

A Penitentiary for Iowa

Among the problems of the first Legislative Assembly of Iowa in 1838 was the enactment of a criminal code providing suitable punishments for public offenders. "Some of the greatest statesmen and philanthropists of the age", declared Governor Robert Lucas in his first message to the Territorial legislature, had studied the subject, "and the general conclusion has been, that sanguinary punishments do not tend to lessen crime, and that the general policy of all criminal laws should be to prevent crimes, rather than to inflict punishment, and that all punishments should be inflicted with a view to reform, rather than exterminate the criminal. In these conclusions I heartily concur, and would wish to see confinement at hard labor, for life, substituted in all cases, in lieu of capital punishment, when suitable prisons for the purpose can be had".

That this enlightened policy might be inaugurated as soon as possible, the Governor suggested "the expediency of respectfully memorializing Congress to grant to the Territory an appropriation sufficient to erect a Penitentiary in the Territory, for the confinement of convicts that may be

sentenced for a violation of the penal laws of the Territory, as well as those who may be convicted for a violation of the laws of the United States." Though a quarter section of land had been granted to each county to provide for public buildings, only one jail had been built, according to the Burlington newspaper. The Governor thought it reasonable to anticipate the same liberality by Congress to Iowa as to other Territories. Apparently he chose to disregard the previous appropriations amounting to \$40,000 for Territorial buildings. Perhaps he assumed that this money was not available for a prison, or that an additional amount would be needed.

On Saturday, January 12, 1839, a special committee of one from each electoral district was appointed in the House of Representatives to "inquire into the expediency of establishing a penitentiary in this territory". Under the leadership of John Frierson of Muscatine this representative committee of eight drafted a bill and submitted it for consideration on the following Monday. The details were discussed thoroughly, probably vehemently, by the House in committee of the whole, and finally the bill was reported without locating the penitentiary. James W. Grimes of Burlington proposed Mount Pleasant and his motion carried, fourteen to eleven. With the exception of Laurel

Summers, all the Representatives of counties north of Henry opposed this location, while the Representatives from Des Moines, Van Buren, and Henry counties were unanimously in favor of Mount Pleasant. The delegation from Lee County divided evenly: James Brierly and Hawkins Taylor for Mount Pleasant and William Patterson and C. J. Price opposed. And so on January 17, 1839, the House of Representatives authorized the establishment of the penitentiary at Mount Pleasant.

In the Council the next day the location of the penitentiary at Mount Pleasant was immediately challenged by the representatives of northern counties. Stephen Hempstead of Dubuque proposed to substitute Davenport, but the motion was lost five to eight. Jesse B. Browne of Fort Madison was the only southerner to support the change. Hempstead then suggested Fort Madison as the seat of the penitentiary but precisely the same Councilmen voted against that change. Apparently the Mount Pleasant faction had a decisive majority. This vote must have been an attempt of the northerners to divide their opponents, because their tentative support of the Lee County town was obviously insincere.

Though Fort Madison did not attract more than one unequivocal vote (Browne), there must

have been some dissatisfaction with Mount Pleasant. Probably the parliamentary maneuvers were motivated by local rivalry. George Hepner's motion to locate the penitentiary at Burlington attracted the support of the other two representatives of Des Moines County as well as Browne of Lee and Charles Whittlesey of Cedar County. Then James M. Clark of Muscatine County proposed Bloomington. The four northern Councilmen agreed to that change but Clark and Browne were the only others. Why Jesse D. Payne of Henry County should have favored Hempstead's motion to locate the penitentiary at Dubuque is a mystery, but apparently it had no chance of adoption and Payne may have hoped thereby to win northern votes for Mount Pleasant on later ballots.

To test the true attitude of the Council, Whittlesey proposed to strike out Mount Pleasant and his motion was carried seven to six by the four northerners, two from Burlington, and Browne of Fort Madison. Thereupon Whittlesey suggested that the penitentiary be located at the new capital of the Territory (Iowa City), but that idea received no support from the partisans of existing towns. E. A. M. Swazy of Van Buren County proposed Fort Madison again. This time the representatives of Lee, Van Buren, and Henry coun-

ties united on that location but all the others opposed it, including the four northerners who had previously voted for Fort Madison. Apparently Mount Pleasant and Fort Madison were eliminated. If the penitentiary was to be situated most conveniently in relation to density of population, Burlington seemed to be the only remaining choice. Payne of Mount Pleasant therefore moved to place the penitentiary at the temporary capital of the Territory and his motion was adopted, eight to five. Only Browne, Clark, Whittlesey, Hempstead, and Lewis of Dubuque voted no. And so the bill passed on January 19th and was returned to the House of Representatives for concurrence.

The Representatives, however, were not pleased with the change. Hawkins Taylor of Lee County, who had originally voted for Mount Pleasant, immediately moved to strike out Burlington and his proposal was adopted. James Hall of Van Buren County moved to locate the penitentiary at Keosauqua but his suggestion was not adopted. Chauncey Swan wanted to place the penitentiary at the new capital of Iowa City but that location was rejected. Then Taylor renewed his original proposal to locate the penal institution at Fort Madison, and the House agreed. The Council also accepted the change from Burlington to Fort

Madison, though the three Des Moines County members and Payne of Henry voted no.

The Territorial legislature assumed that the money to build the penitentiary would be obtained from the United States treasury. On July 7, 1838, Congress had appropriated \$20,000 for public buildings in Iowa. The Organic Act creating the Territory on June 12, 1838, had also contained an appropriation of \$20,000, but this sum was restricted to public buildings at the seat of government and was therefore not available for the penitentiary at Fort Madison.

Some members of the Legislative Assembly apparently hoped, with Governor Lucas, that an additional appropriation might be obtained from Congress. Stephen Hempstead tried to amend the bill to appropriate "any moneys that may have been, or may hereafter be appropriated for the erection of a Penitentiary", instead of appropriating the \$20,000 provided by Congress on July 7, 1838, "for the erection of public buildings", as the House of Representatives had provided. This amendment, however, was defeated. Assuming that Congress might have intended to spend \$40,000 for public buildings at Iowa City, Charles Whittlesey wanted to keep the whole sum available for the capitol (in his district); but the Council adopted the opinion of Jesse D. Payne who

thought a proviso that the penitentiary appropriation should "not interfere with the \$20,000 appropriated by the organic law, organizing the Territory of Iowa" would be sufficient protection for the capitol funds. This amendment was superfluous because the organic act appropriation could not have been spent for a public building at Fort Madison anyway. Hempstead, still hopeful of securing an additional appropriation by Congress — or determined to frustrate the whole project by eliminating the use of any funds already available — proposed that the \$20,000 provided for "public buildings" should not be spent for the construction of the penitentiary, "if the same has been appropriated by Congress for other purposes." The seven Councilmen from Des Moines, Henry, and Van Buren counties defeated this obstructive amendment, and so the bill passed and was approved by the Governor on January 25, 1839.

The Territorial legislature authorized the erection of a penitentiary "of sufficient capacity to receive, secure, and employ one hundred and thirty-six convicts," to be constructed according to the plan of the Connecticut State Prison at Wethersfield. This type of prison provided a cell for each prisoner at night and workshops for labor together during the day. The maximum cost was fixed at \$40,000, which implied the expectation of another

Congressional appropriation of \$20,000. Eventually, on August 29, 1842, Congress provided \$15,000 more, but declared that the prison would have to be completed at no further expense to the national government.

At a joint session the Legislative Assembly elected three directors to supervise the construction and operation of the penitentiary. Of seven men nominated, Jesse M. Harrison and John S. David were elected on the second ballot and John Claypole on the third. The first to be elected was supposed to serve for three years, the second for two years, and the third for one year. At the end of the first year, the number of directors was reduced to one, and the two who had been elected for the long terms were removed by law, leaving in office Claypole whose term legally expired on January 25, 1840. In effect, therefore, the legislature reelected him for a three-year term, which he served.

Before May first the citizens of Fort Madison gave the Territory a "suitable spot" of ten acres within "one mile of the public square", as required by law. It was a good site, in the opinion of the directors, located at the east end of town about 400 yards from the river on a low ridge extending to the base of the bluff. An abundant supply of water and excellent building materials were avail-

able, though most of the stone was eventually obtained from a quarry across the river in Illinois.

On June 5, 1839, the directors appointed Amos Ladd of Burlington as superintendent of construction. He immediately made plans for a two-story stone building containing quarters for the warden and space for 138 cells in conformity to the plan specified by the act of the Assembly. Such a structure would cost \$55,933.90, estimated the directors, but they believed the "outer wall, warden's house, and sixty cells" could be completed for the allotted \$40,000 and the remaining portion could be "erected by the labor of the convicts."

Superintendent Ladd began construction on July 9th and by the first of November two wells had been dug, a boarding house to accommodate the workmen had been built, the basement story of the warden's house and guard room had been erected, the foundation for sixty cells had been started, 350 feet of cut stone for the cells was on the ground, and "about 150 perch of stone from the quarry, not yet laid in the walls." Already \$3422 had been spent.

During 1840, work on the prison was prosecuted with all the diligence that funds would permit. The whole appropriation of \$20,000 was spent and, in order to finish the prison enough to be used, the superintendent contracted with Wells

& Wilson for work to the amount of \$8000 and had issued certificates for \$2,322.18 more. By the first of November, 1840, "three-fourths of the main building (including cells, guard room, and keeper's house)" was "thirteen feet high", the second story of the keeper's house was up and a temporary roof over it, ten cells were completed, except for the iron doors, and twenty more were started, ten of them above the first ten. A committee of the legislature reported that the materials and workmanship surpassed any "of a similar kind in the western country."

Meanwhile, twelve convicts had been committed to the penitentiary, before adequate facilities were ready for their confinement. During the day the prisoners were "moderately exercised in such employment as the Director may offer" and at night they were "lodged in the cellar under the guard room of the penitentiary". The "hard labor" they were supposed to do consisted of construction work, "at times assisting at turning and raising stone, and carrying stone and mortar", which was valued at forty-six cents a day.

Working among masons and stone cutters, the convicts were able to conceal iron tools with which seven of them broke their shackles and escaped into the rough, brush-covered country around the penitentiary where they eluded pursuit. Two

were recaptured in Saint Louis. Jacob Abdon, Samuel Conlogue, and Lester Wallace escaped from the cellar under the guard room by breaking through the floor while the guard was at supper. Thereafter the most desperate convicts were required to wear the "necklace", an iron collar with two iron horns extending beyond the shoulders.

In November, 1840, six prisoners were in the penitentiary, "well secured with a ball and chain, and properly guarded." James McCubben, Samuel Wilson, John Howard, Bartlet Dennison, Ephraim Whitacre, and Samuel Green were reported to be "in a good and healthy condition, well clad [in uniforms of bed ticking, one side dark and the other light], and suitably accommodated as regards boarding and lodging." On January 15, 1841, William Anderson was appointed as the first warden and assumed the responsibility for the custody and employment of the convicts. Work on the prison, however, practically ceased until more money was appropriated. The half-dozen or more prisoners were employed mainly in cultivating a large garden and in a cooperage shop.

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