

## The Temporary Plan

Governor Hughes might have chosen an earlier date but he had to allow sufficient time to fill three House vacancies left by resignations in Johnson, Monroe, and Poweshiek counties. He set February 18, 1964, for special elections in all three counties and when the votes were counted Democrats had captured all three seats, previously held by two Democrats and one Republican. This changed the House alignment from 79-29 to 78-30 favoring the Republicans. The Senate alignment remained Republican, 38-12.

Newly-elected House members were Minette Doderer of Iowa City, to succeed Scott Swisher, Iowa City Democrat in Johnson County; Tom Dougherty of Albia, to succeed Katherine M. Falvey, Albia Democrat in Monroe County, and Al Meacham of Grinnell, to succeed George Paul, Brooklyn Republican in Poweshiek County.

They were sworn into office shortly after the Extraordinary Session opened and then took their places beside their House colleagues, and the Senators who had joined them, to hear Governor Hughes officially outline his reasons for calling them together.

The Chief Executive made a strong plea for



unity between rural and urban forces, and between Democrats and Republicans, urging all hands to work diligently and cooperatively to reach an agreement on an equitable apportionment plan along guidelines laid down by the court. Tactfully, he pointed out the marked distinction between "minority protection," as guaranteed under our form of government, and "minority control," as exercised wrongfully in Iowa for more than half a century.

After listening to the charge, the legislature moved into high gear, hoping to carry out the Governor's recommendations and the court's directive in three weeks or less. But the session was to last more than twice that long.

A prompt decision was reached to concentrate on the reapportionment issue, taking up only such other legislation deemed of emergency nature. Also, that special reapportionment committees would be named rather than to reorganize the reapportionment standing committees that served during the 1963 regular session.

Named to the House committee by Speaker Robert W. Naden, Webster City Republican, who was challenging Lieutenant Governor William L. Mooty's bid for a third term, were: Representatives Henry Nelson of Forest City, chairman; Lawrence D. Carstensen of Clinton, vice-chairman; Maurice Baringer of Oelwein, Floyd Edgington of Sheffield, Harry R. Gittens of Council Bluffs, Frances G. Hakes of Laurens, Arthur C. Hanson of Inwood, Joseph G. Knock of Creston, Francis L. Messerly of Cedar Falls,



Floyd H. Millen of Farmington, John Mowry of Marshalltown, Louis A. Peterson of Lawton, Dan Prine of Oskaloosa, Tom Riley of Cedar Rapids, Samuel E. Robinson of Guthrie Center, William J. Scherle of Henderson, Marvin W. Smith of Paullina, and David M. Stanley of Muscatine, Republicans; William F. Denman of Des Moines, John L. Duffy of Dubuque, Keith H. Dunton of Thornburg, Raymond Eveland of Kelley, Niels J. Nielsen of Ringsted, M. Ross Stevenson of Lime Springs, and Ivan Wells of Bedford, Democrats.

Lieutenant Governor Mooty named this committee: Senators Robert R. Rigler of New Hampton, chairman; Charles S. Van Eaton of Sioux City, vice-chairman; Harry L. Cowden of Guthrie Center, Leo Elthon of Fertile, Joseph B. Flatt of Winterset, Vern Lisle of Clarinda, J. Henry Lucken of LeMars, Jack Schroeder of Bettendorf, David O. Shaff of Clinton, John D. Shoeman of Atlantic, Richard L. Stephens of Ainsworth, Clifford M. Vance of Mount Pleasant, and Martin Wiley of Cedar Rapids, Republicans; John Brown of Emmetsburg, Adolph W. Elvers of Elkader, Andrew G. Frommelt of Dubuque, and George E. O'Malley of Des Moines, Democrats.

Ready for immediate consideration of both committees was a temporary plan drawn by a Des Moines lawyer, David Belin, which had the personal support of Republican State Chairman Robert Ray, also a Des Moines lawyer, and of Attorney General Hultman, the lone Republican candidate for Governor. Chairman Ray had circulated copies of the plan, prior to the opening of the session, to Democrats as well as Republicans in the legislature so all members had the opportunity to become familiar with it.



Democrats submitted a plan, too, and the Legislative Research Bureau, at the request of several legislators, drew 16 separate plans, which were ready for consideration. But all of these turned out to be only the first of nearly 100 plans to be drafted, if not actually considered, as the session wore on.

Republicans repeatedly heaped coals on Governor Hughes for his refusal to submit a plan of his own. They declared that inasmuch as his approval was needed for any temporary plan passed, he should tell them what kind of a plan would please him. But the Governor, mindful of the big Republican majorities in both chambers, stuck to his guns. He felt Republicans would exhibit more joy in ripping apart any plan he might submit than in getting down to the business of passing a plan. The Governor repeatedly said he would sign any plan conforming to the court's guidelines, and that he preferred that House seats be based on population with Senate seats based on population-area factors.

#### *The Senate*

Before the first week was over the Senate committee recommended a plan basing House seats on population and Senate seats on a predominantly area basis with a population factor. House committee members, meanwhile, decided to summon Attorney General Hultman to straighten them out on the meaning of the word "invidious."



First roll call action came on March 3 in the second week when the Senate voted, 34 to 16, to send the House a plan to increase House seats from 108 to 120, based largely on population, and Senate seats from 50 to 51, based largely on area. Only Polk County would get a second Senate seat.

The key amendment, which provided a test of the many votes ahead, was whether to reduce to 51 the 56 Senate seats called for in the original bill. After a bitter battle, the 51-seat amendment was adopted, 29 to 21, and the bill was on its way to passage and to the House.

#### *The House*

First major House battle was over an amendment to change the Senate bill to permit each of the 99 counties to continue to have one House seat, regardless of population. Debate waxed long and hot before the House (with several rural members rising to unprecedented heights of statesmanship by literally voting themselves out of seats) rejected the amendment — 60 to 46. This meant that House seats would be based predominantly on population in any plan subsequently agreed upon.

Next House battle was over how much of a population factor to permit in apportionment of Senate seats. Should the House join the Senate in limiting Senate seats to 51 or insist on restoring the 56-seat limit rejected by the Senate? The larger figure would provide for additional seats



for such populous counties as Linn, Black Hawk, Scott, and Woodbury, as well as Polk.

Some House members believed that the 56-seat limit would increase the population factor in the Senate sufficiently so the House could hold down its own population factor. Under the 1904-28 formula, 27.4% of the people elected a majority (55) of the 108 House members and 35.6% a majority (26) of the 50 Senators. If Senate seats were increased to 56, these House members reasoned, the population factor there would make it unnecessary to assure 50% of the people the right to elect 50% of the House membership. But other House members wanted to go along with the Senate to limit its seats to 51 and to make the House seats truly reflect population.

In the showdown, the 56-seat amendment was passed, 80 to 27, in a vote taken March 9. The House also voted to increase the number of House seats from 120, as called for in the Senate bill, to 130. The bill was then sent back to the Senate calling for five more Senators and 10 more Representatives than the Senate had agreed to, and for six more Senators and 22 more Representatives than at present.

#### *To Conference*

Two days later the Senate took up the House version of the proposed temporary plan and voted, 31 to 18, to restore the 51-seat Senate, leaving unchanged the House's desire for 130 seats of its



own. This action was taken in the face of a statement by Governor Hughes that he would veto any temporary plan limiting the Senate to 51 seats on grounds it would not meet the court's guidelines.

The bill now was sent back to the House where, on March 12, members voted 97 to 11 against concurring with the Senate on the 51-seat limit. This left the matter up to the Senate whose members promptly insisted, by voice vote, on the 51-seat figure. So the bill was sent to a conference committee.

Even as the Senate acted, 325 delegates of the Iowa Farm Bureau Federation, meeting in a downtown hotel, were voting to back the 51-seat Senate limit. Within hours, President Kenneth Schuman of the Iowa Farmers Union announced that his organization favored a 56-seat Senate.

As House conferees, Speaker Naden selected Representatives Mowry, the Republican leader; Maurice Van Nostrand of Avoca and Raymond W. Hagie of Clarion, Republicans, and Lorne R. Worthington of Lamoni, Democrat. Lieutenant Governor Mooty appointed Senators Rigler, the Republican leader; Elthon and Flatt, Republicans, and Frommelt, the Democratic leader.

The committee convened late in the afternoon of March 12 and the following Monday had agreed on a tentative compromise bill calling for a 55-seat Senate and a 113-seat House. It then recessed to permit party caucuses to try it on for size, with the



knowledge that Governor Hughes had given it his tentative approval. Democrats in both House and Senate and Republicans in the House apparently liked the compromise. But Senate Republicans would have none of it. So, the conference committee went back to work.

On Tuesday, March 17, the committee reported a new compromise calling for a 59-seat Senate on area with a population factor and a 124-seat House largely on population. Six of the new Senate seats would be based on population, three on area. Under this compromise, 38.9% of the people would elect a majority (30) of 59 Senators and 44.02% would elect a majority (63) of the 124 Representatives.

The House took up the compromise plan on March 18 and worked through the noon hour until 1:10 p.m. before adopting it, 72 to 35. The Senate added its approval four hours later, 28 to 21. Governor Hughes used 48 different ball point pens to affix his signature at 11:30 a.m., March 23, and now the plan had only to pass federal court inspection.

#### *Back to Court Again*

On March 20, only eight days before the March 28 deadline [which the Assembly extended to April 14] for filing nomination papers for legislative offices, the court set March 27 to consider the temporary plan and several new actions pertaining to the reapportionment suit, which had been filed



even after the special session convened. Here, briefly, is a summary of these actions:

March 9, 1964: As the temporary plan was being debated, Clarke County Auditor Dean D. Hill of Osceola, Wayne County Auditor George T. Nickles of Corydon, and Ringgold County Auditor Albert Drake of Mount Ayr, as defendants in the reapportionment suit, filed notice they would appeal the court's January 14 decision to the United States Supreme Court.

March 10, 1964: Five Republicans, Senators John J. Campbell of Oskaloosa and Edward A. Wearin of Red Oak, former Senator Dewel, chairman of Iowans Against the Shaff Plan, and Representatives Elmer H. Vermeer of Pella and William J. Coffman of North English, asked the court for permission to intervene in the reapportionment suit. Their application was filed by three Republican lawyers, Senators D. C. Nolan of Iowa City, Richard C. Turner of Council Bluffs and A. V. Doran of Boone. Among other things, they said the court's guidelines were being "seriously misconstrued" by legislators, that the word "rational" meant different things to different people and they asked the court to elaborate on the meaning of its January 14 decision. On March 13, the three county auditors filed a statement supporting the intervention petition and three days later the plaintiffs entered a resistance.

March 18, 1964: The three county auditors filed an application for an order to stay the January 14 decision from taking effect, along with supporting statements signed by 17 Senators and 42 Representatives. Plaintiffs filed a resistance to the stay petition March 26.

This set the scene, then, for the March 27 hearing on all of these questions before the Federal Court panel.



There had been action, too, in Polk County district court. On January 27, 1964, Ernest J. Seemann of Waterloo, "for himself and as a candidate for lieutenant governor and on behalf of all other persons and taxpayers" of Iowa, asked the court to declare martial law in the absence of a legally-constituted legislature; also to require Governor Hughes to fill "existing vacancies" in the legislature by appointment. Seemann followed on February 17 with a separate application asking the court to order the State Executive Council to prohibit legislators elected in 1962 from convening in special session on February 24 and to order State Comptroller Marvin Selden not to pay them. District Judge Wade Clarke dismissed the first action on Attorney General Hultman's motion on March 3. The second suffered the same fate in District Judge Tom K. Murrow's court just 17 days later.

On March 27, the Federal District Court panel faced a battery of 10 lawyers, representing the plaintiffs, the state and various parties to the suit. Presentations lasted well into the noon hour, after which the panel announced it had:

1. Approved the temporary reapportionment plan, holding it "materially reduced" malapportionment of both House and Senate and that in the absence of further guidelines from the United States Supreme Court, it "is not so objectionable on federal constitutional grounds as to warrant disapproval as an interim plan of apportionment."
2. Denied the application for a stay order.
3. Denied the petition for intervention.

The three county auditors appealed the denial of the stay order to the United States Supreme Court, where, on April 8, Associate Justice Byron



R. White refused to intervene with the District Court's decision. On May 5, the three county auditors also appealed the District Court panel's January 14 decision to the United States Supreme Court where it was pending as this was written.