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The Extra Session of 1840

Governor Robert Lucas in his regular message to the Second Legislative Assembly of the Territory of Iowa in November, 1839, asked for the consideration of measures leading to the admission of Iowa into the Union as a State. As the session drew to a close in January, 1840, it became evident that this request was not going to receive the attention of the lawmaking body, though the Territory was growing rapidly in population and wealth. Indeed, the westward trend of settlement would require reapportionment of representation before the next Assembly met. The Federal census, however, would not be available until July. Accordingly, the Legislative Assembly presented to Governor Lucas for his approval on January 11th, an act to provide for a special session of the Territorial legislature. The primary purpose of this extra session, beginning on the second Monday of July, was to consider "apportioning the members of the council and

house of representatives equally among the several counties" of the Territory. For some unknown reason, Governor Lucas failed to sign this bill, so that after remaining in his possession for three days, with a Sunday excepted, it became a law without his signature on January 15, 1840.

In the Methodist Church at Burlington on Monday, July 13, 1840, the special session of the Legislative Assembly congregated to organize for business. In membership, this group was identical with that of the regular session that had adjourned six months before. The Democrats had a preponderance of fifteen to nine over the Whigs in the House of Representatives with two members non-committal; while the two parties were tied at six each in the Council with the affiliation of one member not determined. Organization was speedily completed. On July 14th, both the Council and the House adopted the rules and regulations of the previous regular Legislative Assembly. In the Council, James M. Clark, representing Muscatine, Louisa, and Slaughter counties, was elected President on the eighth ballot, securing eight of the thirteen votes. Jesse Browne of Lee County was the principal candidate, but he could muster no more than six votes. The opposition first supported Jonathan W. Parker of Scott County, then shifted to Warner Lewis of Dubuque, and finally

united on Clark of Louisa. Stephen Hempstead who had served as President in the regular session was apparently not a candidate. In the House of Representatives, Edward Johnston, one of the four representatives from Lee County and Speaker at the last regular session, was reëlected Speaker.

The Governor presented his message to the legislature on July 15, 1840. "I conceive it to be my duty to lay before you such information," he announced, "and to suggest for your consideration such subjects as may be required by the public interests, to occupy your attention during your session." The \$20,000 provided by Congress for the erection of public buildings had been expended for a penitentiary, and the Governor invited legislative attention to the report to be submitted by the director of that penal institution.

Congress had likewise appropriated \$20,000 to the Territory for the erection of public buildings at the seat of government (Iowa City). Governor Lucas thought this appropriation, together with the funds obtainable from the sale of lots in Iowa City, if sagaciously managed, would be sufficient to complete the erection of the capitol as planned. But he went on to say that in his opinion the laws relating to the sale of the lots should be revised to secure every possible advantage. He then sug-

gested the fixing of an average minimum price for the lots and authorizing a public sale, to be followed by private sales, for the disposal of the remaining property. The laws relating to the execution of title deeds of lots in Iowa City he thought ought to be revised. His idea was to require a certificate of final payment, to be signed by the Acting Commissioner and filed in the office of the Secretary of the Territory, with the issuance of a deed at that time.

In Congress, the Committee on Territories of the House of Representatives had reported a bill enabling the people of Iowa and of Florida to form State constitutions for the purpose of seeking admission into the Union. Though the majority of the Legislative Assembly had been opposed to seeking Statehood earlier in the year, the Governor nevertheless renewed his recommendation for legislation favorable to the early admission of Iowa into the Union. Knowing the adverse attitude of the legislature, he proposed a referendum of the voters in the Territory on the subject of a constitutional convention at the next annual election.

The census report for 1840 had not yet been obtained from the United States Marshal, but was expected within a few days. It seemed probable, however, that the population of the Territory had

at least doubled since 1838. Pending receipt of this report, the problem of reapportioning the members of the legislature had to be postponed temporarily.

The Legislative Assembly managed to deal with most of the subjects outlined for consideration in Governor Lucas's message. A bill amending the law pertaining to the administration of the penitentiary was passed in the House of Representatives, but was tabled by the Council. It was found that there had been nine convicts received, five of whom had escaped and one had been discharged, leaving a total of three in the prison. The Council, in refusing to approve of the House bill, requested the director of the penitentiary to make a detailed report to the next Legislative Assembly of monies expended and progress on the construction of the prison. No legislation pertaining to the penitentiary was enacted.

In respect to the new seat of government, however, an act was approved on July 24, 1840, fixing the valuation of lots in Iowa City. The legislature adopted most of the Governor's proposals and stipulated that "the unsold lots within the city plat of Iowa City, the seat of Government of the Territory, shall not be sold for a less average value than three hundred dollars per lot." It further imposed the duty upon the Governor, Secretary

of the Territory, and the Acting Commissioner of Public Buildings to equalize the value of the unsold lots in Iowa City, and attach to each lot a value in proportion to its site, not reducing the aggregate value of the whole below the average sum of \$300 per lot. In the same bill, provision was made for the private sale of lots remaining after the public sale, and the Acting Commissioner of Public Buildings was required to give to persons entitled thereto a certificate of final payment. Whenever a certificate of final payment was presented to the Secretary of the Territory, he was to issue a deed which would constitute a title in fee simple.

In 1838, Governor Lucas under provisions of the Organic Act creating Iowa Territory had apportioned the members of both houses of the legislature among eight districts on the basis of population according to the census of that year:

<i>District</i>	<i>Counties</i>	<i>Council</i>	<i>House</i>
1	Des Moines	3	5
2	Lee	1	4
3	Henry	2	3
4	Van Buren	2	3
5	Louisa, Muscatine, Slaughter	1	4
6	Johnson, Cedar, Jones, Linn	1	1
7	Scott, Clinton	1	2
8	Jackson, Du Buque, Delaware, Buchanan, Fayette, Clayton	2	4

The first Iowa Legislative Assembly, aware of the rapid growth of the Territory, reapportioned members of the House of Representatives among ten districts, but left the Council unchanged, probably because Councilmen served for a term of two years and none would be elected in 1839. The new second district seems to have been created to guarantee separate representation of Jackson County, while the other additional district recognized the growth of population in the interior counties of Slaughter, Johnson, Cedar, Jones, and Linn.

<i>District</i>	<i>Counties</i>	<i>House</i>
1	Du Buque, Clayton, Fayette, Delaware, Buchanan	3
2	Jackson	1
3	Scott, Clinton	2
4	Muscatine, Johnson, Keokuk	2
5	Cedar, Jones, Linn, Benton	1
6	Louisa, Slaughter	2
7	Henry, Jefferson	3
8	Van Buren	3
9	Lee	4
10	Des Moines	5

The main purpose of the extra session — to apportion the members of the Legislative Assembly equally among the various counties — was fulfilled in a bill approved by the Governor on July 30, 1840. This reapportionment, based on the

Federal census taken in June, established ten Assembly districts and stipulated the number of Councilmen and Representatives from each district.

<i>District</i>	<i>Counties</i>	<i>Population</i>	<i>Council</i>	<i>House</i>
1	Lee	6093	2	3
2	Van Buren, and attached territory	6146	2	3
3	Des Moines	5577	1	5
4	Henry	3772	1	3
5	Jefferson	2773	1	1
6	Louisa, Washington	3512	1	2
7	Muscatine, Johnson	3433	2(1)	2
8	Cedar, Jones, Linn	3097	1	2
9	Scott, Clinton	2961	1	2
10	Dubuque, Jackson, Delaware, Clayton	5739	2	3

It may be noted that this apportionment provides fourteen members for the Council, whereas the Organic Act limited the number to thirteen. Actually, when the Third Legislative Assembly met in November, 1840, only thirteen Council members presented themselves. The error appears to have been in the provisions for the seventh district (Muscatine and Johnson counties). The law of 1840 clearly allotted two council members, but according to population the district was entitled to only one.

Reapportionment in the House reflected the

growth of settlement in the western counties. Jefferson, Henry, Cedar, Jones, and Linn counties gained two Representatives at the expense of Lee, Dubuque, Delaware, and Clayton counties. Des Moines County retained its original allotment of five Representatives which was disproportionate, probably because it was not quite entitled to two Councilmen, yet had 1805 more inhabitants than Henry County which was the next smaller district and only 162 less than the tenth district which was the next larger.

On July 31, 1840, the day before adjournment, the desire of Governor Lucas to allow the people of the Territory to express their opinion on preparatory steps for admission into the Union was embodied in a provision that a poll be opened at each precinct in the Territory at the time of the next general election of the Delegate to Congress. Those voters who favored a constitutional convention were to signify it by writing "convention" on their ballots; those opposed were to write "no convention". At the appointed time, 2907 voters registered their opposition while only 973 favored the proposed convention. Although Governor Lucas strongly advocated preparation for Statehood, he refrained from any further agitation.

One interesting piece of legislation — in fact the longest and most detailed of any adopted —

was an act to "organize, discipline, and govern the Militia" of Iowa Territory. This statute, replacing a less detailed one enacted on January 4, 1839, differed from the others of the extra session in that it was taken almost verbatim from the militia act of the Territory of Wisconsin. It should be understood, however, that this procedure of adopting entire statutes from other commonwealths was a common practice. Moreover, the Assembly repealed "all the Acts of the Territory of Michigan, and the Territory of Wisconsin" which were in force in the Territory of Iowa on July 4, 1838. Inasmuch as the original Iowa militia act was merely supplementary to the Wisconsin law, this action would have left the organization of the militia in a chaotic condition. The enactment of the Wisconsin statute designated the persons liable for military duty and provided for the appointment of officers, organization, uniform, and discipline of the militia. The act filled twenty-four pages of the session laws.

Legislative assemblies a hundred years ago indulged in much special legislation. Of the forty bills passed, twenty-six were of a special nature, leaving only fourteen dealing with affairs of general Territorial concern. Laws were enacted, for example, to "authorize James Wilson, his heirs, or assigns, to build a dam across Skunk River, in

Jefferson County" and "to amend an act entitled 'an act to authorize Timothy Fanning to establish and keep a Ferry across the Mississippi River at the town of Du Buque' ". Divorces were usually obtained by judicial process except in extraordinary cases, when special legislation was demanded. Such a case was that of Harriet Williams who was granted a divorce by the Legislative Assembly because they found her husband to be a "common felon who possesses the power to squander her property and beggar herself and children".

Finally, very important to the persons concerned, an act was approved "to provide for the compensation of the Printers, Members, and Officers of the Extra Session of the Legislative Assembly, and for other purposes." This appropriation act provided, among other things, for the salaries and mileage of the members of the House of Representatives in the amount of \$2172.25. The Council members received \$1107.30 for their mileage and compensation. The trustees of the Methodist Church in Burlington were allowed \$100 as rent for the use of their building during the extra session. Francis Gehon, the United States Marshal, was paid the sum of \$250 for making the census returns available to the legislature. The total expenses as provided in this enact-

ment approved on August 1, 1840, were \$6969.15 for the three-weeks session, or \$386.62 a day omitting the two Sundays.

Contrary to the usual custom, the proceedings of the extra session of the Second Legislative Assembly were not published. A resolution was adopted by the House of Representatives to employ James G. Edwards to print 300 copies of the House Journal at the "same prices allowed by Congress for such work", but the Council took no such action and so neither journal was printed. The original records remained unpublished in the office of the Secretary of State until 1902 when, upon the initiative of Charles Aldrich, 1000 copies were published by the State Historical Department for distribution to Iowa libraries and "to meet the needs of historical students".

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