STATUTORY BEGINNINGS OF COURTS IN IOWA MUNICIPALITIES

In undertaking a survey of the statutory beginnings of the judicial machinery of the towns and cities of Iowa we are impressed by the prominence accorded to the mayors in the municipal administration of justice. In the more than 900 incorporated cities and towns in this State, there are but six municipal courts,[1] six superior courts,[2] and ten police courts. All the other cities and towns are served by a mayor's court. In every case, the mayor was looked upon as the chief judicial functionary of the town before the adoption of the now existing court.

The fact that so many of the towns and cities of the State are so dependent upon the mayor in this matter makes a consideration of the office of mayor a matter of prime importance in studying the historical and statutory development of city courts in Iowa. From the historical standpoint, at least, the mayor's court is the basis of all our city courts. Accordingly, a glance at the development of this office is not without value.

Consulting the books for an etymological definition of the word "mayor" we turn the pages far back into the past. The word is from the Latin, the comparative of the word "magnus". It was in the kingdom of the Merovingian Franks that the term acquired a meaning bearing on its future application to the chief officer of the city govern-

[1] Ames, Clinton, Council Bluffs, Des Moines, Marshalltown, and Waterloo. — *Iowa Official Register,* 1931-1932, p. 183.

[2] Cedar Rapids, Grinnell, Iowa Falls, Keokuk, Oelwein, and Shenandoah.— *Iowa Official Register,* 1931-1932, p. 184; *Code of 1931,* Secs. 6530, 6651.

ment. The most important officer of the royal household was the mayor of the palace who was also the chief governor of Paris. The history of the period relates the story of how these "climbers" converted the weakness of the Merovingian rulers to their own advantage and in time became the rulers in name as well as in fact.

Wherever French ideas, influence, or customs were carried, the word "mayor" came into use; so at the present time we find forms of the word in France, Great Britain, Germany, Portugal, and in various parts of the British Empire.[3]

It is in England that we have the beginning of these functions and activities which we commonly associate with the office of the "mayor". Just what those beginnings were we are unable to say. Those long ago centuries are but fitfully lit, and here and there the dim twilight that partially discloses facts and forms becomes complete darkness. Beyond that lies conjecture and guess work. It is believed, however, that the office existed in fact for some time before it was recognized and defined by the municipal charters. It is generally accepted that there was no mayor in London prior to 1189, and there was a mayor by 1193. Norman influence was strong in London. The use of the term "mayor" to designate the chief officers in cities was common in northern France before 1189 and the application of this Frankish term to the portreeve, or head officer, of English cities was a natural result.

During the Thirteenth, Fourteenth, and Fifteenth Cen-

[3] Norton's *Commentaries on the History, Constitution, and Chartered Franchises of the City of London,* p. 68. For further discussion on the historical background of the mayor's office see Fairlie's *Essays on Municipal Administration,* p. 20; McQuillen's *A Treatise on the Law of Municipal Corporations,* Vol. II, Sec. 433; Stubbs's *Constitutional History of England,* Vol. III, p. 485; and Pfiffner's *The Mayor in Iowa* in *Applied History,* Vol. V, pp. 255–259.

turies English municipal government was slowly shaped.[4] By the end of the Fifteenth Century, the doctrine of the legal personality of the borough had been developed and the mayor as the chief magistrate was a permanent part of the organization. This does not, to be sure, mean the mayor as we think of him, the chief executive office of the municipality. The mayor was but one member of the close corporation which was either created by charter or recognized by custom. The general powers of the corporation depended upon the charter terms and upon the local usage or practice.

During the Seventeenth and Eighteenth Centuries the English mayor had important if somewhat varying powers. The scope and character of his powers depended greatly upon the provisions made for them in the borough charters. Borough administration was, for the most part, vested in the hands of the council, though the mayor had more power in these matters than he was to have in the New World during colonial days. The mayor was the presiding officer of the council and had the judicial powers of a justice of the peace.[5] In all judicial matters he was the chief magistrate. He presided alone or with the recorder in whatever courts the borough maintained. He served as coroner for the borough and was the keeper of the borough gaol.

The American colonists built along the same lines, adopt-

[4] An examination of the charters granted to the city of London by the King during these centuries is illuminating in this connection. A good discussion of these charters is to be found in Book II of Norton's *Commentaries on the History, Constitution, and Chartered Franchises of the City of London.*

[5] To trace the development of the justice of the peace is a full-sized task in itself. Charles A. Beard has treated this in his doctoral dissertation on *The Office of Justice of the Peace in England,* in *Columbia University Studies in History, Economics, and Public Law,* Vol. XX. The "conservation of the peace" is now and has always been one of the chief functions of the mayor. It is through taking on the jurisdiction and powers of the justice of peace that this accrues to him.

ing insofar as was practicable the offices with which they were familiar. The mayor in colonial America was a part of the council and its presiding officer, as was the chief magistrate of European cities or the cities of England. The mayor as an independent officer, however, is a peculiarly American institution, a product of our philosophy of separation of powers and checks and balances. This is a development of the Nineteenth Century and, in its final form, brings the "strong mayor" full statured, sturdy and vigorous, filling a commanding position in the municipal governments.

The colonial mayor was the presiding officer of the council and in most cases had a vote as did other council members, but he had no veto or appointing power. His judicial powers were limited though he had the responsibility of trying various petty suits at law and holding coroner's inquests. Certain other lesser functions were given to him, varying with the different towns and charters or with local practices. Although the mayor and aldermen, as ex officio justices of the peace, tried minor cases individually they acted as a body in determining appeals. The judicial functions of the mayor, however, were no greater than those of the aldermen or the recorder, for that matter, since they were all justices of the peace during their term of office, and had the usual summary jurisdiction over petty criminal and civil cases. Then, too, the mayor, recorder, and aldermen of each borough often sat together as the local court of record, with a regular time for meeting during which it tried some of the more important cases. Occasionally this group served also as members of the county court.

With the Revolution won and the necessity of forming a new national organization forced upon the people, we find much thought given to new political ideas. All government in this country was in a plastic and formative period.

Municipalities quickly yielded to the new order and incorporated similar features in their organization when they revised their charters as not a few of them did in the late Eighteenth Century and in the opening years of the Nineteenth Century. The Baltimore charter of 1796 is an example of this movement. It is in this period when the mayor's power was growing that the movement across the Alleghenies into the Northwest Territory took place and it was while this power was still increasing that the settlement of the great Mississippi Valley began. The position of the mayor in Iowa and in the trans-Mississippi West may be traced from a period when his power was expanding.

A glance at the charters given by the legislatures in 1839 and 1840 shows the variations in the state of the mayorship at this time. In one series of incorporations the officers prescribed for the town were a president, recorder, and three trustees. The president, recorder, and trustees were a body corporate and politic, with the power to ordain and establish by-laws, rules, and regulations for the government of the town. Under this plan it was the duty of the president to preside at all meetings of the town council. This was the older collegiate form carrying over.

In the other group, the officers prescribed for the town were the mayor and aldermen who were to have the power of making and establishing by-laws and ordinances for the government of the city. Under this plan the mayor, although required by the charter to attend and preside at all council meetings, had no vote except in case of a tie.

As the duties became more extensive, we find that the mayors in the larger centers no longer had the time, or the facilities, for exercising the rather considerable criminal and civil jurisdiction of the earlier American mayors. As a result these duties were transferred to specialized offi-

cials who could devote entire attention to the problem. In New York City, for example, the powers of the mayor's court were given over to the recorder's court. But in the smaller towns and cities of the country, the mayor's court continued active and still plays an important rôle in the local administration of justice.

In Iowa, as in the other States of the New West, the first system of government set up was more than likely to be the county or township government or both, and within these districts justices of the peace served.[6] They were usually elected locally to take care of the petty local judicial functions required in rural districts although their jurisdiction as a general thing extended beyond their own bailiwick and to the boundaries of the entire county. A glance at the beginnings of local government in the Iowa country is not without value in this matter.

The forms of local government in Iowa came from the seaboard States, through the Northwest Territory, the Territory of Michigan, and the Territory of Wisconsin.[7] The first provision for the western territory was made on September 2, 1834, by the Sixth Legislative Council of the Territory of Michigan which was meeting in an extra session at Detroit. On that date the Governor of Michigan Territory suggested in a message to the Council that it take up the matter of establishing a system of local government west of the Mississippi River — referring to the territory included in the Black Hawk Purchase. The result was "An Act to lay off and organize counties west of the Mississippi River", which was approved on September 6, 1834.[8]

[6] Aurner's *History of Township Government in Iowa*, pp. 107–113.

[7] Shambaugh's *Documentary Materials Relating to the History of Iowa*, Vol. I, p. 49.

[8] *Laws of Michigan and Wisconsin, 1834–1836*, p. 278. See also Garver's *History of the Establishment of Counties in Iowa* in THE IOWA JOURNAL OF

This act provided for two counties, Dubuque and Demoine (Des Moines), each of which was to constitute a single township. The county and township lines were the same. It was evidently the intention of the legislature to place the government of the county and township in the hands of a single board.[9]

The act further provided that all laws then in force in the "County of Iowa", not locally inapplicable, should be extended to the counties of Dubuque and Demoine. The "County of Iowa" referred to a county of the Territory of Michigan, located east of the Mississippi River, which had been established in 1829.[10] It would seem then that the laws governing the two original counties of Iowa were adopted from laws of an earlier date, which were already in effect in Michigan Territory. The affairs of local government at this time, it appears, were placed largely in the hands of a board of supervisors, who had the functions of both township and county officers.[11] Judicial officers were appointed by the Governor and included judges of the county and probate courts, clerks of court, justices of the peace, and notaries public.

When a part of the Territory of Michigan was admitted as a State, the remainder was organized as the Territory of Wisconsin by an Act of Congress, approved on April 20, 1836.[12] The Iowa country was included in the new jurisdiction. At the first session of the Wisconsin legislature at Belmont in 1836 an act was passed dividing the county of

HISTORY AND POLITICS, Vol. VI, p. 380; Swisher's *History of the Organization of Counties* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XX, pp. 490–494.

[9] Aurner's *History of Township Government in Iowa*, pp. 18, 19.

[10] *Laws of the Territory of Michigan*, Vol. II, p. 714.

[11] *Laws of the Territory of Michigan*, Vol. II, pp. 317, 584.

[12] *United States Statutes at Large*, Vol. V, p. 10.

Des Moines (this the spelling now) into several new counties. This act was approved on December 7, 1836, and went into effect immediately.[13]

That the justices of the peace were officers of considerable importance in this day of scanty settlement and long distances is indicated by the Wisconsin statute prescribing their powers and duties and regulating their proceedings, which was approved on January 17, 1838. The act provided that the Governor should appoint in each of the organized counties of the Territory as many justices of the peace as in his opinion were required for the public good and the wants of the people. The term of service of a justice of the peace at that time was four years. The law made elaborate provision for the procedure and jurisdiction of the justice of the peace.[14]

On June 12, 1838, Wisconsin Territory was divided[15] and that part of the Territory lying west of the Mississippi River and west of a line due north from the source of that river was formed into a new Territory to be known as the Territory of Iowa.

The first session of the Legislative Assembly of the Territory of Iowa was held at Burlington on October 12, 1838, in the old Zion Methodist Church.[16] On January 21, 1839, the legislature passed an act to provide for the appointing of justices of the peace, to prescribe their powers and duties, and to regulate their proceedings. It is a comprehensive sketch of powers and duties, forty-two pages in length, and would seem to indicate the course of justice in the new country.

At first no distinction was made between the responsi-

[13] *Laws of the Territory of Wisconsin,* 1836–1838, p. 76.

[14] *Laws of the Territory of Wisconsin,* 1836–1838, pp. 309–357.

[15] *United States Statutes at Large,* Vol. V, p. 235.

[16] *Iowa Historical Record,* Vol. IV–VI (1888–1890), pp. 516–522.

bility placed on the justices of the peace before and after an increase in population led to the establishment and incorporation of towns. There was in these first towns no evidence of a mayor's court as such. It would seem that the justice of the peace functioned in the same way after the formation of a town as before. For example, on December 6, 1836, the legislature of the Territory of Wisconsin passed an act to incorporate such towns as wished to be incorporated. There is no mention in this act of any particular court for the town, though it is stated that the president and trustees may impose fines for the breach of the town ordinances, which fines, together with the costs of the suit, may be recovered before any justice of the peace by action of debt, in the name of the president and trustees of such town, and may be collected by execution as other judgments of the justices of the peace.[17]

In 1838, the Council and House of Representatives of the Territory of Wisconsin passed two acts of incorporation for Iowa towns, Burlington and Fort Madison each receiving a special charter on January 19, 1838.[18]

In the Burlington charter the mayor was made a conservator of peace within the city, but all trials for the violation of the by-laws, ordinances, and regulations of the city were to be before a justice of the peace. The justices of the peace resident in the city also had the power, as well as the duty, to issue all needful process for the apprehension of offenders against the laws, ordinances, and regulations of the city, to hold court for the trial of such offenders within the city, and to fine or imprison those found guilty, as the ordinances of the city and the facts of the case might require. For that purpose the justices of the peace were authorized and required to summon a jury when necessary.

[17] *Laws of the Territory of Wisconsin,* 1836–1838, p. 68, Sec. 8.

[18] *Laws of the Territory of Wisconsin,* 1836–1838, pp. 470, 481.

This was supplemented by a provision that no person should be deprived of his or her liberty for any offense, or fined in a sum greater than twenty dollars, unless convicted of such offense by a jury of twelve citizens of the city who were also qualified voters. All offenders, on conviction, were liable for the costs of prosecution, and judgment was to go accordingly.

In case of acquittal the judgment was to be paid by the municipal corporation. In cases arising under the municipality, the common council was also required to fix by ordinance the fees of the jurors, as well as the fees of the justice of the peace, marshal, and all other officers. All process in behalf of the city was to be executed, served, and returned by the marshal. It was to run in the name of the United States and was to conform to all requisitions and provisions made by the mayor and aldermen in common council.

In the Fort Madison charter the president and trustees of the town were given the power to impose appropriate fines for breaches of city ordinances, and to provide for their collection.[19] Nothing is said about the agencies which are to be employed in hearing these cases.

At the first session of the Territorial legislature of Iowa at Burlington in 1838, charters were granted to Bloomington and Davenport.[20] By the terms of the Bloomington charter, granted on January 23, 1839, the president and trustees of the town were given the power to impose fines for ordinance violations.[21] In the charter granted to Davenport two days later the mayor, recorder, and trustees were given the power to impose a fine not exceeding $12.00 for a breach of ordinances. This was to be recovered, with

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

[20] *Laws of the Territory of Iowa*, 1838-1839, pp. 248, 265.

[21] *Laws of the Territory of Iowa*, 1838-1839, p. 250.

costs, before a justice of the peace, by an action of debt in the name of the corporation.[22] The justice of the peace, it would seem from this, was the judicial officer of Davenport at this date.

At the second session of the Iowa Territorial legislature in 1839-1840, Salem and Dubuque were given charters.[23] The Salem charter, approved on January 14, 1840, contained the same provisions as did the Bloomington charter with regard to fines, and said nothing concerning the judicial administration of the town ordinances.

The Dubuque charter was approved on January 17, 1840. It provided that the mayor and aldermen should have the power to fix reasonable fines for violations of ordinances of the corporation. But no person could be fined more than $50.00 for one offense against an ordinance. This fine was recoverable by an action of debt before any justice of the peace or any magistrate of competent jurisdiction within the city.

The council was also required to appoint a marshal for the city. It was to be his duty to execute and return all process directed to him by the mayor or any justice of the peace within the corporation in the name of the mayor and the aldermen of the city of Dubuque. The marshal's authority, duties, fees, and liabilities were to be the same as those of a constable in the county.[24]

The dependence of local justice upon the justice of the peace may also be seen from an act passed on August 1, 1840, which provided that the precinct in which Mount Pleasant in Henry County was situated be allowed to elect three justices for that precinct.[25]

[22] *Laws of the Territory of Iowa,* 1838-1839, p. 266.

[23] *Laws of the Territory of Iowa,* 1839-1840, pp. 72, 124.

[24] *Laws of the Territory of Iowa,* 1841-1842, p. 120.

[25] *Laws of the Territory of Iowa,* 1840, p. 51.

The next year — 1841 — Farmington, Nashville, and Iowa City were given charters. These charters do not go into the matter of judicial administration save for a clause in each giving the president and the councilmen the power "to fix to the violation of the by-laws and ordinances of the corporation such reasonable fines and penalties as they may deem proper."[26]

At the same session of the legislature an act was passed providing for the election of additional justices of the peace and constables in the towns of Montrose and Keokuk, in Lee County, at Jefferson and Salem, in Henry County, and at Philadelphia, in Van Buren County.[27] The justice, it would appear, was still carrying the heavy load in local litigation.

In 1842, Davenport and Fort Madison were given new charters.[28] In the charter granted to Davenport, the mayor and aldermen were given the power to fix and impose fines and penalties for breaches of city ordinances, provided the fine was not over $20. This fine and the costs of the suit could be recovered before any justice of the peace, or court, having jurisdiction of the matter by an action of debt in the name of the corporation. The person fined was to remain in the custody of the marshal until the debt and the costs were paid, or be imprisoned not more than four months in the common jail, or in the guardhouse of the community. The person fined in such a fashion, however, was given the right of appeal to the district court of the county. The charter for the town of Fort Madison provided a similar arrangement.

At the same session of the legislature, Mount Pleasant

[26] *Laws of the Territory of Iowa*, 1840-1841, pp. 33, 88, 97.

[27] *Laws of the Territory of Iowa*, 1840-1841, p. 86.

[28] *Laws of the Territory of Iowa*, 1841-1842, pp. 41, 74.

and Keosauqua were given charters,[29] the Mount Pleasant charter making no mention of local justice save after the fashion of the Farmington, Nashville, and Iowa City charters. The charter granted to Keosauqua was different, however. By its terms the mayor, or any justice of the peace, residing within the limits of the corporation,[30] was to have jurisdiction co-extensive with the county, in all cases where the mayor and aldermen of the city were plaintiffs or complainants. All fines collected for any violation of the laws of the Territory, where the offense had been committed within the corporation, were to be paid into the city treasury. The charter further provided that two justices of the peace be elected at the first election, the one with the highest number of votes for two years, and the other for one year. After that one justice of the peace was to be elected annually and was to hold office for two years or until his successor was selected.

At the session of 1842-1843, the Keosauqua charter of 1842 was amended by an act which provided among other things that the mayor was to be liable for any neglect or malpractice in office in all respects as justices of the peace were liable, or might be liable. The act further provided that the use of the county jail was to be allowed to the city authorities of Keosauqua for the confinement of persons committed by any justice of the peace in cases of the violation of the ordinances of the city.[31]

During the next two sessions of the legislature no further charters were granted, though the original charters of several towns were altered, amended, or revised. Among these were Farmington, Davenport, Fort Madison, and Iowa

[29] *Laws of the Territory of Iowa,* 1841-1842, pp. 14, 107.

[30] *Laws of the Territory of Iowa,* 1841-1842, p. 109.

[31] *Laws of the Territory of Iowa,* 1842-1843, p. 44.

City.[32] Burlington received a new charter in 1845, and in 1846, Dubuque was granted another charter.[33] In the matter of administration of justice in the city the two charters had similar provisions. Both provided that the justices of the peace in the city should have full power and authority, when required by the city authorities, to issue all needful process for the apprehension of offenders against the by-laws, ordinances, and regulations of the city.

Justices of the peace were also given the power to hold court for the trial of all offenders within the city and to fine, imprison, or discharge the same as the ordinances of the city and the facts of the case required. For that purpose they were authorized and required to impanel a jury of six qualified voters of the city. Upon conviction all offenders were to be liable for the costs of prosecution and judgment was to go accordingly. In case of acquittal the costs were to be paid by the corporation, after being allowed by the city council.

Any process on behalf of the city was to run in the name of the United States for the use and benefit of the city and was to conform to the requisitions and provisions made by the mayor and aldermen in common council. It was served, executed, and returned by the marshal of the city and until other provisions were made it was to be lawful for the justices of the peace to commit all offenders against the city laws, upon conviction, to the county jail. In cases where a portion or all the punishment was imprisonment, the keeper of the jail was required, by the terms of the charters, to receive such persons into his custody in the jail in the same manner as in ordinary cases on the proper warrant of a justice of the peace. The expenses of imprisonment, in cases where the same could not be collected from the per-

[32] *Laws of the Territory of Iowa*, 1843-1844, pp. 113, 149, 150, 152, 156.

[33] *Laws of the Territory of Iowa*, 1845, pp. 73–85, 1845-1846, pp. 114–124.

sons convicted and imprisoned, was to be paid out of the treasury of the city or town. The fees of the justices and jurors, in such cases, were the same as those allowed by the statutes of the Territory of Iowa.

All trials for the violation of city laws were to be in a summary manner, but no person could be deprived of liberty, or be fined more than twenty dollars, unless convicted by a jury of six qualified voters of the city.

When Iowa became a State in 1846, fifteen towns had received charters from the legislature — two towns from the legislature of the Territory of Wisconsin, and the others from the legislature of the Territory of Iowa.

With a new country building, with people living for the most part at great distances from each other, and with the means of transportation slow and tedious, it was natural that there should be set up local courts of a non-technical character, which should settle controversies quickly and according to common sense rules. Disputes and misdemeanors were neighborhood matters that could be settled in the neighborhood. The ordinary petty controversies within the town were handled, as previously, by the justices of the peace, the traditional arbiters of small disputes. If the legislative body of the new town was given the power to make ordinances, regulations, or by-laws, with the consequent power of prescribing pains and penalties for their violation, it was only natural that the ancient office of the justice of the peace be made to serve the purpose of enforcement. For offenses of a more serious character there was the general court sitting within the county.

At the first session of the General Assembly of the new State of Iowa which met for the first time on November 30, 1846, at Iowa City, two towns — Farmington and Dubuque — were granted new charters.[34] In the charter of Farm-

[34] *Laws of Iowa,* 1846-1847, Chs. 79, 82.

ington, approved on February 22, 1847, it was provided that the mayor should be ex officio conservator of the peace throughout the city. He was also to have the powers and jurisdiction vested in justices of the peace in matters of a criminal nature, and was to receive the same fees as were allowed to justices of the peace for similar services.[35]

This is the first instance of what later comes to be the most common policy in handling the administration of justice in the towns. The mayor was given a share in the responsibility for law enforcement and was made the main instrument in the administration of justice. The charter granted to Dubuque at the same session and only two days later, however, makes no mention of such a change. In that charter, the justices of the peace were still used for these duties. The same holds true of the charter granted to Fairfield,[36] and to Keokuk[37] at the same session.

In the third charter given to Fort Madison, which was granted on January 25, 1848, the mayor and aldermen were given the power to fix and impose fines and penalties for breaches of the ordinances and by-laws passed by them, provided the fine did not exceed $20.00. Such fine was recoverable, together with the costs of the suit, before the mayor. To make this possible the mayor was invested with authority to hear, try, and determine all such cases.

The fine was recoverable by an action of debt in the name of the corporation. The process issued against the person to compel his appearance was to be a warrant of arrest, issued in the name of the State of Iowa and attested by the mayor. The process issued for the collection and satisfaction of the fine was to be a warrant, issued in the name of the State of Iowa and attested by the mayor, commanding

[35] *Laws of Iowa*, 1846-1847, Ch. 79, Sec. 9.

[36] *Laws of Iowa*, 1846-1847, Ch. 38.

[37] *Laws of Iowa*, 1846-1847, Ch. 110.

the marshal of the town, by levy and sale of the property of the accused, to collect the fine and costs.[38]

On December 13, 1848, Keokuk received its second charter. By the terms of this instrument[39] the mayor was given full power and authority within the city to issue all needful process for the apprehension of offenders against any of the city laws. It was also made his duty to do so when proper complaint and application was made before him. He was also empowered to hold a court for the trial of all offenders within the city, and to fine, imprison, or discharge the same as the city laws and the facts of the case might require. To that end, he was authorized and required to summon a jury of six qualified voters of the city.

The mayor was also authorized to issue all needful process to arrest any offenders against the criminal laws of the State and was to try such person or persons by the same rules that governed justices of the peace. In criminal matters arising under the law of the State the marshal was to have the same powers and duties within the city and was to receive the same compensation as any constable in Jackson Township.

All trials for the violation of city laws were to be in a summary manner, but no person could, for any offense, be deprived of liberty, or "be fined in any sum not less than one, nor more than fifty dollars, unless convicted by a jury of six citizens".[40]

Cedar Rapids, which was granted a charter on January 15, 1849, at the same session, depended on the justices of the peace for the recovery of any fines imposed for violations of municipal ordinances.[41]

[38] *Laws of Iowa,* 1848 (Extra Session), Ch. 64.

[39] *Laws of Iowa,* 1848-1849, Ch. 3.

[40] *Laws of Iowa,* 1848-1849, Ch. 3, Sec. 25.

[41] *Laws of Iowa,* 1848-1849, Ch. 87.

Muscatine (formerly Bloomington) was created a city by an act passed on February 1, 1851. By the terms of this act[42] the mayor was, by virtue of his office, a justice of the peace. He was accordingly vested with exclusive original jurisdiction of cases arising under the ordinances of the city and was granted criminal jurisdiction over offenses against the laws of the State committed within the city. His civil jurisdiction was limited to the city in the same manner that the jurisdiction of the justice of the peace was limited or may be limited to his township. The mayor was not disqualified from acting in a judicial capacity because any proceedings were in the name of, or on behalf of the city.

In all civil actions and in actions for the breach of the laws of the State, he was entitled to demand and receive such fees as were at the time allowed by law to justices of the peace. Appeals were allowed from the mayor's judgment and decisions to the district court in the same cases, time, and manner, as they were at the time allowed from those of justices of the peace, and were to be tried in the same manner.

The mayor was not a conservator of the peace as he was at a later date, this function being given over to the marshal, who was the executive officer of the mayor's court and executed and returned all process directed to him by the mayor. The importance of the marshal was further indicated by the provision which invested him with the same authority within the city to quell riots and disturbances and to prevent crimes and arrest offenders that the sheriff had within the county. He was also required to perform any other duty that the council might prescribe and, with the approval of the council, he was permitted to appoint one or more deputies, for whose official acts he was held

[42] *Laws of Iowa*, 1850-1851, Ch. 32.

responsible, and whom he might discharge. For services required by the council he was permitted such compensation as they might allow. For serving legal process he was entitled to the same fees as a constable.

The council was empowered to impose penalties, not exceeding $100, for the violation of its ordinances, which might be recovered by a civil action before a justice of the peace.[43]

At the same session, on February 5, 1851, the legislature granted a charter to Davenport which made the mayor a justice of the peace for the city. He was also made a conservator of the peace in the city of Davenport, and was given the power and authority to administer oaths, issue writs and processes under the seal of the city, take depositions, acknowledge deeds, mortgages, and all other instruments of writing, and certify the same under the seal of the city which was to be good and valid in law. He was to have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and concurrent jurisdiction with all justices of the peace in all criminal and civil cases within the county, arising under the laws of the State. He was also to have such jurisdiction as might be vested in him by ordinance of the city for the enforcement of health and quarantine regulations.

Before entering upon the discharge of his duties he was required to give bond and security with the same penalties and under like conditions as those required by law of justices of the peace. The marshal was made the executive arm of the mayor's court in all necessary matters such as service and return of process.[44]

Iowa City was granted a charter on February 4, 1851.[45]

[43] *Laws of Iowa,* 1850-1851, Ch. 32, Sec. 20.

[44] *Laws of Iowa,* 1850-1851, Ch. 55.

[45] *Laws of Iowa,* 1850-1851, Ch. 43.

By this act the mayor was made a conservator of the peace within the city and ex officio a justice of the peace. The marshal was the executive officer of the mayor's court. But in the charter given to Mount Pleasant on the next day — February 5, 1851 — no mention is made of any such power vesting in the mayor.[46] And in the charter granted to Guttenberg, which was also approved on February 5, 1851, we find the justice of the peace still functioning as under the older charters.[47]

In another charter approved on the same day — February 5, 1851 — this one granted to Bellevue, it was expressly stated that any justice of the peace residing within the town should have full power and authority and it was made his duty to issue all needful process for the apprehension of any offenders against the laws of the city.[48] On the other hand the legislature approved another charter, incorporating the city of Keosauqua, in which the mayor was invested with all the powers then granted to justices of the peace for the purpose of hearing, trying, and determining all offenses against the ordinances of the city.[49]

During the next two sessions and in the extra session of 1856, at least twelve charters were granted and in all of these we find provisions giving to the mayor the powers and duties of a justice of the peace. He shared with the marshal in the same list of cities the powers of conservator of the peace.[50]

In a charter granted to Keokuk during the extra session it was provided that there be established a court called the

[46] *Laws of Iowa,* 1850-1851, Ch. 82.

[47] *Laws of Iowa,* 1850-1851, Ch. 50.

[48] *Laws of Iowa,* 1850-1851, Ch. 88.

[49] *Laws of Iowa,* 1850-1851, Ch. 62.

[50] *Laws of Iowa,* 1852-1853, Chs. 27, 63, 64, 1854-1855, Chs. 11, 18, 71, 85, 89, 91, 1856 (Extra Session), Chs. 15, 20, 23.

"recorder's court". This court, within the city of Keokuk, was to have all jurisdiction both civil and criminal, with the rights, powers, and authority of a justice of the peace, and all the judicial authority, rights, and powers, vested by law or by city ordinance in the mayor of the city.

After the recorder was elected and qualified, the mayor of the city was to exercise no judicial functions whatsoever, but was to be the executive officer of the city, and as such was to have the right to remit fines and pardon offenses committed against the municipal ordinances and regulations of the city.

The recorder was to hold office for two years, take the usual oath of office, and give the same bond as was required of the justices of the peace. He was also to give a bond in penalty of one thousand dollars to the city of Keokuk, to perform his duty as judge of the recorder's court. This bond was to be approved by the mayor.

The recorder was to receive the same fees that were allowed to justices of the peace for the same services and such additional payment as the council might from time to time determine by ordinance. This compensation was not, however, to be so increased or lessened, as to affect a person then in office during the term for which he was elected.[51]

Council Bluffs was granted a similar court by an act approved[52] on January 23, 1857, which amended the charter then in existence.

The legislature was extremely active in the year 1857, granting sixteen charters and revising some of the older ones. In all of these charters save one, we find that the judicial duties of the mayor are recognized. He is in all cases functioning as a justice of the peace and in most

[51] *Laws of Iowa,* 1856 (Extra Session), Ch. 17.

[52] *Laws of Iowa,* 1856-1857, Ch. 102.

cases serving as a conservator of the peace. We also find the marshal serving as the executive officer of the mayor's court.[53]

Dubuque was the exception to the rule, and was permitted to establish a city court. This act, approved on January 28, 1857, provided for a court which was to be a court of record and have a seal. The officers were to be a judge, a clerk, and the city marshal. The court was to function every day during the year, except on Sundays and holidays, and its sessions were to be divided into monthly terms, commencing on the first Monday of each month. It was to be held in a suitable room provided by the council.

The judge of the city court was elected at the annual election held for city officers. His term of office was four years. He must be a qualified elector of the city and learned in the law. He had to take the same oath required by the judges of the supreme and district courts and he was required to file this with the recorder and likewise be commissioned by the mayor. His salary was fixed by the city council but was not to exceed $1500 per year payable out of the city treasury.

The clerk of this court was elected at the annual election. He was to be a qualified voter of the city. He held his office for a term of two years, and was required to give bond to the city of Dubuque in the sum of $5000 under practically the same conditions as were required by law of the clerk of the district court. His salary was fixed by the city council, and was not to exceed $1000 per year payable out of the city treasury.

The powers, duties, and responsibilities of the judge, clerk, and marshal of this city court were to correspond to those of the judge, clerk, and sheriff of the district court.

[53] *Laws of Iowa,* 1856-1857, Chs. 41, 42, 44, 100, 121, 122, 128, 137, 150, 152, 163, 185, 197, 202, 211, 253.

The authority of the process of this court was the same as that of the district court and might be served by the city marshal or the sheriff. The marshal, however, did not have the power to serve process, other than subpoenas, beyond the limits of the city.

The court was given extensive jurisdiction. It had jurisdiction of all offenses and suits under the city ordinances, and had general jurisdiction concurrent with the district court in certain civil cases and was to have concurrent jurisdiction with justices of the peace in all criminal cases.

In case of ordinance violations, actions were to be brought in the name of the State of Iowa, for the use of the city of Dubuque. The proceeding was by sworn information, which was filed with the clerk of the city court, or with any justice of the peace of the city, whereupon warrant was issued for the apprehension of the accused. But certain persons designated by ordinance might arrest persons actually found violating any ordinance, and commit them for a trial without warrant. In all cases, the trial was to be in a summary manner and without the intervention of a jury, unless demanded by the defendant.

The fees in the court were the same as in the district court. These fees and all fines and forfeitures were accounted for by the clerk of the court to the city of Dubuque. They were paid into the city treasury as often as the city council directed. The fees of the marshal and other officers serving the process and executing the orders of the court belonged to and were payable to the officers serving the same.

When the city judge was absent or suffering from a disability the criminal business pending in the city court was transferred to some justice of the peace having jurisdiction of the subject matter, by having a delivery to him of all the papers relating to the matter. He then proceeded

to dispose of the matter as if the prosecution had originally commenced before him. All civil business was continued as in similar cases in the district court.[54]

In 1857, the new State Constitution went into effect. Among other things it contained a provision prohibiting the legislature from enacting special laws. In consequence, the legislature meeting in 1858 passed a general act for the incorporation of cities and towns and no more special charters were granted to Iowa cities.

Using the time of the adoption of the Constitution as a dividing line, we find that previous to 1857 the towns depended upon one of four agencies in the administration of justice. The first and most common agency was the justice of the peace. Then the mayor took over the functions of justice of the peace. In some cases he was also invested with the functions of a conservator of the peace, whereas in others this function was given to the town marshal, who was the executive arm of the mayor's court. At the turn of this period we find two new agencies introduced which supplanted the mayor as the judicial officer of the town. One was the recorder's court, established at Keokuk and Council Bluffs in 1856, and the other was the city court established at Dubuque in the following year, 1857. Apparently the administration of justice was becoming more complex in Iowa urban centers at the time the new Constitution was adopted and the separation of judicial and executive functions had begun.

After 1857, several new types of courts were added as the need became urgent and times demanded. In 1858, the General Assembly passed an act to provide for the election of police judges in cities of the first class under the general incorporation act, and the establishment of police courts in such cities. The statute provided that the police

[54] *Laws of Iowa*, 1856-1857, Ch. 210, Secs. 28–36.

judge of any such city should have power to hold court. This court was to be styled the "police court".

The police court was to be a court of record and was to have a seal provided by the city council. It was to have jurisdiction and power to determine all cases of violation of the ordinances of the city which were to be prosecuted in the name of and in behalf of the city. It could hear and determine all cases of petit larceny, or other minor offenses of any description committed within the city, or within one mile thereof, which the Constitution or some law of the State did not require to be prosecuted by indictment on presentment of a grand jury.

Prosecutions for all such offenses were to be brought and conducted in the name of the State. For the purpose of exercising this jurisdiction, the police court was to have all the power of the district court in the hearing and determining of cases. It had this power also in the matter of issuing of process, preserving order, and punishing contempt, administering oaths, and impaneling juries.

The city council was required to provide suitable rooms for the police court. The council was also to provide for the election by the qualified electors of the city, or for the appointment by the police judge of a clerk for the police court, and for the selection, summoning, and impaneling of juries, and for all matters touching the court as might tend to increase its speed and efficiency. No clerk of the police court could in any way be concerned as counsel or agent in the prosecution and defense of any person before that court. The city marshal was required to attend the sittings of the police court to execute its orders and process and preserve order. In case he could not attend, this duty devolved upon his deputy.[55]

[55] *Laws of Iowa*, 1858, Ch. 157, Secs. 76, 87–92. For an account of the police court, see *Applied History*, Vol. VI, pp. 177–190.

On February 9, 1870, the General Assembly of the State passed an act to provide for the election of a police judge, and the establishment of a police court in cities acting under special charters. This did not compel such city to elect a police judge but left it contingent on the wishes of the city.[56]

On March 17, 1876, the General Assembly of the State passed an act authorizing the establishment of superior courts in cities, including special charter cities, having a population of 5000 or more.[57] The superior court, when established, took the place of the police court.

The superior court was to have jurisdiction concurrent with the district and circuit courts, save where those courts had exclusive jurisdiction and in actions for divorce. It also had jurisdiction over all appeals and writs of error, in civil cases, from justices' courts within the township or townships in which the city was located, and, by consent of the parties, from justice courts in other townships in the county. Such appeals and writs of error were to be taken in the same time and manner as if they were taken to the circuit court.

The superior court also had exclusive original jurisdiction to try and determine all actions, civil and criminal, for the violation of city ordinances, and all the jurisdiction conferred on police courts, then and in the future. It also had jurisdiction co-extensive and concurrent with justices of the peace, in all actions, civil and criminal.

The judge of the superior court was to have the same power in regard to injunctions, writs, orders, and other proceedings, out of court as was at that time, or might thereafter be possessed by the judges of the district or

[56] *Laws of Iowa,* 1870, Ch. 12.

[57] *Laws of Iowa,* 1876, Ch. 143. For an account of the superior court, see *Applied History,* Vol. VI, pp. 190–202.

circuit courts. He was also empowered to administer oaths, take acknowledgments and depositions (save for depositions to be used in his own court), and solemnize marriages. On the other hand he was forbidden to practice in any of the courts of the State.

The superior court was made a court of record, and all statutes in force respecting venue and commencement of actions, the jurisdiction, process, and practice of the circuit and district court, the pleadings and mode of trial of action at law or in equity, and the enforcement of its judgments by execution or otherwise, and the allowances and taxing of costs, and the making of rules for practice, or otherwise, were applicable to the superior court, except when inconsistent with the provisions of the act creating the superior court.

The judge of the superior court was to act as the clerk of the court as long as the business of the court could be done with convenience and dispatch. But when, from the accumulation of causes and other demands upon the court a clerk might become necessary, the city recorder, or clerk, was to be the clerk of the superior court, and was to receive such compensation for his services as the city council might from time to time allow. This clerk was required to perform the same duties in this court as was provided by law for the clerk of the circuit court.

The city marshal was the executive officer of the court. His duties and authority in the court and in executive process were the same as those of the sheriff of the county in the circuit court. He also received the same fees and compensation as the sheriff for similar services.

The salary of the judge was to be paid quarterly. That for the first two quarters of the municipal year was to be paid from the city treasury, and the salary for the last two quarters from the county treasury.

In order to provide jurors for the court, the judge, mayor, and recorder immediately after qualifying to serve and every three months thereafter made out a list of twelve names of persons qualified to serve as jurors in the district court. This list was furnished to the clerk of the superior court, and from this list the clerk and the marshal drew the names of nine persons in the same manner as jurors were drawn in the district court. The jury consisted of six qualified jurors, unless a jury of twelve was demanded, in which case the clerk might issue a special venire for that purpose, or the city marshal might complete the jury from the bystanders. But no party was to be entitled to a jury of twelve, until the person demanding the same had deposited with the clerk the sum of $6 to be paid the jurors and taxed with the costs.

On April 9, 1915, the General Assembly of the State approved an act to authorize municipal courts for certain cities.[58] It also provided for the adoption of such court at any general, State, municipal, or special election. The law also defined the jurisdiction of such courts and specified the procedure for their establishment. Upon the establishment of a municipal court, the offices of justice of the peace, constable, and police judge were abolished.

Since the establishment of the municipal court there have been no further additions to the city courts of Iowa. In 1923, however, a statute was adopted making possible the adoption of a conciliation feature in both the municipal and superior courts. While this does not establish a new court it may develop into something that will approximate a small claims court, acting more or less independently of the municipal or superior court.[59] In Des Moines, the only

[58] *Laws of Iowa*, 1915, Ch. 106. For an account of the municipal court, see *Applied History*, Vol. VI, pp. 202–217.

[59] *Laws of Iowa*, 1923, Ch. 265.

city to date which has adopted this plan, it still remains an adjunct of the municipal court. This court is making great strides and its success may inspire other towns to emulate Des Moines in this matter. The new court is assuredly making a distinct place for itself in settling the small claims that arise in the larger city. Where the size of the town justifies the adoption of this court as a more or less independent branch of the municipal or superior court, there seems no good reason why it should not be adopted.

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