

THE PALIMPSEST

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Second Legislative Assembly

The first session of the Legislative Assembly of the Territory of Iowa had closed with a controversy between the Governor and the lawmakers. The organic act of the Territory made the Governor a part of the legislature. More specifically he possessed an absolute veto over any measure passed by the Assembly. This provision was the basis of the quarrel.

In a memorial to Congress, the Iowa legislators pointed out that they desired some control over the dictatorial veto of the Chief Executive. Heeding the plea, Congress on March 3, 1839, amended the organic act of the Territory. The change required the Governor to return vetoed bills to the chamber in which they originated. By a two-thirds vote the measures could be passed in spite of his objections. However, a record of the vote of each member was to be made in the legislative journal. If the Governor did not return a proposal within three days (Sundays excepted) after

receiving it, the proposition was to become a law without approval unless the Assembly by adjournment prevented its return, in which case it was not to become a law.

Consequently the two branches of the government were once more harmonious when the second session of the Legislative Assembly congregated at the Methodist Church in Burlington on November 4, 1839. In the Council there were six Whigs and six Democrats (one member undetermined), and in the House of Representatives there were nine Whigs and fifteen Democrats with two members not labeled. In comparison with the First Legislative Assembly the political complexion of the two houses remained unchanged. The members of the Council were holdovers but in spite of the annual election the Democrats maintained their majority in the Territorial House of Representatives. At once the two houses completed their organization. In the House Edward Johnston was elected Speaker, and Joseph T. Fales was chosen Chief Clerk; in the Council Stephen Hempstead was selected President and B. F. Wallace named Secretary. As if to guarantee harmony, the Secretary of the Territory, William B. Conway, who had been partially responsible for controversies in the first session, died during the first week in December, 1839. James

Clarke, a firm Democrat, was appointed to his post.

On November 5, 1839, Governor Robert Lucas sent his message to the legislature. "It becomes my duty, as Executive," he said, "to submit to you a statement of the affairs of the Government, and to recommend to your consideration, such measures as are best calculated to advance the interest, promote the prosperity, and secure the happiness of the people." In line with that obligation he urged the legislature to "proceed to measures preparatory to the formation of a Constitution and State Government". Governor Lucas even went so far as to describe the natural boundaries of the future State. The Assembly, however, failed to do anything about it.

Relative to the Congressional change in the organic act, Governor Lucas said that the amendment was "truly gratifying to the executive. It defines the powers and duties of the executive, when those duties stand connected with the Legislative Assembly, relieves him from much legislative responsibility, and places it where all legislative responsibility should ever rest, with the immediate representatives of the people."

In his message the Governor outlined a complete legislative program. He proposed that statutes be passed providing for the popular election of local officials, the organization of townships,

the establishment of an adequate system of common schools, the creation of the office of public printer, the completion of the penitentiary, the settlement of the location of the seat of government, the establishment of an auditor of public accounts, the authorization of the sale of intoxicating liquors by local option, the clarification of the southern boundary dispute, and "the propriety of again memorializing Congress to grant to this Territory for literary purposes a quantity of land equal to the grant made to Wisconsin." With this legislative program before them, the members of the Assembly began their work of making laws.

Statutes reflect the period in which they are enacted. The enactments of the Second Legislative Assembly exemplified the needs of the frontier. Legislation completing governmental organization, favorable to a growing population, and fostering an expanding commerce was passed by the Territorial lawmakers. Indeed, all of the Governor's proposals except his plan for Statehood were enacted into law in one form or another. Nor is this surprising, because the Chief Executive was a mature politician. With previous legislative and administrative experience in Ohio, Robert Lucas brought with him statute books from which Iowa legislators could easily copy.

The Iowa legislators supplemented the Con-

gressional amendment concerning the executive veto by passing an act "relative to the authentication of statutes without the approval of the Governor". Also in accordance with Congressional authorization and upon the Governor's insistence the popular election of local officials was provided for: coroners, county treasurers, justices of the peace, judges of probate, sheriffs, county recorders, and county surveyors were to depend upon the mandate of the electorate for their incumbency.

The Governor's recommendation for the actual establishment of township government was heeded. On January 10, 1840, an act "to provide for the organization of townships" was approved. The county commissioners were authorized to arrange for an election upon the question of township government. If a majority of voters in the county were in favor of such organization then the commissioners were to divide the county into townships "of such shape and size as the convenience and interests of such county would seem to demand". After this division the voters in each township were to elect "one township clerk, three trustees, two overseers of the poor, two fence viewers, a sufficient number of supervisors of highways, two constables, and one township treasurer". The government of the local area was under the direction of these officers.

One of the more interesting statutes which reflected a need of the times was the proposal to authorize public schools. The act "to establish a system of common schools" provided for the creation of school districts within townships, the collection of school taxes, the selection of school teachers, and the erection of schoolhouses. The qualified voters of each school district within each township were to have complete control over the affairs of the district. At an annual meeting a moderator, a director, and an assessor were to be elected. Three school inspectors chosen annually were to supervise the operation of the schools.

In addition to the common schools, a system of higher education was promoted. A seminary of learning (the Union Academy) was authorized to be established at Parkhurst, a Bloomington education society was incorporated, the Antwerp Academy was sanctioned, and a university at Mount Pleasant "for the purpose of the education of youth" was chartered.

The members of the legislature did not agree with the Governor's proposal to regulate the liquor business by local option. But they did approve of licensing the vendors of ardent spirits. A county license of twenty-five to one hundred dollars was required of grocery keepers. "A grocery," according to the legislative enactment was "any

house or place where spirituous or vinous liquors are retailed by less quantities than one gallon." Such a vendor was required to keep an "orderly house" and refuse to permit "unlawful gaming or riotous conduct in or about his house."

To preserve and classify the expanding Territorial Library the legislature provided that "a librarian shall be annually appointed on the nomination of the governor, by and with the advice and consent of the Council." Previously the library had been under the unofficial supervision of the Governor.

In order to further complete the organization of the Territorial administration, the office of Auditor of Public Accounts was created and the duties of the Territorial Treasurer were clarified. The Territorial Auditor was to be appointed by the Governor with the consent of the Council. He was to "sign all warrants for money on the treasurer of the territory, all tax receipts and all other papers necessary and proper for the auditor to sign." The Treasurer was "to receive the proceeds of all taxes and other public moneys of this territory, and safely keep the same."

The members of the legislature were also mindful of the private interests within the Territory. Ferries were authorized in numerous cases as were statutes giving legislative sanction for mills

and dams. An act "relative to landlords and tenants" was passed to clarify the method of paying and collecting rents.

Historically interesting was a statute incorporating the Bloomington Insurance Company. With a capital stock of fifty thousand dollars, the company was authorized to insure "all kinds of property against loss or damage by fire or other casualty, to make all kinds of insurances against loss on goods and merchandize in the course of transportation, whether on land or water, to make all kinds of insurances on life or lives, to cause themselves to be insured against any loss or risk which they may incur in the course of their business, and generally to do and perform all other matters and things connected with and proper to promote those objects."

The legislators were also aware of the need for the improvement of transportation facilities. This necessarily meant the construction of roads throughout the Territory. The establishment by the county commissioners of roads and road districts within counties was authorized and several Territorial roads were established. A large number of these new highways converged upon the proposed Territorial capital, Iowa City.

To foster local government Dubuque and Salem were given special charters. Henry County was

divided into three commissioners' districts; the organization of Delaware and Clinton counties was authorized; and in Cedar, Johnson, Clayton, Lee, and Jones counties the seats of justice were relocated.

Marital relations were redefined. On January 6, 1840, an act "regulating marriages" was approved. This appears to have been timely for an act "to provide for the support of illegitimate children" had been sanctioned only two days earlier. Perhaps as an afterthought a statute "relative to divorce, alimony and other purposes" provided the method to be followed in the district courts for dissolving the marriage bonds. Thus, while the clumsy procedure of petitioning the legislature for divorce decrees was not abandoned, the common law rules governing judicial action were codified and probably to some extent modified.

The prevention of crime was not overlooked. An act for "the safe custody of persons arrested for crimes and misdemeanors" was passed. Persons convicted of a crime in one county might "for safe custody" be transferred to the jail of another county. Nor was procedural law neglected: acts relative to habeas corpus, the admission of attorneys, the giving of oaths, and limitations upon prosecutions were adopted. As a measure of the level which Iowa civilization had reached, im-

prisonment for debt was abolished, but, lest such immunity might encourage irresponsible conduct, an act "to prevent frauds" was approved. Thereafter, leases were to be in writing and recorded with the clerk of the county. Likewise contracts for more than thirty dollars were to be in writing.

Wolves must have been plentiful in pioneer Iowa because a statute of January 7, 1840, proposed "to encourage the destruction of wolves". At the discretion of county commissioners bounties were to be paid for each wolf killed. The amount of the bounty varied from twenty-five cents to three dollars depending upon the county and the age of the wolf.

Aware that poverty existed even on the frontier, the Second Territorial Assembly enacted a statute "for the relief of the poor". Any person unable to earn a livelihood because of "bodily infirmity, idiocy, lunacy or other unavoidable cause" was to be supported by relatives. But if relatives were not available, such paupers were to be supported out of the county treasury. The amount of the relief depended upon the generosity of the county, and at the commissioners' discretion "work houses" could be constructed for the care of the poor.

Several of the measures passed by the Second Territorial Assembly were concerned with the two

Iowa public building projects: the erection of the penitentiary and the building of the stone capitol. The sale of lots in order to provide funds for the erection of the capitol at Iowa City was sanctioned, a method of managing the finances was prescribed, and the granting of land titles was authorized.

Of the measures passed by the legislature, two acts were vetoed by the Governor. The method of appointing the public printer and the Territorial librarian was to be by joint ballot of the legislature. To this Governor Lucas objected, saying that according to the organic act appointments were to be made by the Chief Executive. One resolution failed to meet the Governor's approval. Finally, ninety-five laws and thirty-two resolutions found their way into the statute books. This was a striking contrast to the first session during which over five hundred pages of laws and resolutions were enacted.

On January 17, 1840, the Second Legislative Assembly of the Territory of Iowa came to an end, having passed a statute "to provide for an extra session" for the purpose of apportioning the members of the Council and the House of Representatives in accordance with the 1840 census of the growing population. It was scheduled "to commence on the second Monday in July."

In time the Second Assembly consumed the

period from November 4, 1839, to January 17, 1840. In money it cost the national government for pay of officers, printing, furniture, stationery, fuel, and all other incidental expenses "the sum of twenty-seven thousand and fifty dollars." In services it contributed to the orderly development of political, economic, and social institutions.

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