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Legislation in 1841

A visitor at the Capitol in Des Moines during the spring of 1941 would find the Iowa lawmakers with their clerks and secretaries comfortably situated in spacious legislative halls, busily engaged in their biennial task of revising, amending, and supplementing the laws of the State. In contrast to the environment and procedure of modern legislators, it may be of interest to look back across the years and observe the surroundings, the personnel, and the work of the Iowa Legislative Assembly which was in session one hundred years ago.

The Territorial legislature then consisted of a Council of thirteen members and a House of Representatives composed of twenty-six members. The Methodist Church in Burlington had housed the first Iowa Territorial legislatures. When the Third Legislative Assembly convened in November, 1840, members of the Council sought new quarters. Early in the session a committee was

appointed to examine rooms in the Catholic Church, and a few days later the Council moved into that building. The Catholics were paid \$300 for the use of their church and the Methodists received \$450 for theirs.

The membership of the Third Legislative Assembly was based on the census of 1840, both houses being apportioned among ten districts. In the Council, Mortimer Bainbridge and Joseph S. Kirkpatrick represented Dubuque, Jackson, Delaware, and Clayton counties; Jonathan W. Parker represented Scott and Clinton counties; George Greene served for Cedar, Jones, and Linn counties; S. C. Hastings spoke for Muscatine and Johnson counties; Francis Springer was elected from Louisa and Washington counties; William H. Wallace came from Henry County; W. G. Coop represented Jefferson County; while Lee and Van Buren counties, constituting separate districts, each had two members in the Council — J. B. Browne and Edward Johnston from the former, and James Hall and G. S. Bailey from the latter.

In the House of Representatives, the first electoral district consisting of Lee County was represented by Daniel F. Miller, John Box, and James Brierly. The second district of Van Buren County was represented by Isaac N. Lewis, John Whit-

aker, and William Steele. Des Moines County, which constituted the third district, had five representatives — Milton Browning, Alfred Hebard, Shepherd Leffler, Robert Avery, and David Hendershott. Henry County, the fourth district, was represented by Asbury B. Porter, Paton Wilson, and John B. Lash. The fifth district of Jefferson County was represented by Alexander A. Wilson. The counties of Louisa and Washington formed the sixth district with William L. Toole as spokesman for Louisa and Simon P. Teeple for Washington. The seventh district sent Thomas M. Isett to the House for Muscatine County and Henry Felkner for Johnson County. The counties of Cedar, Jones, and Linn being the eighth district were represented by Harman Van Antwerp and George H. Walworth. The ninth district consisted of Scott and Clinton counties which sent Laurel Summers and Joseph M. Robertson to the Assembly. The counties of Dubuque, Jackson, Delaware, Clayton and the country attached thereto made up the tenth district which was represented by Timothy Mason, Edward Langworthy, and Thomas Cox, the latter being from Jackson County.

Of the twenty-six members of the House of Representatives in the Third Legislative Assembly, seventeen were farmers and four were law-

yers. Of the thirty-nine members in the entire Assembly, eleven were natives of Kentucky, six came from New York, five came from each of the States of Ohio and Virginia, and four from Pennsylvania. None of them was a native of Iowa, and only one — born in Illinois — had come from the region west of Ohio.

In accordance with the provisions of the Organic Law, members of the Legislative Assembly were paid three dollars per day during their attendance, "and three dollars each for every twenty miles travel in going to and returning from the said sessions, estimated according to the nearest usually travelled route." The presiding officers were paid at the rate of six dollars per day.

In 1840 the President of the Council, as well as the Speaker of the House, was elected by members of the chamber from among their own number. In the Third Legislative Assembly the Council was composed of seven Democrats and six Whigs. Notwithstanding this circumstance Mortimer Bainbridge of Dubuque received eleven of the thirteen votes for President of the Council, and was elected on the first ballot. Little is known of Mr. Bainbridge, except that he was at that time a spirited leader of the Democratic faction in the Assembly, who later became involved in a newspaper controversy with Ver Planck Van

Antwerp. He served during two sessions of the Council, and eventually he left the Democratic party to become a Whig.

Of the twenty-six members of the House of Representatives, fifteen were Democrats and eleven were Whigs. Thomas Cox, a Democrat from Jackson County, was elected Speaker of the House. He was a native of Kentucky, a former legislator in Illinois, and a soldier in Wisconsin when it was still a part of Michigan Territory. He served in the First, Second, Third, Fifth, and Sixth Legislative Assemblies of the Territory of Iowa, acting as President of the Council in the Second Legislative Assembly and Speaker of the House in the Third.

On the third day of the legislative session in 1840 the "message of the Governor was transmitted to each House in printed form, and was read by their respective Scribes". In this message Governor Robert Lucas discussed the controversy over the Iowa-Missouri boundary line, considered the matter of paying annuities to the Sauk and Fox Indians, and called attention to the fact that the payment of certain outstanding bills had not been authorized by previous Legislative Assemblies. This deficiency, he said, had been reported to the Treasury Department and he "solicited an appropriation to meet it." Such a

method of contracting debts beyond the means of payment, he declared, "is practising a deception upon the public creditors, and ought, in my opinion, to be carefully avoided."

The standing rules that governed the deliberations of the Third Legislative Assembly were not essentially different from those used today, though *Jefferson's Manual* which was then the primary guide has been supplanted by *Robert's Rules of Order*. In 1840 there was no Lieutenant Governor to preside over the Council. Instead, the standing rules provided that the Council should "choose by ballot, one of their own number to occupy the Chair." Another standing rule which is no longer in vogue in the Iowa legislature provided that "No member or officer of the Council shall read the newspapers within the bar of the Council while in session." The custom of smoking in the Legislative Assembly was not mentioned in the standing rules, but the Council on the fourth day of the session in 1840-41 adopted a resolution that smoking in the hall of the Council, during the session hours, be prohibited.

On January 23, 1941, a measure was introduced in the Iowa State Senate to provide that postage on official letters sent by legislators during the session should be paid by the State. This was not a new idea. The Legislative Assembly one

hundred years ago considered a similar plan. On November 4, 1840, the Territorial Council passed a resolution "That the Secretary of the Council be authorized to make regulations with the Postmaster of the City of Burlington, forthwith, relative to the postage of all letters, papers and documents which shall be received or transmitted by the members of the Council, through that office during the present session; and that the said Postmaster be requested to keep a true and accurate account of the postage, and transmit the said amount, together with his demand for the trouble of keeping the same, to the Council, at the close of the present session, for allowance, which shall be paid out of the contingent fund as allowed."

Parliamentary bickering and local jealousy were not unknown in Iowa legislative circles a hundred years ago. On the second day of the session in 1840-41, a resolution was offered by Representative Walworth to provide each member of the House with twenty copies of the Burlington *Territorial Gazette* and twenty copies of the Burlington *Hawk-Eye and Patriot* as often as they were published during the session of the legislature. Mr. Langworthy of Dubuque thought fifteen copies would be enough, with which Mr. Van Antwerp apparently concurred but proposed that each member choose any papers he wished.

When the debate was resumed the next day Mr. Lash of Henry County moved that each member of the House be furnished with fifteen copies of the *Gazette* and the *Hawk-Eye* each week, but Mr. Box of Lee County thought ten copies of each would be sufficient.

Thereupon Mr. Summers of Scott County, probably thinking of the *Davenport Sun*, offered a substitute resolution that the Chief Clerk furnish each member of the House "with twenty copies weekly of such newspaper or papers as he may order." This resolution with its amendments, however, was referred to a select committee.

In the afternoon the committee reported, recommending that the Chief Clerk furnish each member of the House with twenty copies of the *Gazette* and twenty copies of the *Hawk-Eye* and *Patriot* "as often as those papers may be published during the session." Mr. Summers immediately reoffered his substitute. Mr. Box still thought "ten papers from each office" would be enough, but his amendment was lost. The question then recurred on the adoption of the substitute, which was also lost, whereupon Mr. Lash proposed to strike out "twenty" and insert "fifteen" in the original resolution, but this change was likewise defeated. The report of the special committee was then rejected.

Hoping to curtail the monopoly of the Burlington papers, Mr. Isett of Muscatine offered a resolution that "the Clerk be instructed to furnish each member of this House with thirty copies weekly of any newspapers published in this Territory", which would have made the *Iowa Standard* and the *Bloomington Herald* of his constituents eligible. Again the motion was lost.

By this time Mr. Whitaker of Van Buren County had become weary of parliamentary sparring and moved to adjourn. But, alas, this, too, was impossible, for the motion "was determined in the negative."

Starting anew Mr. Walworth, who had offered the original resolution, then moved that each member of the House be furnished with thirty copies weekly of any paper or papers "published in this City", thus giving a monopoly of patronage to the Burlington papers and excluding those published in Dubuque, Davenport, and Muscatine. This motion was promptly agreed to and the House adjourned until the following morning.

The Third Legislative Assembly convened on Monday, November 2, 1840, and adjourned on Friday, January 15, 1841, having been in session seventy-five days, but during that time on ten Sundays and eleven other days the Assembly did not meet. Accordingly, there were fifty-four

working days in the session. Seventy-two bills and resolutions were introduced in the Council, and 147 measures were presented in the House of Representatives — 219 in all. Of this number, 105 bills passed both houses.

Of the measures which were enacted, twenty-two pertained to roads, seventeen dealt with counties and county government, ten made provisions for cities and towns, nine authorized the construction of mills and dams, eight granted permission to operate ferries, and seven dealt with courts and court procedure. Other measures concerned corporations, real estate, schools, the Legislative Assembly, the Half-breed Tract, public buildings, taxes, relief, divorce, and the penitentiary.

One of the questions before the Legislative Assembly a hundred years ago was the location of county seats. In Jackson County the town of Bellevue which had been selected was located on the eastern border of the county and some settlers objected to it for that reason. The Third Legislative Assembly therefore authorized commissioners to select a new site so that the voters could choose between Bellevue and the new place. Under the provisions of this law a quarter section of land was selected at the geographical center of the county and named Andrew, after Andrew Jackson. At the election which followed, the new town

became the political as well as the geographical center of the county.

Fort Madison had been designated as the county seat of Lee County, but there was agitation for a more nearly central location. Indeed, a new site named Franklin was surveyed at the geographical center of the county. Lots were advertised, but apparently nothing else was done. In this situation the Third Legislative Assembly submitted the whole matter to a vote of the people at an election on the second Monday in March, 1841. If no location received a majority of the votes cast, the two places having the highest number of votes were to be considered at a special election in April.

Immediately after the passage of this act the town of Fort Madison offered \$8000 to build a courthouse, provided the county seat should be located there. Money received from the sale of lots was added to this bonus, until a building fund of more than \$13,000 had been pledged. This "pernicious activity", as some of the opponents of Fort Madison expressed it, had its effect on election day. At the first election Fort Madison received 465 votes, Franklin 435, and West Point 320. Fort Madison won the second election easily.

Camanche was the first county seat of Clinton County, but in response to urgent requests the

Third Legislative Assembly passed a law appointing commissioners to select a new location, as near the geographical center of the county as a suitable place, "convenient to wood and water", could be found. In pursuance of this statute the commissioners selected a central location for the county seat, which they called Vandenburg. This name was soon changed to DeWitt.

According to tradition the first county seat of Delaware County was located at Ead's Grove by flipping a coin. This decision, however, was very unpopular among the settlers. A mass meeting was held, a resolution of protest was adopted, and the Legislative Assembly was requested to relocate the county seat. The new statute placed the county seat at whatever site the people might select by majority vote. Meanwhile, the citizens in mass meeting appointed a committee to review the eligible sites and report their opinion. At last, in the vicinity of Silver Lake, a desirable location was discovered and nominated for the county seat. At the election in August, 1841, Delhi received twenty-five votes and Elizabeth (Ead's Grove) only six.

For the development of transportation the Third Legislative Assembly authorized the construction of Territorial roads from Davenport to "Bellevue", from Keokuk to Mount Pleasant, from

Iowa City "to the Mississippi river, opposite Prairie du Chien", from Camanche to Iowa City, from Washington County to the Missouri line, from Burlington to the mouth of the Des Moines River, from Dubuque to "Camp Atkinson", from Davenport to Marion, from Burlington to Keosauqua, and several other roads connecting various points in the Territory. This Assembly also authorized the operation of ferries at Rockingham, Charleston, Bloomington, "Faber's Landing", Nashville, Tête de Mort, and Ellenborough.

One hundred years ago divorces were sometimes granted by legislative action. An interesting controversy arose in the Third Legislative Assembly when William H. Wallace introduced a divorce bill and Jonathan W. Parker moved that it be laid on the table for two weeks. This motion having been lost, Mr. Parker protested against the passage of the bill and asked that his objections be published in the Journal, but upon the suggestion of Francis Springer this proposal was laid on the table. Mr. Parker then formally moved that the protest be published. After two motions to adjourn had been defeated, Mr. Parker called for the previous question and was granted permission to have his objections recorded.

"I protest against the passage of the said bill", he declared, "Because I believe the legislature

have not the right to pass it: Because, in doing so, I believe they usurp the power and jurisdiction of the courts: Because, there is no evidence before the Legislature that the husband, in this case, has had notice of the application upon which this bill is founded, and because, if the Legislature has the power of granting divorces, it is highly impolitic to exercise it."

In response to this protest Edward Johnston expressed the belief that it was proper for the legislature to pass bills for divorce: "1st. Because the matter is not wholly a judicial proceeding, but may be, from the special circumstances of the case, under legislative control.

"2nd. Because the facts detailed in this case, as reported by the committee to which that bill was referred, make it one of that kind and calls for immediate relief to the petitioner.

"3rd. Because, so far as authority is concerned, we have precedents in the action of legislatures of every state in the Union, that such is a legitimate object of legislation."

Another interesting discussion arose in the Third Legislative Assembly with reference to a bill "to prohibit vice and immorality". Joseph S. Kirkpatrick, reporting for a committee, expressed the belief that this was not "a rightful subject of legislation", but "a matter of conscience", which

is "entirely above the jurisdiction of legislative power".

"Your committee believe," he said, "that the most demoralizing practices, such as idle sport, hunting, running from house to house, gaming, telling long stories, and many other such vices, would be cultivated by such a law, which are certainly greater breaches of the Sabbath day than ordinary labor, and calculated more to corrupt the good morals of society and set bad examples. Hence, if such a law be passed, these vices should be provided against; and if so, a provision should be annexed to define the way in which the Sabbath should be spent, which would be trampling upon liberties that no authority under heaven has a right to do."

Despite many controversies the legislators of one hundred years ago rendered substantial service of permanent value. The Third Legislative Assembly passed many laws for the development of internal improvements; it encouraged industry, established new governmental agencies, protected property, fostered learning, and transmitted to posterity more favorable conditions than had existed previously.

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