, into two classes; the seats of the Senators of the first class, shall be vacated at the expiration of the second year, so that one half shall be chosen every two years, and a rotation thereby, kept up perpetually.

7. When an additional number of Senators is added to the Senate, they shall be annexed, by lot, to one of the two classes, so as to keep them as nearly equal in number as practicable.

3. The members of the House of Representative, shall be chosen a Speaker and its other officers; and the Senate shall appoint its own officers, except the President; and each body shall judge of the qualifications, elections, and returns of its own members; but a contested election shall be determined in such manner as shall be directed by law.

9. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

10. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same, determine its rules of proceedings, punish members for disorderly behavior, and with the consent of two-thirds expel a member; but not a second time for the same offence, and shall have all other powers necessary for a branch of the Legislature of a free and independent State.

11. Every member of the General Assembly shall have the liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journals, and the yeas and nays of the members of either House shall, at the desire of any two members present, be entered on the journals likewise.

12. Senators and Representatives, in all cases except for treason, felony, and a breach of the peace, shall be privileged from arrest during the session of the Legislature, and in going to, and returning from the same, allowing one day for every thirty miles such members may reside from the place at which the General Assembly is convened.

13. When vacancies occur in either house, the Governor, or the

person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

14. The doors of each house shall be open, except on such occasions as in the opinion of the house, may require secrecy.

15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either house, and be amended, altered or rejected by the other, but no bill shall have the force of a law until on three several days it be read in each house, and free discussion be allowed thereon, unless in cases of urgency, three-fourths of the house in which the bill shall be depending, may deem it expedient to dispense with the rule, and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses, *Provided*, That all bills for raising revenue shall originate in the House of Representatives, but the Senate may reject or amend them as other bills.

17. Every bill which shall have passed the General Assembly, shall, before it become a law, be presented to the Governor, if he approve, he shall sign it, but if not, he shall return it with his objections to the house in which it shall have originated, who shall enter the same upon the journal and proceed to reconsider it; if, after such reconsideration it again pass both houses, by yeas and nays, it shall become a law notwithstanding the Governor's objections; if any bill shall not be returned within five days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevent the return, in which case it shall be no law.

18. No money shall be drawn from the Treasury but in consequence of appropriations made by law.

19. An accurate statement of the receipts and expenditures of the public money shall be attached to, and published with the laws at every regular session of the Legislature.

20. The House of Representatives shall have the sole power of impeaching; but all impeachments shall be tried by the Senate; when sitting for that purpose the Senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members present.

21. The Governor, and all civil officers, shall be liable to impeachment for any misdemeanor in office, but judgment in such

cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under this State; but the party convicted or acquitted shall nevertheless be liable and subject to indictment, trial, and punishment according to law.

22. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections from the people.

23. No person holding any lucrative office under the United States, this State, or any other power, shall be eligible to the General Assembly, *Provided*, That offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, shall not be deemed lucrative.

24. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for, and paid into the treasury all sums of which he may be accountable.

25. Each member of the General Assembly shall receive a compensation, to be fixed by law, for his services, to be paid out of the treasury of the State; but such compensation shall not exceed two dollars per day for the period of thirty days from the commencement of the session, and shall not exceed the sum of one dollar per day for the remainder of the session; when convened in extra sessions by the Governor, they shall receive such sum as shall be fixed for the first thirty days of the ordinary session; they shall also receive two dollars for every thirty miles they shall travel in going to and returning from their place of meeting, on the most usual route. The President of the Senate and the Speaker of the House of Representatives, shall receive in virtue of their offices, an additional compensation equal to one third of the per diem allowance of other members; *Provided, however*, That the members of the first Legislature, under this constitution, shall receive two dollars per day for their services during the entire session.

26. To obviate confusion and improper influences which may result from intermingling in one and the same act, such things as have no proper relation to each other; every law shall embrace but one object, and shall be expressed in the title.

27. No law of the General Assembly, of a public nature, shall have effect until the same shall be published and circulated in the several counties of this State by authority; *Provided*, That if the General Assembly shall deem any law to be passed, of pressing and immediate importance, provision may be made for the taking effect at an earlier period than herein provided, on the publication thereof in the several newspapers in the State.

28. No divorce shall be granted by the Legislature.

29. No lottery shall be authorised by this State, and no ticket in any lottery, not authorised by a law of this State, shall be bought or sold within the State.

30. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation. "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator (or Representative, as the case may be,) according to the best of my ability;" and members elect of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

31. Within two years after the first meeting of the General Assembly, under the Constitution, and within every subsequent term of ———— years an enumeration of all the white male inhabitants, above twenty-one years, shall be made in such manner as shall be directed by law. The number of Senators and Representatives shall, at the first regular session of the Legislature after such enumeration, be fixed by law, and apportioned among the several counties according to the number of white male inhabitants above twenty-one years of age in each, and the House of Representatives shall never be less than twenty-six nor greater than thirty-six, until the number of white male inhabitants of above twenty-one years of age shall be twenty-five thousand, and after that event at such ratio that the whole number of Representatives shall never be less than thirty-six nor exceed one hundred.¹⁵

Following the reading the report was laid aside and one hundred and fifty copies of it ordered to be printed.

¹⁵ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 14, 37-42; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 405-410.

The committee in this report set forth the principle of the separation of powers. They wished to guarantee to the people that the legislature would confine its activities to the making of laws, the executive to the execution of laws, and the judiciary to the interpretation of laws. This part of the report dealing with the distribution of governmental powers was accepted by the Convention of 1844 without discussion and is to-day a part of the fundamental law of the Commonwealth of Iowa.

The report of the Committee on the Legislative Department was taken up for consideration by the Convention sitting as a Committee of the Whole on October 17, 1844, and a number of changes were adopted.¹⁶ However, owing to the fact that all changes adopted in Committee of the Whole were later subject to the approval of the Convention, and that each section of the committee's report had to pass three separate readings in Convention, each section will be traced individually through its various steps from the time that it was introduced until it was adopted by the Convention. Fourteen of the thirty-one sections in the original report were adopted without verbal change. These were: section one, providing for the General Assembly; section eight, dealing with the election of officers of both houses and the settling of contested elections for membership; section nine, specifying what should constitute a quorum; section ten, defining the authority of both houses; section thirteen, on vacancies; section fourteen, providing for open doors to the public except in special cases; section fifteen, on adjournments; section eighteen, on the use of public money; section nineteen, on receipts and expenditures; section twenty-three, on disqualification for membership; section twenty-four, dealing with the failure of collectors and

¹⁶ Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, p. 55.

holders of public moneys to account; section twenty-six, providing that every act of the General Assembly should embrace but one subject except in cases where they are closely related; section twenty-eight, prohibiting the legislature from granting divorces; and section thirty, relative to oath of members, which later became section thirty-one of the Article on the Legislative Department.

Section two, providing for biennial sessions and the time of meeting of the General Assembly, was amended in Committee of the Whole so as to give the Governor alone the power of calling special sessions of the legislature. The original report made it necessary for the Governor to get the consent of the Lieutenant Governor and the last Speaker of the House of Representatives. This amendment was favorably received by the Convention and adopted. Francis Gehon proposed to change the time of meeting from January to December. This same proposal had already been offered by Stephen B. Shelledy in Committee of the Whole where it was debated at considerable length and defeated. According to newspaper reports the month of January was preferred to December by the Constitution-makers in order to avoid the expense of adjournment for the holidays. Accordingly the proposal of Mr. Gehon in Convention was likewise defeated. The report of the Committee on Revision, made on October 29, 1844, recommended that the section be revised to read as follows:

The sessions of the General Assembly shall be biennial, and shall commence on the 1st Monday of January next ensuing the election of its members, unless the Governor of the State shall in the interim convene the General Assembly by proclamation.

This recommendation was later accepted, and in this form section two was finally adopted by the Convention. The change effected by the report of the Committee on Revision removed the limitation upon the power of the

Governor to call only one special session of the legislature during the time between regular legislative periods.¹⁷

The report of the Committee on the Legislative Department in providing for the election of Representatives did not specify the date on which they should be chosen. Consequently, when section three dealing with this subject was taken up in Committee of the Whole, Robert Lucas, Ex-Governor of the Territory, proposed to set the date for the general election on the first Monday in October. He objected to any proposition which would set the date as early as the first Monday in August because that was the time of harvest and would be very inconvenient for the holding of elections. October was the proper month for elections because it was a time of comparative leisure.

Gideon S. Bailey objected to having elections in October because October was the month of sickness, and a great number of the electors would be unable to cast their ballots at that time. He said that in his own county, Van Buren, the last election was held in October and that there were three hundred less votes polled at that election than the previous election which was held in August. Furthermore, he objected to October because it was seeding time.

Richard Quinton likewise objected to the holding of elections in October for the reasons stated by Mr. Bailey. In Keokuk County there had also been a diminution of votes in the last election. Being a farmer, Mr. Quinton knew that October was a busy time. The debate upon this question continued for some time, and finally it was agreed that the date for holding the general election should be set at the first Monday in October. When this question was later taken up for consideration in Convention, James Grant moved to strike out the "first Monday" and to insert in its

¹⁷ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 38, 75, 156, 190, 191; *Shambaugh's Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 55, 64.

stead the "third Tuesday", which was agreed to by a vote of forty-two to twenty-four. Somewhat later a motion was made to reconsider this vote but it failed to carry. At this time J. C. Hall proposed to amend section three by adding, "Provided, That the Legislature may alter the time of holding the General election, so that members of Congress elect shall have reasonable time to go to the general Congress between the time of their election and the first Monday in December following the election." This proposal, however, was rejected. No other changes were proposed to this section, and it was agreed to as first reported by the Committee except that the time for holding elections was specified.¹⁸

In Committee of the Whole section four dealing with qualifications for membership in the House of Representatives was debated at length, a difference of opinion occurring on the question as to whether there should be a residence qualification for membership in the House, and if so, what should be the proper length of the residence period? Edward Langworthy opposed a residence qualification because he had confidence in the capability of the people to decide for themselves in regard to their Representatives. Mr. Hall thought that the people would send persons to the legislature who were qualified to represent them. To place a residence qualification in the Constitution might take from them their first choice because they might desire to send a Representative who had not been in the State for two years. It was his further conviction that a person who had the right to vote should also have the right to hold office.

Ralph P. Lowe favored a residence qualification because he believed that one ought to be in the State long enough to

¹⁸ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 75, 83, 84; *Shambaugh's Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 55, 56, 64.

know something of the statutes before he attempted to represent the people in the legislature. Mr. Quinton agreed with Mr. Lowe: a man who had not been in this country six months had given him a "close tussel for a seat in the Convention." James Grant favored a residence qualification because he believed it the duty of the Convention to make rules and restrictions of this kind in order to guard the public rights. Stephen B. Hempstead then recommended that the residence qualification be changed from two years to one year. This proposal was agreed to in Committee of the Whole. Apparently further changes were made to this section in Committee of the Whole which have not been recorded, for in considering the report of this committee the records of the Convention state that the Committee of the Whole recommended that the following section be substituted for section four:

No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years, who shall not be a free white male citizen of the United States, who shall not have been an inhabitant of this State or Territory, one year next preceding his election, and who shall not at the time of his election, have an actual residence in the county or district he may be chosen to represent.¹⁹

This recommendation was adopted by the Convention with the addition of a requirement of thirty days residence in the county or district represented. No other changes were made in section four by the Convention.

In Committee of the Whole, Edward Langworthy recommended a change in section five which deals with the qualifications and terms of members of the Senate. He favored reducing the length of the term from four to two years. Mr. Lucas objected to this proposal because he

¹⁹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, p. 76; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 56, 57.

believed that it would destroy the principle of continuity in office. When the vote was taken upon this question it failed of adoption. Section five was amended in Convention by reducing the age qualification for membership in the Senate from thirty to twenty-five years. Somewhat later the report of the Committee on Revision recommended a change in the language of section five which did not, however, change its content or purpose.

As reported by the Committee on Revision the section now read: "Senators shall be chosen for the term of four years, at the same time and place as Representatives. They shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship." In this form section five was agreed to by the Convention.²⁰

The only change made in section six providing for the number and classification of Senators was the striking out of the final clause—"and a rotation thereby, kept up perpetually." The matter of continuity or rotation was already provided for and this clause was therefore unnecessary.²¹

Section seven which provided for the distribution of Senators among the two groups whenever the number of Senators should be increased was revised by the Committee on Revision so that the first clause read, "When the number of Senators are increased", instead of "When an additional number of Senators is added to the Senate". This change which was of no consequence was agreed to without objection. The same committee recommended striking out the word "but" from the clause in section eight which read, "but a contested election shall be determined in such

²⁰ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 76, 156, 163; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 57, 58.

²¹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 76, 191.

manner as shall be directed by law." This unimportant change was likewise agreed to.²²

The only change made in section eleven dealing with protest of members of the General Assembly was the removal of the word "likewise" from the final clause, "at the desire of any two members present, be entered on the journals likewise." Section twelve, which provided for the privilege of members of the General Assembly of being free from arrest except in case of treason, felony, or breach of the peace during the legislative period and in going to and returning from the sessions of the legislature, was amended upon its second reading by striking from the original report of the committee the following words: "allowing one day for every thirty miles such members may reside from the place at which the General Assembly is convened."²³

Section sixteen dealing with the origin of bills as reported by the Committee on the Legislative Department was amended by the convention so that a vote of only two-thirds instead of three-fourths of the house in which the bill was being considered would be necessary to suspend the rules in order that the bill might be read more than once on the same day. The clause "and free discussion be allowed thereon" was omitted. The section was further amended by removing the final provision, which as reported by the standing committee read: "*Provided*, That all bills for raising revenue shall originate in the House of Representatives, but the Senate may reject or amend them as other bills." Thus the Convention broke away from the general custom which was that bills for raising revenue

²² *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 157, 191.

²³ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 76, 83, 192.

should originate in the most numerous house of the legislature.²⁴

In Committee of the Whole section seventeen, which provided for executive approval of bills before they became laws, caused considerable discussion. O. S. X. Peck proposed to make it more difficult for the legislature to pass bills over the executive veto by requiring a two-thirds vote for this purpose instead of only a majority which was required for the original or first passage of the bill. This change was agreed to by the Committee of the Whole. It was later agreed to in Convention by a vote of forty-nine to nineteen.²⁵

J. C. Hall strongly opposed the idea of giving the chief executive the power to veto legislation. He contended that wherever this power had been granted it had been used exclusively for partisan reasons. It was not a conservative power as it was usually considered, but destructive and oppressive, and Mr. Hall prophesied that it would some day be done away with. It was an arbitrary privilege giving to one man the right to say that an act passed by a majority of the representatives of the people should not go into effect. He was entirely opposed to the scheme and challenged any one to give good arguments supporting it.

Ex-Governor Lucas accepted the challenge. In his opinion one of the chief purposes in making the Constitution was to protect the people's rights, and the executive veto was one of the instruments that had been used for this purpose. It had been so exercised in the Republic of Rome. The framers of the Federal Constitution of the United States conferred upon the chief executive the power to veto legislative measures. This was proper, because the

²⁴ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844, pp. 76, 77, 157, 192.*

²⁵ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844, p. 77.*

executive was the only officer in the whole government "who was completely the representative of the people in their aggregate capacity." Even George Washington had vetoed bills, and this not for constitutional reasons, but for reasons of expediency. Mr. Lucas said that he thought Mr. Hall was inconsistent in that he proposed to do away with the executive veto and yet was willing to leave to the judiciary the right to supervise the legislature and be the judges of law.

Mr. Peck, who proposed to make it more difficult to pass measures over the executive veto, said that the veto was not a positive power of forbidding, "but a qualified negative to prevent hasty and ill-advised legislation". The feeling had taken strong hold upon the people of this country that there was too much legislation and the veto was a conservative power that did not absolutely forbid legislation, but suspended action. It was a democratic feature of any Constitution. He thought moreover that its exercise had been sustained by the people, and that it had served their best interests. The power might be objectionable if the Governor were to be elected for twenty years, but when his term was two years, he thought there could be no reasonable objection.

After further comments were made, the question of denying the executive the veto power was put to a vote in Committee of the Whole and defeated.²⁶

An attempt was made in the Convention to qualify the provision in regard to the executive veto by making it possible for a vetoed bill to become a law "if at the next succeeding regular session of the General Assembly, the same measure be introduced and passed by a majority of both houses without requiring the Governor's con-

²⁶ Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 58-63.

currence." Since the section already contained a provision for passing bills over the Governor's veto the proposal referred to was defeated by a large majority. Samuel W. Bissell then proposed to strike out that portion of section seventeen relating to the passage of bills over the executive veto, and introduced the principle of referendum by proposing to add the following:

After such reconsideration both houses concurring, may direct such bill, together with the objections of the Governor, to be published in all the newspapers printed in this State, for four successive weeks, and that a vote of the qualified electors be taken for and against said bill at the next annual election; and if a majority of the votes cast be in favor of such bill, it shall become a law.

This amendment was amended so as to remove the part concerning publication in newspapers, and then when submitted to a vote it was defeated, the vote being twenty-three for and forty-one against. Ebenezer Cook now proposed to amend the section so as to limit the veto power to questions of constitutionality only. He wished to add the following limitation: "*Provided*, That the objections of the Executive of this State, as provided herein, shall not prevent the said bill from becoming a law, unless said objections are on the ground of the unconstitutionality of said proposed law." This amendment was also defeated by an overwhelming majority.

The Committee on Revision in making its report recommended that the final phrase, "in which case it shall be no law", should be stricken out. This recommendation was concurred in and section seventeen was adopted without further amendment.²⁷

Section twenty, on the power of impeachment, and section twenty-two, relative to the restriction of members,

²⁷ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 79, 80, 157, 163, 192.

received only minor amendments. Section twenty-one, on liability of impeachment, was amended by the Committee of the Whole so that instead of reading, "The Governor, and all civil officers, shall be liable to impeachment", it read, "The Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, and Judges of the Supreme and District Courts, shall be liable to impeachment". At the end of the section the Committee of the Whole added, "all other civil officers shall be tried for misdemeanors in office in such manner as the General Assembly may provide."²⁸

The report of the Committee of the Whole recommended that section twenty-five, providing for the compensation of members of the General Assembly, be amended so as to extend the time for which the legislature might receive per diem compensation from thirty to fifty days. At the time this recommendation was agreed to it was also decided that the President of the Senate and the Speaker of the House of Representatives should receive no additional compensation by virtue of their offices. The clause relative to mileage allowed members was amended so as to allow two dollars for every twenty miles of travel instead of two dollars for every thirty miles as originally provided.²⁹ Section twenty-seven, in regard to the publication

²⁸ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844, pp. 77, 78, 157, 163, 193.*

²⁹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844, pp. 78, 82, 84, 157, 163, 193.*

According to the journal of the Convention an amendment was offered to section twenty-five by Ralph P. Lowe proposing to strike out the words "male and above 21 years of age", in line ten and to insert "one hundred and twenty-five thousand" in lines ten and eleven. This proposal was agreed to by the Convention but as a matter of fact no such change was made in this section for the very good reason that the words "male and above 21 years of age" do not appear in the section referred to. The amendment of Mr. Lowe, however, referred to section thirty-one of the original report of the Committee on the Legislative Department.

of laws and the date on which they were to go into effect was partially revised by the Committee on Revision although the meaning and intent was in no wise altered. For the section which read, "That if the General Assembly shall deem any law to be passed, of pressing and immediate importance, provision may be made for the taking effect at an earlier period than herein provided, on the publication thereof in the several newspapers in the State", the Committee on Revision substituted the following: "If the General Assembly shall deem any law of immediate importance they may provide that the same shall take effect by publication in newspapers in the State." No further changes were made in this section and so in content it remained the same as originally reported.³⁰

At this point a new section was adopted by the Convention, becoming section twenty-nine. This section read: "No county or counties shall be liable for the expense of laying out or establishing any road or roads authorized by special act of the assembly."³¹ Because of this insertion it was necessary to change the numbering of all sections of the original report following. Thus, the twenty-ninth section became the thirtieth and so on.

When section twenty-nine of the original report, now section thirty, which prohibited lotteries or the sale of lottery tickets, was being considered, Stephen Hempstead proposed to strike out "and no ticket in any lottery not authorised by a law of this State, shall be bought or sold within the State", and to insert the following, "nor shall the sale of lottery tickets be allowed." Mr. Hempstead's proposed amendment was rejected by the Convention, and so far as the records of the journals show was never taken up

³⁰ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 157, 163, 194.

³¹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 80, 81, 82, 194.

or mentioned again. Not even the report of the Committee on Revision contained any proposed or recommended changes to this section. The final draft of the Constitution, however, shows that this section was changed to read as Mr. Hempstead had proposed to have it.³²

Section thirty-one of the committee's report, providing for the census enumeration received a number of amendments both in Committee of the Whole and in the Convention. The amended section which appeared in the Constitution as section thirty-two provided for a census enumeration every four years for a period of sixteen years. This was to include all white inhabitants of the State regardless of age instead of all white male inhabitants above twenty-one years as provided in the committee's report. The amended section further provided that the number of members in the House of Representatives should never exceed thirty-nine until the number of white inhabitants in the State should be one hundred and twenty-five thousand, instead of limiting this number to thirty-six until the number of white male inhabitants above twenty-one years should be twenty-five thousand, as provided in the original report.³³

In addition to section twenty-nine, three other new sections were added to the original report of the Committee on the Legislative Department. As adopted by the Convention these sections read:

33. When a senatorial and representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a senatorial or representative district.

34. In all elections by the General Assembly the members

³² *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 88, 194.

³³ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 78, 79, 82, 157.

thereof shall vote viva voce, and the votes shall be entered on the journal.

35. For the first ten years after the organization of the government, the annual salary of the Governor shall not exceed eight hundred dollars; Secretary of State, five hundred dollars; Treasurer, three hundred dollars; Auditor, five hundred dollars; Judges of the Supreme and District Courts, each, eight hundred dollars.³⁴

Edward Langworthy proposed to add a provision which would make it mandatory upon the legislature to pass laws to prohibit blacks and mulattoes from settling in the State. This proposal, which was adopted by the Convention, read: "The Legislature shall, at as early a day as practicable, pass laws to prevent the settlement of Blacks and Mulattoes in this State." The report of the Committee on Revision, however, recommended that this provision should not be included as a part of the Article on the Legislature and the Convention later agreed to this recommendation.³⁵

In its amended form the Article on the Legislative Department passed its third reading on Wednesday morning, October 30th. As adopted by the Convention this Article read:

1. The legislative authority of this State shall be vested in a senate and house of representatives, which shall be designated the General Assembly of the State of Iowa, and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The sessions of the General Assembly shall be biennial, and shall commence on the 1st Monday of January next ensuing the election of its members; unless the Governor of the State shall in the interim convene the General Assembly by proclamation.

3. The members of the house of representatives shall be chosen every second year, by the qualified electors of their respective

³⁴ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 82, 83, 157, 165, 194, 195.

³⁵ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 82, 157, 165.

districts, on the 3d Tuesday in October, whose term of office shall continue two years from the day of the general election.

4. No person shall be a member of the house of representatives who shall not have attained the age of twenty-one years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this State or Territory, one year next preceding his election, and who shall not, at the time of his election, have an actual residence of thirty-days in the county or district he may be chosen to represent.

5. Senators shall be chosen for the term of four years, at the same time and place as representatives. They shall be twenty-five years of age, and possess the qualifications of representatives as to residence and citizenship.

6. The number of Senators shall not be less than one third nor more than one half of the representative body; and at the first session of the General Assembly after this Constitution takes effect, the Senators shall be divided by lot, as equally as may be, into two classes; the seats of the Senators of the first class shall be vacated at the expiration of the second year, so that one half shall be chosen every two years.

7. When the number of senators is increased they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. The house of representatives, when assembled, shall choose a Speaker and its other officers, and the senate shall appoint its own officers except the President; and each body shall judge of the qualifications, elections, and returns of its own members. A contested election shall be determined in such manner as shall be directed by law.

9. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties, as each house may provide.

10. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and with the consent of two-thirds, expel a member, but not a second time for the same offence; and shall have all other powers necessary for a branch of the legislature of a free and independent State.

11. Every member of the General Assembly shall have the liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question, shall at the desire of any two members present, be entered on the journals.

12. Senators and representatives, in all cases except for treason, felony, and breach of the peace, shall be privileged from arrest during the session of the legislature, and in going to and returning from the same.

13. When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

14. The doors of each house shall be open, except on such occasion as in the opinion of the house, may require secrecy.

15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either house, and be amended, altered or rejected by the other; but no bill shall have the force of a law until on three several days it be read in each house, and unless, in cases of urgency, two thirds of the house in which the bill shall be depending may deem it expedient to dispense with the rules: and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses.

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

18. No money shall be drawn from the treasury but in consequence of appropriations made by law.

19. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the legislature.

20. The house of representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation: no person shall be convicted without the concurrence of two-thirds of the members present.

21. The governor, lieutenant governor, secretary of state, auditor, treasurer, and judges of the Supreme and District Courts shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend farther than to removal from office, and disqualification to hold any office of honor, trust or profit, under this State; but the party convicted or acquitted shall nevertheless be liable and subject to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the General Assembly may provide.

22. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created or the emoluments of which shall have been increased, during such term; except such offices as may be filled by elections by the people.

23. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to the general assembly: *Provided*, That officers in the militia to which there is attached no annual salary, or the office of justice of the peace, shall not be deemed lucrative.

24. No person who may hereafter be a collector or holder of public moneys shall have a seat in either house of the general assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

25. Each member of the general assembly shall receive a compensation to be fixed by law, for his services, to be paid out of the treasury of the State. Such compensation shall not exceed two dollars per day for the period of fifty days from the commencement of the session, and shall not exceed the sum of one dollar per day for the remainder of the session; when convened in extra session by the governor, they shall receive such sum as shall be fixed for the

first fifty days of the ordinary session. They shall also receive two dollars for every twenty miles they shall travel, in going to and returning from their place of meeting, on the most usual route: *Provided, however,* That the members of the first Legislature under this constitution, shall receive two dollars per day for their services during the entire session.

26. To obviate confusion, and improper influences which may result from intermingling in one and the same act, such things as have no proper relation to each other, every law shall embrace but one object, which shall be expressed in the title.

27. No law of the general assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of this State by authority: If the general assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the state.

28. No divorce shall be granted by the legislature.

29. No county or counties shall be liable for the expense of laying out or establishing any road or roads authorized by special act of the assembly.

30. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

31. Members of the general assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear or affirm (as the case may be) that I will support the constitution of the United States and the constitution of the State of Iowa, and that I will faithfully discharge the duties of senator (or representative as the case may be) according to the best of my ability;" and members elect of the general assembly are hereby empowered to administer to each other the said oath or affirmation.

32. Within two years after the first meeting of the General Assembly, under this constitution, and within every subsequent term of four years for the term of sixteen years, an enumeration of all the white inhabitants of this State shall be made, in such manner as shall be directed by law. The number of senators and representatives shall, at the first regular session of the legislature after such enumeration, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each; and the house of representatives shall never be less than twenty-six, nor greater than thirty-nine, until the number of white

inhabitants shall be one hundred and twenty-five thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-nine nor exceed seventy-two.

33. When a senatorial and representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a senatorial or representative district.

34. In all elections by the General Assembly the members thereof shall vote viva voce, and the votes shall be entered on the journal.

35. For the first ten years after the organization of the government, the annual salary of the Governor shall not exceed eight hundred dollars; Secretary of State, five hundred dollars; Treasurer, three hundred dollars; Auditor, five hundred dollars; Judges of the Supreme and District Courts, each, eight hundred dollars.³⁶

On the afternoon following the adoption of this article the committee to which had been assigned the duty of superintending the enrollment of the Constitution reported that it had been correctly enrolled and was ready for the attestation of the members of the Convention and the Secretary thereof. The members of the Convention then came forward and signed their names to the Constitution adopted by the Convention.³⁷

The Constitution of 1844 was submitted to the people for ratification in April, 1845, and defeated by a vote of 6023 for and 7019 against. The chief reason for its defeat was the reduction of the boundaries by the act of Congress providing for the admission of Iowa. In August of the same year the Constitution was again submitted to the people, in the hope that they had changed their minds in

³⁶ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 180-195.

³⁷ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 176, 186.

regard to the boundaries, and that perhaps statehood was more to be desired than additional territory or the boundaries fixed by the Convention of 1844. The Constitution was, however, again defeated and as such was never re-submitted.³⁸

THE LEGISLATIVE DEPARTMENT AS PROVIDED BY
THE CONSTITUTION OF 1846

Following the second defeat of the Constitution of 1844 efforts were almost immediately put forth to secure the calling of a new Constitutional Convention. A change in politics which put James K. Polk into the presidency of the United States resulted in the appointment of James Clarke of Burlington as Governor of the Territory of Iowa. Governor Clarke had been a member of the Constitutional Convention of 1844 and regretted that the Constitution which he had helped to frame had been defeated. He did not, however, recommend any definite course to be pursued by the Legislative Assembly, but assured them that he would coöperate with them on any measure that would bring about the speedy admission of Iowa into the Union. The Legislative Assembly, feeling that the people desired State organization, passed an act providing for the election of delegates to a Constitutional Convention. This act, which was signed by the Governor on January 17, 1846, called for the election of thirty-two delegates at the township elections to be held in April. The delegates were to meet at Iowa City on the first Monday in May following their election and "proceed to form a Constitution and State Government for the future State of Iowa."³⁹

In accordance with these provisions, the delegates chosen

³⁸ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 177-184.

³⁹ Shambaugh's *History of the Constitutions of Iowa*, pp. 285-289.

at the April election assembled at the Capitol in Iowa City, on Monday morning, May 4, 1846. James Grant called the meeting to order, and upon his motion William Thompson, who was not a member of the Convention, was appointed Secretary *pro tem*. The roll was then called and all but two delegates appeared and presented their credentials. David Olmsted, member elect from Clayton County, presented his credentials during the afternoon session of the first day and Wareham G. Clark, member elect from Appanoose and Monroe counties, presented his credentials on the following afternoon. After the roll call the Convention proceeded to the election of permanent officers. Enos Lowe and Stephen B. Shelledy were nominated as candidates for the presidency. Mr. Lowe, the Democratic candidate, was elected over Mr. Shelledy, the Whig candidate, by a vote of nineteen to nine. Mr. Thompson, Secretary *pro tem*, was retained as Secretary of the Convention, and William A. Skinner of Linn County was duly elected Sergeant-at-Arms.⁴⁰

In order to facilitate the work of the Convention the rules of the Convention of 1844 were adopted with but one exception. The rule of the Convention of 1844, "If two or more members rise at once, the President shall decide which shall first speak", was rejected by the Convention of 1846. The rules were also altered so as to provide for six standing committees instead of eleven, the number provided by the Convention of 1844. Among the standing committees first appointed was the one on Legislative Department, Suffrage, Citizenship, Education and School Lands. To this committee President Lowe appointed the following members: Shepherd Leffler, Wm. Hubbell, John J. Selman, Stephen B. Shelledy, and John Conery. The work of

⁴⁰ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. 23, 24, 25, 31.

providing for suffrage and citizenship in the new Constitution was later referred to a separate committee, thus leaving to the original committee the work of providing for the Legislative Department and for Education and School Lands.⁴¹

The report of the Committee on the Legislative Department was presented by the chairman, Mr. Leffler, on Friday morning, May 8, 1846, and read as follows:

1. The Legislative authority of this State shall be vested in a Senate and House of Representatives, which shall be designated the General Assembly of the State of Iowa, and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The sessions of the General Assembly shall be biennial, and shall commence on the first Monday of December next ensuing the election of its members, unless the Governor of the State shall in the interim convene the General Assembly by proclamation.

3. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, on the first Monday in August, whose term of office shall continue two years from the day of the general election.

4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this State or Territory, one year next preceding his election, and who shall not, at the time of his election, have an actual residence of thirty days in the county or district he may be chosen to represent.

5. Senators shall be chosen for the term of four years, at the same time and place as Representatives. They shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship.

6. The number of Senators shall not be less than one third nor more than one half the Representative body; and at the first session of the General Assembly after this constitution takes effect, the Senators shall be divided by lot, as equally as may be, into two

⁴¹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1846, pp. 25, 30, 32, 33.*

classes; the seats of the Senators for the first class shall be vacated at the expiration of the second year, so that one half shall be chosen every two years.

7. When the number of Senators is increased they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. The House of Representatives, when assembled, shall choose a speaker and its other officers, and the Senate shall appoint its own officers except the President; and each body shall judge of the qualifications, elections, and returns of its own members. A contested election shall be determined in such manner as shall be directed by law.

9. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

10. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and with the consent of two thirds, expel a member, but not a second time for the same offence; and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

11. Every member of the General Assembly shall have the liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question shall, at the desire of any two members present, be entered on the journals.

12. Senators and Representatives, in all cases except for treason, felony, and breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

13. When vacancies occur in either house, the governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

14. The doors of each house shall be open, except on such occasion as in the opinion of the house, may require secrecy.

15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either house, and be amended, altered or rejected by the other; and every bill having passed both houses, shall be signed by the speaker and president of their respective houses.

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

18. No money shall be drawn from the treasury but in consequence of appropriations made by law.

19. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the General Assembly.

20. The House of Representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation, no person shall be convicted without the concurrence of two thirds of the members present.

21. The Governor, lieutenant Governor, Secretary of State, Auditor, Treasurer and Judges of the Supreme and District courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend farther than to removal from office, and disqualification to hold any office of honor, trust or profit under this state; but the party convicted or acquitted shall nevertheless be liable and subject to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the General Assembly may provide.

22. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

23. No person holding any lucrative office under the United States or this State, or any other power, shall be eligible to the General Assembly; Provided, that, offices in the militia to which there is attached no annual salary, or the office of justice of the peace, or post masters whose per centage shall not amount to more than three hundred dollars, shall not be deemed lucrative.

24. No person who may hereafter be a collector or holder of public moneys shall have a seat in either house of the General Assembly, or be eligible to any office of trust or profit under this state, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

25. Each member of the General Assembly shall receive a compensation to be fixed by law for his services, to be paid out of the treasury of the state. Such compensation shall not exceed two dollars per day for the period of fifty days from the commencement of the session, and shall not exceed the sum of one dollar per day for the remainder of the session; when convened in extra session by the governor, they shall receive such sum as shall be fixed for the first fifty days of the ordinary session. They shall also receive two dollars for every twenty miles they shall travel, in going to and returning from their place of meeting on the most usual route; provided however, that the members of the first legislature under this constitution, shall receive two dollars per day for their services during the entire session.

26. Every law shall embrace but one object, which shall be expressed in the title.

27. No law of the General Assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of this State by authority; If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the state.

28. No divorce shall be granted by the General Assembly.

29. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

30. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear or affirm (as the case may be) that I will support the constitution of the United States and the constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator (or Representative as the case may be) according to the best of my ability;" and members elect of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

31. Within two years after the first meeting of the General Assembly under this constitution, and within every subsequent term of four years for the term of sixteen years, an enumeration of all the white inhabitants of this state shall be made, in such manner as shall be directed by law. The number of Senators and Representatives shall, at the first regular session of the legislature after such an enumeration, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each; and the house of representatives shall never be less than twenty-six, nor greater than thirty-nine, until the number of white inhabitants shall be one hundred and seventy-five thousand; and after that event, at such ratio that the whole number of Representatives shall never be less than thirty-nine nor exceeding seventy-two.

32. When a senatorial and representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a senatorial or representative district.

33. In all elections by the General Assembly, the members thereof shall vote viva voce, and the votes shall be entered on the journal.

34. For the first ten years after the organization of the government, the annual salary of the Governor shall not exceed _____ dollars; Secretary of State _____ dollars; Treasurer, _____ dollars; Auditor, _____ dollars; Judges of the Supreme and District courts, each, _____ dollars.⁴²

Following the reading of this report, forty copies of it were ordered to be printed for the use of the Convention.

⁴² *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1846, pp. 42-46.*

This report on the legislative department differed very little from the article in the Constitution of 1844, the greatest difference being that the committee in drawing up its report omitted the provision in regard to the distribution of governmental powers and section twenty-nine of the old Constitution, "No county or counties shall be liable for the expense of laying out or establishing any road or roads authorized by special act of the assembly." The report also provided that the sessions of the General Assembly should commence on the first Monday in December instead of the first Monday in January; the time for electing members of the House of Representatives was changed from the third Tuesday in October to the first Monday in August; the time granted the Governor for the consideration of bills passed by the legislature was reduced from five to three days; and the membership of the House of Representatives was limited to thirty-nine members until the population of the State should reach one hundred and seventy-five thousand in number instead of one hundred and twenty-five thousand as provided in the Constitution of 1844. Outside of these few changes the report of the Committee on the Legislative Department was almost identical in reading with this article as it appeared in the rejected Constitution.

During the consideration of the Article on the Legislative Department both in Committee of the Whole and in the Convention proper, few changes were made other than those necessitated by changes made elsewhere in the Constitution or by omissions in the report of the standing committee on this subject. The provision for the distribution of governmental powers was added. As adopted by the Convention this article read:

1. The powers of the government of Iowa shall be divided into three separate departments, the Legislative, the Executive, and

Judicial, and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any function appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.⁴³

Under the Constitution of 1844 the Lieutenant Governor was to act as President of the Senate. Since the new instrument of government contained no provision for a Lieutenant Governor, section eight on the election of officers was changed in order to give the Senate the power to choose its own presiding officer. It was also necessary to strike "Lieutenant Governor" from section twenty-one making State officers liable to impeachment. Section sixteen on the origin of bills was amended so as to make it necessary for all bills for the purpose of raising revenue to originate in the House of Representatives. Section seventeen referring to executive approval of bills was so amended as to except Sunday from the time limit that the Governor had for the consideration of bills referred to him.

Section eighteen, which provided that money should not be drawn from the treasury except as appropriated by law was shifted so as to make it appear between sections twenty-four and twenty-five. Thus, the numbering of all sections beginning with section nineteen to twenty-four inclusive, was changed, section nineteen becoming section eighteen and so on. Section twenty-three on disqualification was amended so as to make justices of the peace and postmasters ineligible to membership in the General Assembly if they received an annual compensation exceeding one hundred dollars. Section thirty-one, providing for the enumeration of the inhabitants of the State, was amended so that the enumeration would be made by the authority of the General Assembly within one year after the ratification of the Constitution, and every two years

⁴³ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. 63, 64.

thereafter for eight years, as against two years following the ratification of the Constitution and within every four year period for a period of sixteen years as provided in the report of the Committee on the Legislative Department.

Section thirty-two providing for senatorial and representative districts was amended so as to include congressional districts, and section thirty-four dealing with the salaries of State officers was completed as no salary for any official was specified by the standing committee. The salary to be received by the Governor was not to exceed one thousand dollars; Secretary of State, five hundred dollars; Treasurer, four hundred dollars; Auditor, six hundred dollars; and Judge of the Supreme and district courts, one thousand dollars.⁴⁴ A few minor changes were made by the Convention and by the Committee on Revision, such as substituting the words "General Assembly" for "Legislature". None of these changes affected the content and purpose of the Article on the Legislative Department. The article as finally passed upon by the Convention read:

OF THE DISTRIBUTION OF POWERS

1. The powers of the government of Iowa shall be divided into three separate departments; the legislative, the executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any function appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT

1. The Legislative authority of this State shall be vested in a Senate and House of Representatives, which shall be designated the General Assembly of the State of Iowa, and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The sessions of the General Assembly shall be biennial, and

⁴⁴ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. 57, 58, 59, 60, 61, 62, 63.

shall commence on the first Monday of December next ensuing the election of its members; unless the Governor of the State shall, in the interim, convene the General Assembly by proclamation.

3. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, on the first Monday in August, whose term of office shall continue two years from the day of the general election.

4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years; be a free white male citizen of the United States, and have been an inhabitant of this State or Territory one year next preceding his election; and at the time of his election, have an actual residence of thirty days in the county or district he may be chosen to represent.

5. Senators shall be chosen for the term of four years, at the same time and place as representatives, they shall be twenty-five years of age, and possess the qualifications of representatives as to residence and citizenship.

6. The number of Senators shall not be less than one-third nor more than one half the representative body, and at the first session of the General Assembly after this Constitution takes effect, the Senators shall be divided by lot, as equally as may be, into two classes; the seats of the Senators of the first class shall be vacated at the expiration of the second year, so that one half shall be chosen every two years.

7. When the number of Senators is increased they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. Each house shall choose its own officers and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

9. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

10. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and with the consent of two-thirds, expel a member, but not a second time for the same offence, and shall have all other powers necessary

for a branch of the General Assembly of a free and independent state.

11. Every member of the General Assembly shall have the liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals.

12. Senators and representatives, in all cases except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

13. When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

14. The doors of each house shall be open, except on such occasion as, in the opinion of the house, may require secrecy.

15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either house, except bills for revenue, which shall always originate in the House of Representatives, and may be amended, altered, or rejected by the other, and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses.

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

18. An accurate statement of the receipts and expenditures of

the public money shall be attached to and published with the laws, at every regular session of the General Assembly.

19. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

20. The Governor, Secretary of State, Auditor, Treasurer, and Judges of the Supreme and District Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust or profit under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the General Assembly may provide.

21. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

22. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to the General Assembly: Provided, That offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmasters whose compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative.

23. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for and paid into the treasury, all sums for which he may be liable.

24. No money shall be drawn from the treasury but in consequence of appropriations made by law.

25. Each member of the General Assembly shall receive a compensation to be fixed by law, for his services, to be paid out of the treasury of the State. Such compensation shall not exceed two dollars per day for the period of fifty days from the commencement of the session, and shall not exceed the sum of one dollar per day

for the remainder of the session: when convened in extra session by the Governor, they shall receive such sum as shall be fixed for the first fifty days of the ordinary session. They shall also receive two dollars for every twenty miles they shall travel, in going to and returning from their place of meeting, on the most usual route: Provided, however, That the members of the first General Assembly under this constitution shall receive two dollars per day for their services during the entire session.

26. Every law shall embrace but one object, which shall be expressed in the title.

27. No law of the General Assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of this State, by authority. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the state.

28. No divorce shall be granted by the General Assembly.

29. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

30. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: I do solemnly swear, or affirm (as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability. And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

31. Within one year after the ratification of this constitution, and within every subsequent term of two years, for the term of eight years, an enumeration of all the white inhabitants of this state shall be made, in such manner as shall be directed by law. The number of Senators and Representatives shall, at the first regular session of the General Assembly after such enumeration, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each, and shall also, at every subsequent regular session, apportion the House of Representatives, and every other regular session the Senate for eight years, and the House of Representatives shall never be less than twenty-six, nor

greater than thirty-nine, until the number of white inhabitants shall be one hundred and seventy-five thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-nine nor exceeding seventy-two.

32. When a Congressional, Senatorial, or Representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district.

33. In all elections by the General Assembly, the members thereof shall vote viva voce, and the votes shall be entered on the journal.

34. For the first ten years after the organization of the government, the annual salary of the Governor shall not exceed one thousand dollars; Secretary of State, five hundred dollars; Treasurer, four hundred dollars; Auditor, six hundred dollars; Judge of the Supreme and District Courts, each one thousand dollars.⁴⁵

This article was very similar to that adopted by the Convention of 1844. The chief point of difference was that it provided that the sessions of the General Assembly should begin on the first Monday of January instead of the first Monday in December; that the Senate was to choose its own presiding officer; that bills for revenue must originate in the House of Representatives; and that the salaries for State officers were fixed for a term of ten years. That of the Governor was not to exceed \$1000, the Secretary of State \$500, the Treasurer \$400, the Auditor \$600, and judges of the Supreme and district courts \$1000. The provision that counties should not be liable for the expense of laying out or establishing roads authorized by special act of the General Assembly which appeared in the Article on the Legislative Department of the Constitution of 1844 was not included in this article of the Constitution of 1846.

The Constitutional Convention of 1846 completed its

⁴⁵ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1846, pp. vi-xi.*

labors on the morning of the 19th of May and on August 3rd following the new Constitution was submitted to the people. At this election the Constitution was ratified by the small majority of 456 votes, 9492 having been cast for the Constitution and 9036 against it.

The boundaries as laid down in the new Constitution, and as defined by Congress, were approved by President Polk on August 4, 1846, but it was not until December 28th, that Iowa was finally admitted to full membership into the Union.⁴⁶

THE LEGISLATIVE DEPARTMENT AS PROVIDED
BY THE CONSTITUTION OF 1857

The Constitution of 1846 had scarcely been adopted when agitation was started for its revision or amendment. The people of Iowa were anxious to repeal the restrictions upon banking contained in the Constitution of the State and to amend the provision concerning the selection of members of the Supreme Court. It was not, however, until January 24, 1855, that the General Assembly passed an act which provided for the submission to the electorate of the question of calling a convention to revise the Constitution. In accordance with the provisions of this act, the question was submitted to the people at the general election held on the first Monday in August, 1856, and 32,790 votes were cast in favor of a convention and 14,162 votes against it. Thus, by an overwhelming majority, the people of Iowa voted in favor of constitutional revision.⁴⁷

At the November election held on the Tuesday following the first Monday, thirty-six delegates were chosen. According to the directions set forth in the act of January, 1855,

⁴⁶ Shambaugh's *History of the Constitutions of Iowa*, pp. 317, 327; Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 213.

⁴⁷ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, p. ii; Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 217-222.

these delegates assembled in the Supreme Court room of the Capitol at Iowa City on January 19, 1857.⁴⁸ The first meeting of the Convention was called to order by Hosea W. Gray of Linn County at 10 o'clock, A. M., on the day set by the act providing for the Convention. Mr. Gray nominated John A. Parvin to act as President *pro tem* and this nomination was confirmed by the delegates present. On the following day permanent organization was effected and Francis Springer was chosen President over his Democratic competitor, Jonathan C. Hall, by a vote of twenty to thirteen. The remaining officials were also the choice of the Republican party, the vote being in every instance a strictly party vote.⁴⁹

One of the first things done by the Convention following permanent organization was to provide for a number of standing committees. Among these committees was the Committee on the Distribution of Powers and Legislative Department, to which President Springer appointed J. A. Parvin, Edward Johnstone, J. C. Traer, J. H. Emerson, and Thomas Seeley.⁵⁰ Of these men, Parvin, Johnstone, and Traer were the most active, ranking high among the leaders of the Convention in discussion and debate.

Soon after the appointment of the Committee on the Legislative Department resolutions began to be referred to them from time to time in regard to changes that were desired in certain portions of the Article on Legislative Department as incorporated in the Constitution of 1846.

⁴⁸ Shambaugh's *History of the Constitutions of Iowa*, pp. 335, 336.

⁴⁹ *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 3, 10-15.

The delegates of the Convention who were members of the Republican party held a caucus on the evening prior to the first assemblage of the Convention at which time they decided upon the officers whom they wished to elect.—*Recollections of Judge Francis Springer in the Annals of Iowa (Third Series)*, Vol. II, pp. 583, 584.

⁵⁰ *Journal of the Constitutional Convention of the State of Iowa, 1857*, p. 26.

The first of these resolutions related to section sixteen which dealt with the origin and passage of bills. It was recommended that the section be so revised as to require the vote on the final passage of bills to be by ayes and noes and to be entered upon the journal; further that no bill should become a law without the concurrence "of a majority of all the members elect in each house."⁵¹ On the following day, January 22nd, another resolution was referred to the Committee on the Legislative Department. This required the committee to inquire into the expediency of adopting the following recommendations in regard to the Article on the Legislative Department in the existing Constitution.

First to amend section two so as to provide for annual sessions of the legislature instead of biennial sessions, and to fix the date of meeting on the first Monday of January.

Second to amend section three so as to change the time of electing Representatives from the first Monday in August to the first Tuesday after the first Monday in November.

Third to reduce the age qualification for membership in the Senate as provided in section five, from twenty-five to twenty-one years.

Fourth to amend section twenty-five so as to increase the per diem allowance of members of the General Assembly from two to three dollars.

Fifth to strike out section twenty-six which provides that every law should embrace but one object, and section twenty-seven which provides for the publication of new laws.

Sixth to amend section thirty-one "so that the census shall be taken by the authority of the State in 1865, and every tenth year thereafter, and then that the apportionment of members of the General Assembly be made according to population".

⁵¹ *Journal of the Constitutional Convention of the State of Iowa, 1857, p. 29.*

Seventh to strike out section thirty-four which sets the maximum salary to be received by State officials.

Eighth to add the following as a new section:

No bill shall be passed unless by the assent of the members elected to each branch of the General Assembly, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the Journal.

Ninth to add the following section:

The assent of the two-thirds of the members elected to each branch of the General Assembly, shall be requisite to every bill appropriating the public money, or property for local or private purposes.⁵²

During the afternoon session of the same day James F. Wilson offered a resolution which provided that the committee inquire into the expediency of adopting the following section:

No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered or the contract entered into: nor shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing law unless such compensation or claim be allowed by two-thirds of the members elected to each branch of the General Assembly.⁵³

Following the reference of the above proposal, Daniel H. Solomon offered a resolution requiring the Committee on the Legislative Department to consider the feasibility of making any voter eligible to any office in the State. Only one other resolution was referred to the Committee on the Legislative Department. This resolution, offered by John Edwards, embraced a number of subjects which he proposed to take out of the sphere of the power of the General Assembly. As presented to the Convention this resolution read:

⁵² *Journal of the Constitutional Convention of the State of Iowa, 1857, p. 35.*

⁵³ *Journal of the Constitutional Convention of the State of Iowa, 1857, p. 43.*

Resolved, That the committee on the Legislative Department be instructed to inquire into the expediency of reporting an amendment to the Constitution, providing that the General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of Justices of the Peace and Constables;

For the punishment of crime and misdemeanors;

Regulating the practice in Courts of Justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on highways, and for the election or appointment of township trustees and supervisors;

Vacating roads, town plots, streets, alleys and public squares;

Summoning and empannelling grand and petit jurors and providing for their compensation;

For the assessment and collection of taxes for state, county, township or road purposes;

Providing for supporting common schools and for the preservation of school funds;

In relation to fees or salaries;

In relation to interest on money;

Providing for opening and conducting elections of State, county or township officers and designating the place of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees.⁵⁴

This resolution was also adopted and referred to the Committee on the Distribution of Powers and Legislative Department. It now remained to be seen what influence these resolutions would have upon the report of this committee.

The first report of the Committee on the Distribution of Powers and Legislative Department was made on Monday afternoon, January 26th. This report related to the distri-

⁵⁴ *Journal of the Constitutional Convention of the State of Iowa, 1857, pp. 50, 51, 52.*

bution of powers and recommended that the provision as it appeared in the Constitution of 1846 should be adopted without amendment. As reported, Article III read:

1. The powers of the government of Iowa shall be divided into three separate departments: The Legislative, the Executive and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

This report was laid upon the table without discussion and later adopted in its original form.⁵⁵ On Thursday, January 29th, the same committee made its report upon the legislative department. This consisted of thirty-nine sections. Of these twenty-two were taken without change from the Article on the Legislative Department of the Constitution of 1846, one with no material change, ten with changes of importance, and one — section thirty-one of the old Constitution, which provided for the enumeration of the inhabitants of the State and the number of Senators and Representatives — was separated into three sections and altered to meet the needs of the times. Thus, only three really new sections were added to the Article on the Legislative Department by the standing committee. The new sections added were sections eighteen, thirty-one, and thirty-two of the report, which represent some of the views set forth in the resolutions referred to the committee. The report as first presented to the Convention read:

1. The legislative authority of this State shall be vested in a Senate and House of Representatives, which shall be designated the General Assembly of the State of Iowa; and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The sessions of the General Assembly shall be biennial, and

⁵⁵ *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 42, 364.

shall commence on the second Monday of January next ensuing the election of its members; unless the Governor of the State shall, in the interim, convene the General Assembly by proclamation.

3. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, on the second Tuesday in October, except the years of the Presidential election, when the election shall be on the Tuesday next after the first Monday in November; whose term of office shall continue two years from the Tuesday next after the first Monday in November.

4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years; be a free white male citizen of the United States, and have been an inhabitant of this State one year next preceding his election; and at the time of his election have an actual residence of thirty days in the county or district he may be chosen to represent.

5. Senators shall be chosen for the term of four years, at the same time and place as Representatives; they shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship.

6. The number of Senators shall not be less than one-third, nor more than one-half the Representative body. The present Senators shall remain in office during the term for which they were elected, and shall be divided into two classes. Those Senators whose term of office expires on the first Monday in August, 1858, shall be one class, and those Senators whose term of office expires on the first Monday in August, 1860, shall be the other class; so that one-half shall be chosen every two years.

7. When the number of Senators is increased, they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. Each House shall choose its own officers, and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

9. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each House may provide.

10. Each House shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and, with the consent of two-thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

11. Every member of the General Assembly shall have the liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either House, on any question, shall, at the desire of any two members present, be entered on the journals.

12. Senators and Representatives, in all cases, except treason, felony or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

13. When vacancies occur in either House, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancies.

14. The doors of each House shall be open, except on such occasion as, in the opinion of the House, may require secrecy.

15. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either House, and may be amended, altered, or rejected by the other; and every bill having passed both Houses, shall be signed by the Speaker and President of their respective Houses.

17. Every bill which shall have passed the General Assembly, shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it with his objections to the House in which it originated, which shall enter the same upon the journal and proceed to reconsider it, if, after such reconsideration, it again pass both Houses, by yeas and nays, by a majority of two-thirds of the members of each House present, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall

have been presented to him, Sundays excepted, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by adjournment, prevent such return.

18. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

19. An accurate statement of the receipts and expenditures of the public money, shall be attached to and published with the laws, at every regular session of the General Assembly.

20. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

21. The Governor, Secretary of State, Auditor, Treasurer, Judges of the Supreme and District Courts, Superintendent of Public Instruction, and Attorney General, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanors in office, in such manner as the General Assembly may provide.

22. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

23. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to the General Assembly: *Provided*, that offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmasters whose compensation does not exceed one hundred dollars per annum, or notary public, shall⁵⁶ be deemed lucrative.

⁵⁶ The word "not" was omitted here due no doubt to oversight, as the provision with its omission does not convey the intent of the Constitution framers, and it was later added by the Convention.

24. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either House of the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for and paid into the treasury all sums for which he may be liable.

25. No money shall be drawn from the treasury but in consequence of appropriations made by law.

26. Each member of the General Assembly shall receive a compensation to be fixed by law, for his services, to be paid out of the treasury of the State. Such compensation shall not exceed three dollars per day for the period of sixty days from the commencement of the session, and shall not exceed the sum of two dollars per day for the remainder of the session; when convened in extra session by the Governor, they shall receive such sums per diem as shall be fixed for the first sixty days of the ordinary session. They shall also receive three dollars for every twenty miles they travel, in going to and returning from their place of meeting, on the nearest traveled route.

27. No law of the General Assembly, of a public nature, shall take effect until the fourth day of July next after the passage thereof. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the State.

28. No divorce shall be granted by the General Assembly.

29. No lottery shall be authorized by this State; nor shall the sale of lottery tickets be allowed.

30. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

31. The General Assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for State, county or road purposes;

For laying out, opening and working on roads or highways;

For changing the names of persons;

For the incorporation of cities or towns;

For vacating roads, town plats, streets, alleys, or public squares;

In all cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

32. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid on any claim the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly.

33. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear, or affirm, (as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability." And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

34. The General Assembly shall, in the years 1856, 1862, 1864, 1866, 1868, and 1875, and every ten years thereafter, cause an enumeration to be made, of all the white inhabitants of the State.

35. The number of Senators and Representatives shall, at the next session following each period of making such enumeration, and the next session following each United States census, be fixed by law, and apportioned among the several counties, according to the number of white inhabitants in each.

36. The Senate shall not consist of more than fifty members, nor the House of Representatives of more than one hundred.

37. When a Congressional, Senatorial, or Representative District shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a Congressional, Senatorial or Representative district.

38. In all elections by the General Assembly, the members thereof shall vote *viva voce*; and the votes shall be entered on the journal.

39. The annual salary of the Governor shall not exceed twenty-

five hundred dollars; Secretary, Treasurer, and Auditor of State, fifteen hundred dollars each; Judges of the Supreme Court, twenty-five hundred dollars each; Judges of the District two thousand dollars each.⁵⁷

Following the usual procedure this report was laid upon the table and one hundred copies ordered to be printed for the use of the Convention.

Some days later the report was taken up for consideration and certain of its provisions discussed and debated at great length. During the various sittings upon this article, twenty-two sections of the original report of the Committee on the Distribution of Powers and the Legislative Department were adopted without amendment. These sections⁵⁸ were 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 25, 28, 29, 30, 32, 33, 37, and 38. A slight alteration was made in the wording of section 30 by the Committee on Revision but this was of no material importance. Sections 1, 2, 23, and 24 of this report received unimportant changes, and sections 3, 4, 6, 7, 17, 21, 26, 27, 31, 34, 35, and 36 received changes of such importance as to warrant their further consideration. Section 39 of the report, in regard to the annual salary of State officers, was dropped entirely and some new provisions were added.⁵⁹

Section two, providing for biennial sessions of the

⁵⁷ *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 82-87, 120.

⁵⁸ Owing to the fact that sections six and seven were combined in the Constitution the sections here referred to in the committee's report beginning with section eight and including section thirty-six do not correspond with the section of the same number in the Constitution, but in each case were reduced one point in number. Thus, section eight becomes section seven, section nine, section eight and so forth.

⁵⁹ The section numbers here indicated represent those of the first report of the Committee on the Legislative Department. For a comparison of the original report with the Article on the Legislative Department in the Constitution see the *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 82-87, and appendix pp. 7-11.

legislature, although adopted without significant change was discussed at greater length than any other section in the entire article. The chief point of contention was the question as to whether the sessions should be annual or biennial. Upon this question the delegates were not divided along party lines for of the fourteen members speaking upon this subject nine were Republicans and five Democrats. Of these men five Republicans favored biennial sessions and four preferred annual sessions or annual sessions for a period of from three to five years. Two Democrats favored biennial sessions and three preferred annual sessions or annual sessions for a period of three years. The chief argument of those who favored annual sessions was that the State was so new and that there were so many new enterprises to be undertaken such as the building of railroads, the erection of charitable institutions, the establishment of banks, and the like, that it would be necessary to hold annual sessions of the legislature in order to keep the laws up to date with the rapid advance of internal improvements.

The argument of those who opposed annual sessions was that annual sessions were too expensive, and that they were not needed: a new provision restrained the legislature from entering upon local legislation. This would give the legislature ample time at its biennial session to handle the subjects upon which legislation was needed. Besides the tendency was to get too much legislation which was worse than too little. An attempt was made to secure annual sessions of the legislature for a period of five years, then three years, but every attempt at change ended in failure and finally the section was agreed to without any essential change although the Committee on Revision changed its wording slightly.⁶⁰

⁶⁰ *The Debates of the Constitutional Convention of the State of Iowa, 1857,*

Section three of the report, providing for the date of electing members of the House of Representatives and the time that their term of office should begin, was objected to by some of the delegates because of the lack of uniformity in the time for holding elections. To obviate the necessity of holding an additional election on the year of presidential elections, the standing committee provided that on these years the election of Representatives should take place on the date of the presidential election. The election in other years was to be held on the second Tuesday in October. The delegates preferred to hold the election in October because at that time of the year the weather would permit the electors to come to the polls to cast their ballots. James A. Young later proposed to amend the section so as to make all elections for State Representatives and Senators come on the second Tuesday in October. Mr. Young believed it to be a matter of highest importance that State elections should be kept separate and distinct from the presidential elections and that they should be held on the same date as nearly as possible each election year. This amendment was defeated by a vote of thirteen for it and nineteen against it and the date for election of Representatives and Senators remained the same as reported by the standing committee until 1884, when an amendment was added to the Constitution which provided that the "general election for state, district, county and township officers shall be held on the Tuesday next after the first Monday in November." Section three was, however, amended in Convention so as to have the term of Representatives and Senators "commence on the first day of January next after their election, and continue two years". The latter provision was further enlarged by the Committee on Revision

by the addition of the words, "and until their successors are elected and qualified."⁶¹

Some time was spent in discussing section four which provided the qualifications for members of the House of Representatives. The chief point of contention was the residence requirement of thirty days in the county or district from which the Representative was to be chosen. Certain members contended that this requirement was entirely too lenient and to protect the people against designing politicians they succeeded by a vote of sixteen to fifteen in increasing this requirement from thirty days to one year. Shortly afterwards a motion was made to reconsider the vote by which this amendment was adopted and it was agreed to by a vote of eighteen to sixteen. The residence requirement thus remained thirty days, but on the next to the last day of the Convention it was agreed by general consent to raise this requirement to sixty days.⁶²

Sections six and seven, dealing respectively with the number and classification of Senators, were amended by the Convention and finally combined by the Committee on Revision into a single section. During the consideration of section seven considerable time was spent in discussing the question as to whether the present members of the General Assembly should hold office after the adoption of the new Constitution or if new elections should be held and new Senators and Representatives chosen. This discussion had little to do with the subject in hand but came as the result of a proposal by D. P. Palmer to add the following to the beginning of this section: "The senators shall be so classified by lot that one-half shall be chosen every two years."

⁶¹ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 513-515, 575, 576, 1008; Shambaugh's The Constitution of the State of Iowa and Amendments from 1857 to 1922, p. 106.*

⁶² *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 557, 567-573, Vol. II, p. 1015.*

The amendment offered by Mr. Palmer was agreed to. The sections as combined and reported by the Committee on Revision and finally adopted by the Convention read:

The number of Senators shall not be less than one-third, nor more than one-half the Representative body; and shall be so classified by lot, that one class being as nearly one-half as possible, shall be elected every two years. When the number of Senators is increased, they shall be annexed by lot to one or the other of the two classes, so as to keep them as nearly equal in numbers as practicable.⁶³

The next provision of the standing committee's report that caused discussion was section seventeen which, owing to the fact that sections six and seven were combined, became section sixteen of the Constitution. This section provided for the executive approval of bills passed by the General Assembly. Robert Gower opposed the idea of requiring a two-thirds vote to pass a law over the Governor's veto: he proposed to reduce this requirement to seven-twelfths. A. H. Marvin was of the opinion that only a majority vote of all the members should be required for this purpose. Wm. Penn Clarke would even go so far as to require only a majority vote of those present at the time the bill was being reconsidered. Mr. Parvin was opposed to amendment in any form for he believed that there was no danger in the exercise of the veto power but on the contrary "that it is a safe and salutary restriction upon the hasty action of the legislature." The proposals of Mr. Marvin and Mr. Clarke received no consideration for want of seconds, and that of Mr. Gower was not agreed to by the Convention. Some days afterward Mr. Wilson proposed to add to this section as follows:

Any bill submitted to the governor for his approval during the last three days of a session of the general assembly, shall be

⁶³ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 516-524; Journal of the Constitutional Convention of the State of Iowa, 1857, Appendix, p. 7.*

deposited by him in the office of the secretary of state within thirty days after the adjournment, with his approval if approved by him, and with his objections if he disapproves thereof.

Mr. Wilson's purpose in offering this amendment was to give the Governor more time to consider the important business which usually comes before the General Assembly in the last days of its session, and then to require him to deposit these bills with the Secretary of State within thirty days after adjournment with his approval or his reasons for disapproving the bill or bills under consideration. No objection was made to this amendment, and it was agreed to. This was the only change or addition made to this section by the Convention.⁶⁴

Section twenty-one of the report which provided for the impeachment of State officers specifically enumerated was amended so as to include all State officers. It was further amended by making these officers liable to impeachment for malfeasance. An attempt was made to strike out the word "misdemeanor" and to substitute "malfeasance" in its place because the former was considered ambiguous. This effort having failed it was agreed that the words "or malfeasance" should be added to this provision.⁶⁵ The amended section became section twenty of the Constitution.

The following substitute was adopted by the Convention for section twenty-six of the original report which provided for the compensation of members of the General Assembly:

Each member of the first General Assembly under this constitution, shall receive the sum of three dollars per diem while in session; and the further sum of three dollars for every twenty miles travel in going to and returning from the place where such

⁶⁴ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 525-527, 567, 1012; *Journal of the Constitutional Convention of the State of Iowa, 1857*, Appendix, pp. 8, 9.

⁶⁵ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 527, 551, 574, 575.

session is held, by the nearest traveled route; after which they shall receive such compensation as shall be fixed by law; but no General Assembly shall have the power to increase the compensation of its own members. And when convened in extra session they shall receive the same mileage and per diem compensation as fixed by law for the regular session and none other.

Section twenty-seven which sets the time at which laws of a public nature should take effect was enlarged so as to make all laws passed by a special session of the General Assembly become effective ninety days following their passage. Sections twenty-six and twenty-seven became sections twenty-five and twenty-six respectively in the new Constitution.⁶⁶

The prohibition of special acts of the General Assembly in certain instances as provided in section thirty-one of the report on the legislative department was the next point to arouse debate. This section was an addition to the Article on the Legislative Department in the old Constitution and was reported by the standing committee in consequence of a resolution referred to them asking for their consideration of such a provision. This resolution was taken almost verbatim from the Constitution of Indiana of 1851.⁶⁷ To the prohibitions already reported by the committee was added that in regard to the location or changing of county seats. A further prohibition was also added which provided that "no special law, changing the boundary lines of any county, shall have effect until, upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in

⁶⁶ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 528-530, 551; Journal of the Constitutional Convention of the State of Iowa, 1857, pp. 194, 195.*

⁶⁷ *Journal of the Constitutional Convention of the State of Iowa, 1857, pp. 51, 52; The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 531; Constitution of Indiana, 1851, in Poore's The Federal and State Constitutions and Colonial Charters of the United States, Vol. I, p. 517.*

each county, cast for and against it." The word "special" appearing in this provision was omitted by the Committee on Revision.⁶⁸ Just as a number of sections in the standing committee's report had their numbering changed in the Constitution because of the combination of sections six and seven, so section thirty-one became section thirty in the final product.

Section thirty-four of the original report, which became section thirty-three of the Constitution, specified the time for taking the State census. It was so amended as to set these dates on the following years: 1859, 1863, 1865, 1867, 1869, and 1875.⁶⁹ Section thirty-five of the report which became section thirty-four of the Constitution was so amended as to provide only for the number of Senators and their apportionment whereas the section as reported by the standing committee provided also for the apportionment of Representatives. This was done because the Convention had provided for a special committee to investigate the problem of representation in the House of Representatives, and thus far this committee had not reported.⁷⁰

Directly bearing upon this same subject was section thirty-six of the committee's report which provided that the Senate "shall not consist of more than fifty members, nor the House of Representatives of more than one hundred."

⁶⁸ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 531-539, 551, 552, 556, 575, Vol. II, p. 1010; *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 195-197, 200, 208, 209.

The Journal of the Convention states that the provision for changing county boundaries was offered as an additional section whereas the Debates of the Convention state that it was to be an addition to section thirty-one of the standing committee's report. In this instance the latter is correct.

⁶⁹ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. II, pp. 1011, 1013; *Journal of the Constitutional Convention of the State of Iowa, 1857*, p. 363.

⁷⁰ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 540, 541, 552, 553, 1011; *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 69, 128.

Mr. Wilson thought that this number was too large and he moved to amend the section so as to fix the limit for membership in the Senate at thirty-six and for the House at seventy-two. Mr. Traer opposed this amendment because he believed that it would be "impossible to give to all parts of the State an equal and fair representation, and believing farther, that a house of large size is less apt to become corrupt and led astray in matters of legislation than a smaller house", he favored the number as set forth in the report. Daniel H. Solomon was opposed to any amendment which threatened to deprive an organized county of a Representative in the General Assembly. He also recognized the inequality in population between the newer and older counties and therefore advocated that the balance of membership in the House should be divided among the more populous counties according to their populations. He proposed, therefore, to strike out "one hundred" as the maximum membership in the House and to leave this space blank. His proposal was concurred in by a narrow margin in the Committee of the Whole, but was later disagreed to in Convention.⁷¹

Before further discussion of this section the report of the Committee on the Basis of Representation was heard. This report recommended that the sections given below be added following section thirty-six of the report on the legislative department:

Section 37. The House of Representatives shall be based upon the several counties of the State in the following manner: *Provided*, That no representative district shall contain more than four organized counties, and shall be entitled to one representative. Any district containing one or more counties, and having a number of inhabitants equal to one-half of the ratio fixed by law, shall be entitled to one representative, and any one county containing in

⁷¹ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 541-543, 553, 554.*

addition to the ratio fixed by law, a fraction of one-half of that number shall be entitled to one additional representative. Provided, further, That no floating district shall hereafter be formed.

Sec. 38. At its first session under this Constitution, and at every subsequent session, the General Assembly shall proceed to fix the ratio of representation and also to form into districts, as above provided, those counties which will not be entitled to a representative singly under the provision of the preceding section.

Mr. Solomon, who was a member of this committee, dissented from the report because it failed to provide a Representative for every organized county in the State. Mr. Traer, chairman of the committee, stated that the only reason that such a provision was not made "was the fact that such a system would make the House too large." Mr. Traer further said that "the Committee fixed upon this plan of allowing the Legislature to settle the ratio and graduate the number of members to suit their convenience, provided that they did not exceed the limit fixed in the Constitution. The advantage of this system is, that it will operate equally well with any ratio which the Legislature may see fit to adopt. It will do away with the old system of districting the State by the General Assembly, prevent a large amount of corruption and gerrymandering for party purposes, and render the representation just and equitable throughout the State. And last, though not least, it will do away with the system of floats with which the newer portions of the State have been cursed for years past."

These new sections were finally adopted in very much the same form as first reported by the special Committee on the Basis of Representation. Section thirty-seven of the special report was attached with slight change in construction to section thirty-six of the original report of the standing committee. Because of conditions already referred to this section appears as section thirty-five of the Constitution. By this combination section thirty-eight of the

report of the Committee on the Basis of Representation became section thirty-six of the Constitution. The latter section received but one amendment by the Convention. This was to add the word "regular" before "sessions" so that the section would then read: "At its first session under this constitution and at every subsequent regular session", etc.⁷²

In section thirty-five of the Constitution provision was made prohibiting the formation of "floating districts". The question arises now and then as to just what was meant by a "floating district". This subject was discussed rather freely by J. C. Hall, D. H. Solomon, Amos Harris, J. C. Traer, A. H. Marvin, and J. A. Parvin in the Constitutional Convention of 1857. From the debates of the Convention, the act providing for the apportionment of the State into districts, and the definition of boundaries of Representative districts of 1857, it may be seen that a floating district was made up of the surplus population of two or more counties beyond the ratio required to secure one or more Representatives, in order to secure additional representation. For example the act above referred to provided in section forty-nine that Van Buren County should constitute the forty-ninth Representative district and have two Representatives. Section fifty-three of this act makes Henry County the fifty-third Representative district with two Representatives; and section forty-three makes Lee County the fifty-fourth district with three Representatives. Section fifty-five, however, constituted all three of the above counties — Lee, Henry, and Van Buren — into the fifty-fifth Representative district with one Representative. This was a floating district, made possible by the fact that each of these counties had a surplus population beyond that

⁷² *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 543-550, 554, 555, Vol. II, pp. 1013-1017, 1077.

required to secure the number of Representatives apportioned to it. Their surplus populations when combined were sufficiently large to demand a Representative in the General Assembly, and the so-called floating district was provided.⁷³

The last section of the report of the standing Committee on the Legislative Department was section thirty-nine which provided for salaries of certain specified State officials including that of the Governor. Some delegates were opposed to having a constitutional provision for this purpose because this matter could easily be provided for by legislation. Others contended that by so doing the executive department would be made somewhat subservient to the legislative department. The salary of judges had already been provided for under the Article on the Judicial Department. After some discussion of the subject and the defeat of a substitute as well as an amendment to the substitute it was agreed to that the section should be stricken from the report and that the salaries of those officials not already provided for in the Constitution should be left subject to legislative enactment.⁷⁴ No other amendments being proposed or additions offered the Article on the Legislative Department it was finally agreed to by the Convention in the following form:

OF THE DISTRIBUTION OF POWERS

Section 1. The powers of the government of Iowa shall be divided into three separate departments: The Legislative, the

⁷³ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 543-548; Laws of Iowa, 1856-1857, pp. 170-174.*

The purpose of a floating district was to give each county a fair representation for its surplus population. One difficulty arose from the fact that the Representative from the floating district was very likely to represent the county of his residence rather than the entire district.

⁷⁴ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 549, 550, 555, 556, 578; Journal of the Constitutional Convention of the State of Iowa, 1857, pp. 199, 210.*

Executive and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT

Section 1. The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives; and the style of every law shall be: "Be it enacted by the General Assembly of the State of Iowa."

Sec. 2. The sessions of the General Assembly shall be biennial, and shall commence on the second Monday in January next ensuing the election of its members; unless the Governor of the State shall, in the meantime, convene the General Assembly by proclamation.

Sec. 3. The members of the House of Representatives shall be chosen every year, by the qualified electors of their respective districts, on the second Tuesday in October, except the years of the Presidential election, when the election shall be on the Tuesday next after the first Monday in November; and their term of office shall commence on the first day of January next after their election, and continue two years, and until their successors are elected and qualified.

Sec. 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years, be a free white male citizen of the United States, and shall have been an inhabitant of this State one year next preceding his election, and at the time of his election shall have had an actual residence of sixty days in the county or district he may have been chosen to represent.

Sec. 5. Senators shall be chosen for the term of four years, at the same time and place as Representatives; they shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship.

Sec. 6. The number of Senators shall not be less than one-third, nor more than one-half the Representative body; and shall be so classified by lot, that one class being as nearly one-half as possible, shall be elected every two years. When the number of Senators is increased, they shall be annexed by lot to one or the other of the two classes, so as to keep them as nearly equal in numbers as practicable.

Sec. 7. Each House shall choose its own officers, and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

Sec. 8. A majority of each House shall constitute a quorum to transact business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each House may provide.

Sec. 9. Each House shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and, with the consent of two-thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

Sec. 10. Every member of the General Assembly shall have the liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either House, on any question, shall, at the desire of any two members present, be entered on the journals.

Sec. 11. Senators and Representatives, in all cases, except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

Sec. 12. When vacancies occur in either House, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancies.

Sec. 13. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

Sec. 14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Sec. 15. Bills may originate in either House, and may be amended, altered, or rejected by the other; and every bill having passed both Houses, shall be signed by the Speaker and President of their respective Houses.

Sec. 16. Every bill which shall have passed the General Assembly, shall, before it becomes a law, be presented to the

Governor. If he approves, he shall sign it; but if not, he shall return it with his objections, to the House in which it originated, which shall enter the same upon their journal, and proceed to reconsider it; if, after such reconsideration, it again pass both Houses, by yeas and nays, by a majority of two-thirds of the members of each House, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, (Sunday excepted), the same shall be a law in like manner as if he had signed it, unless the General Assembly, by adjournment, prevent such return. Any bill submitted to the Governor for his approval during the last three days of a session of the General Assembly, shall be deposited by him in the office of the Secretary of State within thirty days after the adjournment, with his approval if approved by him, and with his objections if he disapproved thereof.

Sec. 17. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

Sec. 18. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at every regular session of the General Assembly.

Sec. 19. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

Sec. 20. The Governor, Judges of the Supreme and District Courts, and other State officers, shall be liable to impeachment for any misdemeanor or malfeasance in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanors and malfeasance in office, in such manner as the General Assembly may provide.

Sec. 21. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the

emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

Sec. 22. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to hold a seat in the General Assembly: But offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmaster, whose compensation does not exceed one hundred dollars per annum, or notary public, shall not be deemed lucrative.

Sec. 23. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the General Assembly, or be eligible to hold any office of trust or profit in this State, until he shall have accounted for and paid into the treasury all sums for which he may be liable.

Sec. 24. No money shall be drawn from the treasury but in consequence of appropriations made by law.

Sec. 25. Each member of the first General Assembly under this Constitution shall receive three dollars per diem while in session; and the further sum of three dollars for every twenty miles traveled in going to and returning from the place where such session is held, by the nearest traveled route; after which they shall receive such compensation as shall be fixed by law; but no General Assembly shall have the power to increase the compensation of its own members. And when convened in extra session they shall receive the same mileage and per-diem compensation as fixed by law for the regular session, and none other.

Sec. 26. No law of the General Assembly, passed at a regular session, of a public nature, shall take effect until the fourth day of July next after the passage thereof. Laws passed at a special session shall take effect ninety days after the adjournment of the General Assembly by which they were passed. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the State.

Sec. 27. No divorce shall be granted by the General Assembly.

Sec. 28. No lottery shall be authorized by this State; nor shall the sale of lottery tickets be allowed.

Sec. 29. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which

shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

Sec. 30. The General Assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for State, county, or road purposes;

For laying out, opening, and working roads or highways;

For changing the names of persons;

For the incorporations of cities and towns;

For vacating roads, town plats, streets, alleys, or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.

Sec. 31. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly.

Sec. 32. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear, (or affirm, as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability." And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

Sec. 33. The General Assembly shall, in the years one thousand eight hundred and fifty-nine, one thousand eight hundred and sixty-three, one thousand eight hundred and sixty-five, one thousand eight hundred and sixty-seven, one thousand eight hundred and

sixty-nine, and one thousand eight hundred and seventy-five, and every ten years thereafter, cause an enumeration to be made of all the white inhabitants of the State.

Sec. 34. The number of Senators shall, at the next session following each period of making such enumeration, and the next session following each United States census, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each.

Sec. 35. The Senate shall not consist of more than fifty members, nor the House of Representatives of more than one hundred; and they shall be apportioned among the several counties and representative districts of the State according to the number of white inhabitants in each, upon ratios to be fixed by law; but no representative district shall contain more than four organized counties, and each district shall be entitled to at least one Representative. Every county and district which shall have a number of inhabitants equal to one half of the ratio fixed by law, shall be entitled to one Representative; and any one county containing in addition to the ratio fixed by law one half of that number, or more, shall be entitled to one additional Representative. No floating district shall hereafter be formed.

Sec. 36. At its first session under this Constitution, and at every subsequent regular session, the General Assembly shall fix the ratio of representation, and also form into representative districts those counties which will not be entitled singly to a Representative.

Sec. 37. When a Congressional, Senatorial, or Representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a Congressional, Senatorial, or Representative district.

Sec. 38. In all elections by the General Assembly, the members thereof shall vote viva-voce; and the votes shall be entered on the journal.⁷⁵

A comparison of the Article on the Legislative Department adopted by the Constitutional Convention of 1857 with that of the Constitution of 1846 shows that while a number of changes were made in construction, there were

⁷⁵ *Journal of the Constitutional Convention of the State of Iowa, 1857, Appendix, pp. 6-11.*

but few changes of material importance. The time for convening the General Assembly was changed from the first Monday in December to the second Monday in January following the election of its members; and the time of holding elections was changed from the first Monday in August to the second Tuesday in October, except on the years of the presidential election when it was to correspond with the latter date in order to avoid the unnecessary expense of a double election. Residence in the county for candidates to the General Assembly was changed from thirty to sixty days.

A number of new provisions were added to this article. The Governor must deposit all bills submitted to him within the last three days of the session with the Secretary of State within thirty days following the adjournment, together with his approval if he approved, or the reasons for objection if he disapproved. Section seventeen was entirely new. It required the assent of a majority of all members of each branch of the General Assembly for the passage of bills, as well as a vote upon the final passage of a bill immediately following its last reading, and the entry of the vote upon the journal. Section thirty was also new. It prohibited the General Assembly from passing local or special laws in a number of specifically enumerated cases where a general law could be made applicable. This has done away with a great deal of special legislation on a number of subjects. Up to the time that this provision was adopted, "cities had been incorporated with special charters differing from each other in many details, and even in very important particulars, so that the legislature could not pass laws relating to city government without taking into account many different special charter provisions."⁷⁶ Even at the present time four cities, namely, Davenport,

⁷⁶ McClain's *The Constitutional Convention and the Issues Before It*, p. 33.

Muscatine, Wapello, and Camanche, retain their special charters. Owing to this fact confusion frequently arises because of the necessity of providing special legislation for them. While the legislature possesses the authority to abolish these special charters, it has thus far failed to do so. Section thirty-one which was a new addition, prohibits the the payment of extra compensation "to any officer, public agent, or contractor, after the services shall have been rendered, or the contract entered into". Section thirty-five, which was also new in part, limited the number of Senators to fifty and the number of Representatives to one hundred. This section also prohibits the establishment of floating Representative districts. The provision in the Constitution of 1846 specifying the salary of the Governor and certain other State officials was entirely omitted in the Constitution drawn up by the Constitutional Convention in 1857.

AMENDMENTS TO THE ARTICLE ON THE LEGISLATIVE
DEPARTMENT

The Constitution of Iowa drawn up by the Convention of 1857 remained in operation for a period of eleven years without amendment. Following the Civil War and the abolition of slavery, however, certain changes in the Constitution became necessary to make it conform with changes that were being proposed in the Federal Constitution. In accordance with the provision of the Constitution providing for its amendment the General Assembly of Iowa in regular session in 1866 proposed a series of amendments to the Constitution, among which were three relating to the Article on the Legislative Department.

The Amendments of 1868.—These three amendments respectively proposed to strike the word "white" out of sections thirty-three, thirty-four, and thirty-five of Article III so that the census enumeration of the State should in-

clude not only its white inhabitants but all of its inhabitants regardless of color, race, or previous condition of servitude. All of the inhabitants of the State were to be included also in the apportionment of Senators and Representatives. These amendments as introduced in the General Assembly in 1866 were agreed to by both houses and referred to the next General Assembly in accordance with the provisions for amendment laid down by the Constitution.⁷⁷

When the Twelfth General Assembly convened in 1868 the amendments agreed upon by the previous legislature were referred to them for their consideration, and all of the amendments pertaining to the Article on the Legislative Department were agreed upon.⁷⁸ Thus, two important steps in the process of amendment were completed and it now remained for the people to determine whether or not these amendments should be adopted. At the general election held on November 3, 1857, all of the above amendments carried by over twenty-four thousand majority.⁷⁹ All of this series of amendments, five in number, had to do with the political status of the negro in Iowa, and all were adopted by practically the same majority vote. By these amendments the political rights and privileges of people of color were greatly enlarged.

The Amendment of 1880.—In 1878 the Seventeenth General Assembly of Iowa proposed to remove from the Constitution the last restriction discriminating between free white male citizens and other male citizens of the United States. This was in point of fact a proposal to

⁷⁷ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 260, 261.

⁷⁸ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 261-265.

⁷⁹ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 265-267; Erbe's *Constitutional Provisions for the Suffrage in Iowa* in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XXII, p. 211.

remove the last political distinction between the white citizens and citizens of color who inhabited the State. The proposal came in the form of an amendment to the Constitution, and proposed to strike from section four of the Article on the Legislative Department the words "free white" so that citizens of color would not be disqualified for membership in the House of Representatives if they met all the other requirements for this office. The amendment was passed by both houses of the General Assembly and received the official sanction of Governor John H. Gear on March 15, 1878.⁸⁰ The amendment was then referred to the Eighteenth General Assembly in 1880, adopted by it and approved on March 12, 1880. At the same time that this amendment was adopted by the Eighteenth General Assembly provision was made for its submission to the people for their sanction or rejection. On November 2, 1880, the people ratified the proposed amendment by a vote of 90,237 for adoption and 51,943 against adoption. The amendment was certified adopted on December 3, 1880.⁸¹

The Amendment of 1884.—During the session of the Nineteenth General Assembly in 1882, Warren S. Dungan, a Representative from Lucas County, proposed a series of amendments to the Constitution of Iowa. The first of these amendments related to changing the time of the regular election, and read as follows: "The general election for State, district, county, and township officers shall be held on the Tuesday next after the first Monday in November." This amendment passed the Nineteenth General Assembly as presented, and having received the Governor's approval was referred to the next General Assembly.⁸²

⁸⁰ *Laws of Iowa*, 1878, p. 178.

⁸¹ *Laws of Iowa*, 1880, p. 215; Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 272; *Iowa Official Register*, 1923-1924, p. 36.

⁸² *Journal of the House of Representatives*, 1882, pp. 6, 54; *Laws of Iowa*, 1880, p. 180.

When the Twentieth General Assembly convened two years later, the amendment in question received the approval of both houses, and the official signature of the Governor was attached thereto on March 29, 1884. The remaining steps necessary for its submission to the electorate having been taken, the proposed amendment, along with three others of the series, was submitted to the voters at the regular election held on November 4, 1884, and was ratified by a vote of 89,342 for adoption, and 14,940 against.⁸³

Apparently there was little objection to this amendment which became section seven of the Article on Suffrage, for very little space was given to comment in the newspapers of the time upon the whole series of amendments. This may in part be accounted for by the fact that the people were more interested and absorbed in the national election which resulted in the choice of a Democratic president, than they were in their own local affairs. The chief reason, however, for the lack of newspaper comment, was, no doubt, the fact that the amendment in no way affected the fundamental rights of the people and was really a desirable change because it established uniformity in the time for holding elections. Prior to the adoption of this amendment State elections were held on the second Tuesday in October, except in the years of the presidential election, when such elections were held on the first Tuesday after the first Monday in November.⁸⁴

The Amendments of 1904.—During the session of the Twenty-ninth General Assembly in 1902 the question arose in regard to repealing two of the sections just discussed, namely, sections thirty-four and thirty-five, and in addition

⁸³ *Laws of Iowa*, 1884, p. 234; Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 280; *Iowa Official Register*, 1923-1924, p. 37.

⁸⁴ Constitution of Iowa, Art. III, Secs. 3, 5, Art. IV, Sec. 2.

section thirty-six of the Article on the Legislative Department, and substituting new provisions in their respective places. Section thirty-four related to the apportionment of State Senators; section thirty-five dealt with the maximum number of Senators and Representatives and their apportionment according to population; and section thirty-six dealt with the ratio of representation. The General Assembly in 1902 passed an amendment to repeal these sections and to substitute the following in lieu thereof:

Section 34. The senate shall be composed of fifty members, to be elected from the several senatorial districts, established by law, and at the next session of the General Assembly held following the taking of the state and national census, they shall be apportioned among the several counties, or districts of the state according to population as shown by the last preceding census.

Sec. 35. The house of representatives shall consist of not more than one hundred and eight members. The ratio of representation shall be determined by dividing the whole number of the population of the state as shown by the last preceding state or national census, by the whole number of counties then existing or organized, but each county shall constitute one representative district and be entitled to one representative but each county having a population in excess of the ratio number as herein provided, of three-fifths or more of such ratio number, shall be entitled to one additional representative, but said addition shall extend only to the nine counties having the greatest population.

Sec. 36. The General Assembly shall, at the first regular session held, following the adoption of this amendment, and at each succeeding regular session held next after the taking of such census, fix the ratio of representation, and apportion the additional representatives, as hereinbefore required.⁸⁵

At the same time that the above amendment was introduced the Thirty-ninth General Assembly also proposed to add as section 16 to the Article on Schedule a provision for the holding of elections in November of the even numbered years. This proposal was referred to as the "biennial

⁸⁵ *Laws of Iowa*, 1902, p. 198.

election amendment", although the elections for State officials were already biennial. What this amendment was really designed to do was to change the date of the biennial elections from the odd to the even numbered years. It also changed the date of the regular session of the General Assembly from January of the even numbered years to January of the odd numbered years.

Under the old scheme a State election was held in 1859, a national election in 1860, a State election in 1861, a State election in 1863, and so on. Accordingly, three elections were held in the State during every period of four years. According to the amendment proposed a State election would be held in 1906 instead of 1905, then in 1908 both State and national elections would occur, followed again in 1910 by a State election, and so on. Under this system only two elections would be held in the State during every period of four years, thereby making elections occur biennially.

By the provisions of the amendment now under discussion all Representatives and Senators who would otherwise be elected in the year 1905 would be elected at the same time in the year 1906. Likewise, all Senators who would regularly be chosen in the year 1907 would be elected in the year 1908. As a consequence, the terms of Representatives and Senators affected by these provisions were extended one year.

A proposal similar to this had been ratified by the people in 1900, but was declared unconstitutional by the Supreme Court in the case of *State ex rel. Bailey v. Brookhart*, 113 Iowa 250, owing to the fact that it was not entered in full upon the journal of the House.

The foregoing amendments as proposed and adopted by the Twenty-ninth General Assembly were referred in the regular manner to the Thirtieth General Assembly which convened in January, 1904, and were adopted by it. Provision was also made at this time for referring these

proposed amendments to the people at the general election to be held in the autumn. At this election which occurred on November 8, 1904, the amendment relating to the apportionment of State Senators and Representatives was ratified by a vote of 171,385 for, and 165,076 against adoption, a majority in favor of this amendment of only 6309. Out of the ninety-nine counties in the State, fifty-three voted against the amendment and but forty-six for it. At the same election the biennial elections amendment was ratified by a vote of 198,974 for, and 176,251 against adoption. Both amendments were certified adopted by Governor Albert B. Cummins on November 29, 1904.⁸⁶

The Amendment of 1916.—No other changes were made relating to the time for holding elections until 1916, when an amendment, introduced by Ulysses G. Whitney, Representative from Woodbury County, and approved by the Thirty-fifth and Thirty-sixth General Assemblies in a slightly modified form, was ratified by the people. This amendment proposed to substitute the following section for section seven of Article II of the Constitution of Iowa:

The general election for state, district, county and township officers in the year 1916 shall be held in the same month and on the same day as that fixed by the laws of the United States for the election of presidential electors, or of president and vice-president of the United States; and thereafter such election shall be held at such time as the general assembly may by law provide.⁸⁷

The traveling men of the State desired to have the date of election changed from Tuesday to Monday. They were nearly always compelled to leave home on Monday morning, and if they desired to vote on Tuesday, it was necessary for

⁸⁶ *Laws of Iowa*, 1904, p. 208; *Iowa Official Register*, 1905, pp. 377, 378, 424, 1923-1924, p. 38; Ramsay's *The Constitution of the State of Iowa and Amendments from 1857 to 1919*, p. 68.

⁸⁷ *Laws of Iowa*, 1913, p. 422.

them to return home. In many instances this was impossible. The State Constitution as amended in 1884 and 1904 fixed the date of election as the first Tuesday after the first Monday in November, and in order to change the time set for such election it would be necessary to amend the fundamental law of the State.

Moreover the traveling men of the United States were supporting a bill in Congress the object of which was to fix Monday as the day on which to hold national elections. Some of the Iowa legislators were assured that this bill would very likely pass, and if so, a double election would result in the State unless some provision was made for a change.

The original draft of the amendment proposed by Mr. Whitney was offered "with the purpose in view of so shaping our constitution that we would automatically follow the federal statutes in holding our state elections."⁸⁸

This amendment was adopted by the House of the Thirty-fifth General Assembly by a vote of sixty-six to four. Thirty-eight members were absent or failed to vote. In the Senate the proposed amendment was passed by a vote of thirty-four to one, fifteen members failing to record their vote upon the measure. The proposal was then sent to the Governor and received his approval on April 8, 1913.⁸⁹

The joint resolution was then referred to the Thirty-sixth General Assembly in 1915. It passed the House by a vote of ninety-three to two — thirteen members being absent or failing to vote. In the Senate the vote was twenty-eight for and twelve against adoption, ten members failing to vote. The joint resolution was then sent to the Governor for his sanction, and was approved by him on April 17,

⁸⁸ Quoted from a personal letter of Mr. Whitney to the author.

⁸⁹ *Journal of the House of Representatives*, 1913, pp. 1513, 1681, 1682; *Journal of the Senate*, 1913, pp. 1585, 1586; *Laws of Iowa*, 1913, p. 422.

1915. Following the receipt of the Governor's approval the proposed amendment was submitted to the voters and ratified at the regular election held on November 7, 1916.⁹⁰

The question is frequently raised, why has the power granted to the General Assembly under this amendment never been exercised? The answer to this lies largely in the fact that Congress has not changed the date of national elections and the Thirty-sixth General Assembly passed an act enabling voters who are absent from their place of residence on the day of election to vote by mail. This act is sometimes spoken of as the "Absentee Voters Law". It was passed in 1915 by the same General Assembly that approved the amendment granting to the General Assembly the right to fix the date of election.⁹¹ Both were undoubtedly intended to remedy the same evil. Since one has served the purpose, the other has not been used.

Proposed Amendment of 1925.— Since the adoption of the Nineteenth Amendment to the Federal Constitution declared to be effective on August 26, 1920, the question has come up in Iowa as to whether women, who under its provisions enjoy all of the privileges of qualified electors, are entitled to hold a seat in the General Assembly of the State. Section four of the Article on the Legislative Department in the Constitution states that to qualify for membership in the House of Representatives, a person must "be a free male citizen of the United States". Section five of this same article provides that to qualify for membership in the Senate one "shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship." These provisions of the Constitution

⁹⁰ *Journal of the House of Representatives*, 1915, pp. 569, 1931, 1993; *Journal of the Senate*, 1915, pp. 1696, 1697, 1869; *Laws of Iowa*, 1915, pp. 263, 264; *Iowa Official Register*, 1923-1924, (Note) p. 38.

⁹¹ *Laws of Iowa*, 1915, pp. 203-207, 263, 264.

have generally been interpreted as excluding women from membership in the General Assembly, although all other public offices were automatically thrown open to them when they became electors.⁹²

Having this constitutional limitation upon the political equality of men and women in mind, Governor N. E. Kendall in addressing the Fortieth General Assembly of Iowa on January 11, 1923, said, "I earnestly urge that the first measure adopted by you may be for the removal from constitution and statute of every discrimination there existing against the enjoyment by women of every prerogative now exercised by men."⁹³

Following the recommendation of the Governor, S. L. Graham of Wapello County and A. O. Hauge of Polk County introduced a joint resolution in the House of Representatives which proposed to strike out the word "male" from section four of the Article on the Legislative Department. The resolution as introduced was somewhat amended, retaining however, its intent. It was then passed by both houses and approved by the Governor on February 23, 1923.⁹⁴ This proposed amendment was submitted to the Forty-first General Assembly which convened on the second Monday in January, 1925. It was passed by both houses and was approved by the Governor on March 9, 1925. Provision was made for its submission to the voters at the general election to be held in November, 1926.

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⁹² Erbe's *Constitutional Provisions for the Suffrage in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXII, pp. 215, 216.

⁹³ *Journal of the House of Representatives*, 1923, pp. 153, 162.

⁹⁴ *Journal of the House of Representatives*, 1923, pp. 264, 284, 564, 706; *Journal of the Senate*, 1923, pp. 430, 503, 504, 633; *Laws of Iowa*, 1923, p. 427.