



DAKOTA'S LEGISLATURE.

The Press and Dakotaian's Report of the Proceedings of the Council and House of Representatives.

Fourteenth Session—21st and 22nd Days.

Council.

Monday, January 31—Council met at 7 o'clock p. m. and was called to order by the president.

Prayer by the chaplain. Roll call showed all the members present except Mr. Wiggins.

The reading of the journal was dispensed with.

MESSAGES FROM THE GOVERNOR.

Two messages from the governor, transmitted through his private secretary, were received. One was a sealed message for the consideration of the council in executive session, and the other returning council bill eight, authorizing the commissioners of Lincoln county to issue the bonds of said county for the purpose of erecting a jail, with his reasons for withholding his approval of the same. The veto message is as follows:

Executive office, Dakota, Jan. 31, 1881.—To the legislative council of the territory of Dakota—I return herewith to the council, bill No. 8, being an act providing for the erection and construction of a jail for the county of Lincoln, "this being the body in which said bill originated, without my approval and signature, and with my objections thereto.

Sections 1 and 2 of this bill empower the county commissioners of Lincoln county to erect and construct a jail with a tenement for the jailor and his family without the consent of the voters and as I am informed by the representative from that county in the lower house, in direct violation of nearly a two-thirds vote of the electors given at the last general election in that county.

Section 3 provides that the county commissioners shall select the site, and locate said jail in a particular town, without allowing the voters in Lincoln county to have any voice in the location of such county building.

Section 7 and 8 of the bill authorize, empower and make it the duty of the county commissioners of Lincoln county to prepare and issue the bonds of said county, running ten years, bearing eight per cent, per annum interest, to pay the cost of the erection, construction and furnishing said jail, to the amount of five thousand dollars, thus creating a tax lien upon all the property in said county for ten years, without a submission of the question of bonding the county to the voters and tax-payers, who will be called upon to pay this extra tax.

I cannot regard a proposition to force a county into debt without the consent of the people, as sound in law or practice, and in the case of Lincoln county, where I am informed by its representative, that the county has a large amount of uncollected taxes, and a claim upon a former treasurer from which seven thousand dollars will soon be realized, it would seem to be an excessive and dangerous use of legislative power.

The principle involved in the sections which I have cited necessitates a wide departure from all legislative precedents in the territory and contravenes the opinions of the ablest writers upon legal and just taxation. A territory is not an independent sovereignty, and can only legislate within the power conferred by United States laws.

In this and several other territories the legislative power is restricted to acts that are general in their character, and as this act only applies to one county, and imposes obligations and duties not imposed upon the remaining counties, it appears to me to be unwarranted special legislation.

If the territorial legislature can compel a county to build expensive county buildings against the will of the people, why cannot the legislature direct the mayor of Yankton to issue the bonds of the city to build an expensive city hall in a particular locality in defiance of popular will?

The doctrine of submitting propositions for building or lending county buildings to the people, is as old as the republic and is founded upon justice and common sense.

The congress of the United States has no power to take from the humblest citizen one acre of land for public building, without his consent, except upon an appraisal and a decree of a court. I cannot, therefore, recognize the right of the legislature of this territory to impose unequal and special taxes upon the real or personal property in any particular county without the consent of the people, except upon a decree of some legal tribunal, and I am forced to the conclusion that the bonds directed to be issued by the county commissioners in this bill would be treated in the same manner as a note executed by an individual under duress.

Being firmly impressed with the views and objections herein stated, and appreciating that this is "a government of the people, by the people, for the people," and acting under advices from the department of justice that the veto power should be exercised by the executive whenever enactments appear injurious and contrary to the public policy, I have felt constrained to withhold my assent to this act.

N. G. ORDWAY,
Governor.

INTRODUCTION OF BILLS.

By Mr. President—To provide for the publication of summons in actions brought in courts of justices of the peace.

Also, to amend section 215 of the code of civil procedure.

By Mr. Gamble—To provide for the taxation and collection of costs in certain criminal proceedings.

Also, to amend section one of chapter twenty-two of the political code.

Also, to amend section fourteen of chapter twenty-one of the political code.

By Mr. Wilson—For an act defining the duties and prescribing the fees of the district attorney of the third judicial district.

By Mr. Scobey—To amend section 501 of the civil code. Also to amend section 40 of chapter 28 of the political code.

By Mr. Day—A memorial to the congress of the United States of America, asking for the vacation of that part of the military reservation lying in Charles Mix county.

By Mr. Wilson—To repeal section 427 of the political code in certain counties.

By Mr. Day—For an act to incorporate the city of Springfield.

By Mr. Gamble—To amend an act entitled an act providing a board of education for the city of Yankton, Dakota

territory, and regulating the management of the public schools therein.

By Mr. Wilson—To amend section 65 of the civil code.

Also, to amend section 1,006 of chapter 3, title 4, in part 4 of division third of the civil code, entitled loan of money, and to repeal section 1,100 of the same chapter in certain counties.

COUNCIL BILLS.

The following council bills were read a second time and referred as follows:

No. 35—Providing funds for building a hospital for the insane; to the committee on charitable and penal institutions.

No. 37—Providing the manner in which any person elected to a county office may be contested; to the judiciary committee.

No. 39—Making the town plat of Edwinton the legal plat of the city of Bismarck. Laid on the president's table to come up in order for third reading.

No. 40—To amend the school law of the territory; to the committee on education.

No. 41—Amending an act providing a board of education for the city of Sioux Falls. Laid on the table for third reading.

THIRD READING.

Council bill 34—Amending section 10, of article 2, of an act to incorporate the city of Elk Point. Passed.

Council bill 38—To amend section 7 of chapter 39 of the political code. Passed.

Mr. Day gave notice that he would on to-morrow move a reconsideration of the vote by which the bill passed.

Mr. Gamble moved that the vote by which the bill passed be reconsidered and that the motion to reconsider lie upon the table.

A point of order was here raised that after one member has given notice of a motion to reconsider, another member can not make a similar motion.

Upon this proposition a long discussion ensued in regard to the parliamentary practice in such cases.

The chair ruled that, under the rules of the council, a notice of a motion to reconsider, is a privilege which each member enjoys, and that after such notice has been given any other motion affecting the matter under consideration is out of order.

Mr. Gamble appealed from the decision of the chair, and the question being put "shall the decision of the chair stand as the decision of the house," there were ayes, five; noes, five, so the chair was sustained.

The discussion, ruling and appeal was not owing to the importance of the bill to be disposed of, but for the purpose of settling the question, whether, when a member gives notice of an intention to move a reconsideration of a vote, that notice precludes an immediate motion to reconsider.

EXECUTIVE SESSION.

On motion of Mr. Day, the council went into executive session.

ADJOURNMENT.

At the conclusion of the executive session the council adjourned until 10 o'clock, February 1st.

Council.

Tuesday, February 1.—The council met at 10 a. m., and called to order by the president.

Prayer by the chaplain. Roll call showed all members present.

Minutes read and approved.

ANOTHER VETO.

A message was received from the governor, returning council bill six, to provide extra compensation to the judge of the first judicial district of the territory of Dakota, with his reasons for withholding his approval therefrom.

The message is as follows:

Executive Office, Territory of Dakota, Yankton, Feb. 1st, 1881.—To the Legislative Council of the Territory of Dakota: I return herewith to the council, that being the body in which it originated, without my approval and signature, and with my objections thereto, bill No. six; the same being an act to provide extra compensation to the judge of the first judicial district of the territory of Dakota; the act being in substance, to provide for the payment, by certain counties, of the sum of twenty-four hundred dollars as extra compensation to the judge of the first judicial district, so long, and only so long as the present incumbent shall remain the judge of said district.

Said bill is returned for the following reasons:

I. The payment of extra compensation to United States officials, by the people of any territory is, in most cases, positively prohibited, and, in my opinion, wisely so.

II. The proposition to compel the people of a certain judicial district to pay extra compensation to a particular United States official, appears to me to be special legislation of a most objectionable character, since the execution of justice is thereby made more expensive to the citizens of such judicial district than in any other district of the territory.

III. If the services of the present incumbent of the office of judge of the first judicial district are worth twenty-four hundred dollars per annum more than those of the incumbent of other judicial districts, why should not his successor receive the proposed increased compensation?

IV. The mode of assessing the extra compensation provided for in this act, upon the counties comprising the first judicial district, is quite unusual, and as it seems to me, unwarranted and objectionable, since it makes one county the virtual assessor of the others belonging to the same judicial district.

While entertaining these views and yet impressed with the belief that the salaries of all the judges are inadequate to compensate them for the valuable services which we are requiring from the bench during this season of prosperity and rapid development, I refrained from interposing these objections to a bill, which, as I have been informed, has received the sanction of the judge to be benefited thereby, until I could solicit official advice upon the same, and as the United States district attorney was absent, I decided to send a copy of the bill in question to the attorney general of the United States with a view to securing the best possible opinion regarding the proposed enactment, and have received the following reply:

"Washington, D. C. Hon. N. G. Ordway, Governor, Yankton, D. T.: Bill "in regard to judge is highly objectionable and certainly should be vetoed, if

"you will allow me to express an opinion."

(Signed,) CHARLES DEVENS,
Atty. Gen."

With the foregoing objections and accompanying authority, I have felt constrained to return the said bill as stated.
N. G. ORDWAY,
Governor.

MESSAGE FROM THE HOUSE.

A message was received announcing the passage by the house of house files 27 and 41, and asking the concurrence of the council therein; and informing the council that the house had refused to concur in the council amendments to house joint resolution providing for the printing of the reports of territorial officers.

CONSIDERING THE VETO MESSAGES.

The governor's message vetoing council bill No. 8, authorizing the issue of bonds for the erection of a jail in Lincoln county, coming up. Mr. Wiggin moved that the consideration of the message be postponed until 2 o'clock next Friday afternoon.

After some discussion, Mr. Wiggin withdrew his motion.

The governor's message, received this morning, vetoing the bill providing extra compensation to the judge of the first district was then read.

Consideration of this message was temporarily postponed.

REPORTS OF COMMITTEES.

Mr. Shaw, from the committee on finance and expenditures, reported back and recommended the passage of council bill 31, providing funds for the erection of a penitentiary at Sioux Falls.

Mr. Fisher, from the committee on railroads, reported favorably house file eleven, legalizing the acts of the trustees of the village of Dell Rapids and for other purposes.

Mr. Shaw, from the committee on charitable and penal institutions, reported with amendments council bill 35, to provide funds for the building of an insane asylum, and recommended its passage.

Mr. Scobey, from the committee on education, reported and recommended the passage of council bill 40, to amend the territorial school law.

APPORTIONMENT.

Mr. Gamble offered the following resolution, which was adopted:

Resolved, That a committee be appointed consisting of one from each judicial district to act with a like committee on the part of the house as a joint committee on apportionment.

The president appointed as such committee on the part of the council, Messrs. Wilson, first district; Gamble, second district; Fisher, third district; Shaw, fourth district.

MOTION TO RECONSIDER.

Mr. Day moved that the vote by which council bill 38 passed yesterday, be reconsidered.

On motion by Mr. Scobey, the motion to reconsider was laid on the table.

INTRODUCTION OF BILLS.

By Mr. Fisher—To amend section 62 chapter 24, of the political code, entitled incorporation of towns and cities.

Also, to amend an act providing a board of education for the city of Fargo, and for the regulation of the public schools therein.

COUNCIL BILLS.

The following council bills were read a third time and passed.

No. 31—Providing funds for the building of a penitentiary at Sioux Falls.

No. 35—To provide funds for the erection of a hospital for the insane.

No. 39—To make the town plat of Edwinton the legal plat of the city of Bismarck.

No. 40—To amend the act establishing a public school law for the territory.

No. 41—To amend the act establishing a board of education for Sioux Falls.

COMMITTEE OF CONFERENCE.

On motion of Mr. Day, the council refused to recede from its amendments to the house joint resolution, providing for the printing of the reports of territorial officers.

The president appointed Messrs. Jolley, Day and Wiggin, as a conference committee on said disagreement.

HOUSE BILLS.

House file 34 was read a second time and referred to the judiciary committee.

House file 11, legalizing the acts of the trustees of the village of Dell Rapids, was read a third time and passed—ayes 7, nays 5.

REQUEST REFUSED.

Mr. Day asked to refer back to the order of reports of committees to enable him to report from the committee on counties the bill re-establishing the boundaries of Morton county.

Mr. Gamble objected.

Mr. Wilson moved that the rules be suspended for the purpose of allowing Mr. Day to make his report, which motion did not prevail—the necessary two-thirds not voting in the affirmative.

RECESS.

On motion of Mr. Gamble the council took a recess until 2 p. m.

AFTERNOON SESSION.

In the council this afternoon council bill six, providing extra compensation for the judge of the first judicial district, and council bill eight, authorizing the commissioners of Lincoln county to issue bonds for the purpose of erecting a jail, which bills had been returned by the governor, were passed over the veto—the first by ayes, 11; nays, 1; Mr. Shaw alone voting to sustain the veto. The full proceedings of the afternoon session will appear to-morrow.

House.

Tuesday, Feb. 1.—The house convened at ten o'clock a. m. and was opened with prayer by the chaplain.

Mr. Speaker in the chair and all the members in their seats.

The journal of the preceding session was read and approved.

COMMITTEES REPORTS.

Mr. Boyles, from the committee on judiciary, reported back house file twenty-three, modifying the exemption law, with a recommendation that it be referred to the committee of the whole; also house file twenty-

five, with a recommendation that it pass. The report of the committee on number twenty-three was adopted.

Mr. Inman, from the committee on insurance, banks and banking, reported back house file thirty-eight, to authorize the commissioners of Hutchinson county to fund the outstanding indebtedness of the county, with a recommendation that it pass; also house file thirty-three, relating to insurance corporations, with a recommendation that it pass.

Mr. Kennedy, from the committee on engrossment and enrollment, reported house file forty-eight correctly enrolled and house files seven and two correctly enrolled.

BILLS SIGNED.

The speaker called the attention of the house to the signing of house bills four, twelve and sixteen.

NOTICE OF BILLS.

By Mr. French—To amend section 140 of chapter 6 of the probate code.

By Mr. Ellefson—To provide for the equalization of taxes by township boards in counties where the township system is adopted.

By Mr. Donaldson—To allow the county seat of Grant county to be changed by a vote of the people.

By Mr. Boyles—To amend section 1101 of the council code.

By Mr. Baynes—To amend section eight of chapter fourteen of the session laws of 1879.

INTRODUCTION OF BILLS.

By Mr. Hale—House file sixty—to amend section 166 of the code of civil procedure, as to who may challenge.

By Mr. Kennedy—House file sixty-one—to incorporate the village of Egan, Moody county.

By Mr. Dickey—House file sixty-two—creating and defining the boundaries of the county of Ordway and providing for the organization thereof.

By Mr. Nomland—House file sixty-three—to create the county of Ole Bull and define the boundaries thereof.

By Mr. Boyles—house file sixty-four—providing an appropriation for the territorial hospital for the insane.

By Mr. Boyles—house file sixty-five—to amend section ninety-four of chapter twenty-eight of the political code.

By Mr. Baynes—House file sixty-six—to protect and encourage sheep husbandry and to provide a bounty for wolf scalps.

COUNCIL BILLS.

Council bill seventeen, authorizing the commissioners of Bon Homme county to fund the outstanding indebtedness of the county, reported favorably from committee, came up for consideration and the report of the committee was adopted and the bill will come up before the committee of the whole in its regular order.

HOUSE BILLS.

The following house bills had their second reading, and were referred as indicated:

House file fifty one—To the committee on public printing.

House file fifty-three—To the committee on judiciary.

House file fifty-four—To the committee on insurance, banks and banking.

House file fifty-six—To the committee consisting of the delegation from the fifteenth district.

House file fifty-seven—To the committee of the whole.

House file fifty-eight—A memorial to congress asking for the passage of Washburn's bill, was passed under a suspension of the rules.

House file thirty—To incorporate the village of Parker, had its third reading and was passed by a vote of eighteen to six.

House file thirty-one, to amend the school law as to authorize the teaching of foreign language in the public schools came up for passage, and Mr. Thompson moved that the bill be laid upon the table.

The motion was lost.

The adoption of the measure was opposed by Messrs. Thompson, Nomland, Ellefson and Donaldson, and favored by Messrs. Landmann and Boyles.

The bill was then passed by the following vote: Ayes—Baynes, Boyles, Cross, Dickey, French, Hale, La Moure, Landman, Miller, Thielman, Thorne, Van Osdel, Warner, Wells and Mr. Speaker—15; nays—Donaldson, Ellefson, Inman, Kennedy, McBratney, Moore, Nomland, Rohr and Thompson—9.

House file thirty-nine—to establish a fence law for the Black Hills counties, came up for passage and was passed, Mr. Inman alone voting in the negative.

House file forty-two—relating to marks and brands on live stock, came up for passage and was passed by unanimous vote.

House file forty-eight, authorizing school district number one of Pembina county to issue bonds for the construction of a school house, came up for passage and passed by unanimous vote.

COUNCIL MESSAGE.

A message was received from the council announcing the passage of council bills thirty-four and thirty-eight. Also that the council refused to recede from its amendment to house file three and had appointed a committee of conference thereon.

A RESIGNATION.

The resignation of the enrolling and engrossing clerk was presented to the house and was, on motion of Mr. Dickey, accepted.

ELECTION OF A CLERK.

Mr. Wells nominated E. T. White, of Yankton, for the position,
Mr. Thielman nominated W. D. Russell, of Yankton.

Mr. Cross nominated John L. Taylor, of Custer.

Mr. Van Osdel nominated J. R. Hanson, of Yankton.

Mr. Rohr nominated C. F. Mallahan, of Union.

On motion of Mr. Thielman the first ballot was made informal.

Messrs. Wells and Thorne were appointed tellers.

INFORMAL BALLOT.

The informal ballot resulted as follows:

White.....	10
Russell.....	6
Taylor.....	3
Hanson.....	3
Mallahan.....	3

Mr. Kennedy moved that all but the highest two be dropped in the formal ballot, but the motion was lost.

FIRST FORMAL BALLOT.

The first formal ballot resulted as follows:

White.....	8
Russell.....	7
Taylor.....	4
Hanson.....	3
Mallahan.....	3

SECOND BALLOT.

White.....	6
Russell.....	5
Taylor.....	3
Hanson.....	2
Mallahan.....	2

RECESS.

On motion of Mr. Miller, a recess of five minutes was taken.

THIRD BALLOT.

White.....	7
Russell.....	6
Taylor.....	4
Hanson.....	4
Mallahan.....	2

FOURTH BALLOT.

White.....	12
Russell.....	1
Taylor.....	2
Hanson.....	7
Mallahan.....	2

FIFTH BALLOT.

White.....	12
Russell.....	1
Taylor.....	5
Hanson.....	6
Mallahan.....	3

SIXTH BALLOT.

White.....	12
Russell.....	3
Taylor.....	2
Hanson.....	6
Mallahan.....	2

SEVENTH BALLOT.

White.....	12
Russell.....	1
Taylor.....	1
Hanson.....	6
Mallahan.....	2

EIGHTH BALLOT.

White.....	11
Russell.....	3
Hanson.....	4
Mallahan.....	3

NINTH BALLOT.

White.....	12
Russell.....	7
Taylor.....	5

TENTH BALLOT.

White.....	10
Russell.....	2
Taylor.....	3

Mr. White having received a majority of all the votes cast, was declared elected enrolling and engrossing clerk of the house.

APPORTIONMENT COMMITTEE.

The speaker announced the following apportionment committee, under Mr. La Moure's resolution of yesterday: 1st judicial district—Messrs. Cross and Warner; 2d district—Messrs. Boyles and Baynes; 3d district—Messrs. La Moure and Wells; 4th district—Messrs. Thorne and Donaldson. Under the resolution the speaker is also a member of this committee.

RECESS.

At 12:30 o'clock, on motion of Mr. Thorne, the house took a recess until two o'clock p. m.