



## DAKOTA'S LEGISLATURE.

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

Fourteenth Session—23rd and 24th Days.

### Council.

#### AFTER RECESS.

The council re-assembled at 2 o'clock, p. m., the president in the chair and all the members present, for the consideration of the special order being the contested case of Wallace vs. Smith for the seat from the eleventh district.

Mr. Smith stated that he was personally interested in the proceedings upon which the council was about to enter, and asked permission to retire. Permission being granted, Mr. Smith left the hall.

#### THE ELECTION COMMITTEE.

Mr. Wilson, chairman of the committee on elections, stated that the committee had no report to make in the case under consideration. Various circumstances had combined to prevent meetings of the committee, after the evidence had been presented, to agree upon and prepare a report.

#### A RECESS.

On motion of Mr. Fisher, the council took a recess for ten minutes.

#### TIME UP.

At the expiration of the ten minutes, the council was called to order.

Mr. Shaw stated that the committee had their heads together and were preparing a report, and therefore moved that another recess of ten minutes be taken, which motion prevailed.

#### THE COMMITTEE REPORT.

At the expiration of the second recess, the council came to order, and the majority of the election committee presented the following report:

Mr. President—Your committee to whom was referred the contest of John F. Wallace vs. Patrick R. Smith, have had the same under consideration and beg leave to report the same back to the council with the pleadings, evidence and exhibits submitted us, and recommend and find that John F. Wallace, contestant, is entitled to a seat in the council from the eleventh council and representative district of the territory of Dakota, and that Patrick R. Smith is not entitled to such seat, and further recommend that said John F. Wallace be sworn in as a member of the council from said council and representative district, and be seated as such member.

J. R. GAMBLE,  
J. O. B. SCOBEEY,

Members of the Committee.

Mr. Wilson presented the minority report of the committee as follows:

Mr. President—A minority of your committee on elections to whom was referred the contest of J. F. Wallace vs. P. R. Smith for a seat in this body from the 11th district, beg leave to report that they have had the same under consideration and herewith submit the following report:

1. That after hearing all the evidence admitted as competent, the committee find there is no evidence justifying them in throwing out sufficient votes alleged to have been illegally cast for the contestant as to effect any change in the result.

2. That under the law governing contested elections in this body (see code, page 224) your committee refused to hear any ex parte testimony not taken in the manner prescribed in said law, and also refused to hear or consider any oral testimony on behalf of the claimants.

3. That the claim that the steamboat landing polling place was an illegal one is not capable of being determined from the evidence presented; but if we consider the testimony offered as all there is, then it is a question which we beg to submit, whether there were any legally established voting places in Burleigh county except Mandan and Bismarck, and we submit this question to this body for a decision, also the following:

4. That if there is or was some technical defect in the description of the boundaries of the various voting precincts of said Burleigh county, if, as is admitted, there was no question as to the time and place of voting, and that they did actually vote at the appointed time and place, should such votes be thrown out?  
JOHN R. WILSON,  
Chairman Committee on Elections.

On motion of Mr. Shaw the report of the majority of the committee was adopted by the following vote:

Ayes—Messrs. Fisher, Gamble, Martin, Scobey, Shaw, Wiggan, and Mr. President—7.

Noes—Messrs. Day, Jolley, Walsh, of Union, and Wilson—4.

The following resolution was offered by Mr. Fisher, which was adopted by the same vote given upon the report of the majority of the committee:

Resolved, That John F. Wallace be and is hereby declared entitled to his seat as member of the council of the eleventh legislative council district, and that Patrick R. Smith be and is hereby declared not entitled thereto, and that said John F. Wallace be sworn in as a member of the eleventh legislative council district.

On motion of Mr. Fisher the sergeant-at-arms was directed to wait upon Mr. Wallace and conduct him to the council chamber.

The sergeant-at-arms soon returned with the newly admitted member and conducted him to the president's stand. The oath of office was then administered to Mr. Wallace and he took his seat as representative from the eleventh council district.

#### ADJOURNMENT.

On motion of Mr. Wilson, the council adjourned until 11 o'clock Thursday.

#### Council.

Thursday, February 3.—The council met at 11 a. m., and was called to order by the president.

Prayer by the chaplain.

Roll call—members all present.

Minutes read and approved.

#### A REMONSTRANCE.

The president laid before the council a remonstrance from the citizens of Grand Forks county against the division of that county.

#### REPORTS OF COMMITTEES.

Mr. Jolley, from the committee on enrolled and engrossed bills, reported council bills two and four correctly enrolled, and that council bills four, twelve and sixteen had been presented to the governor.

Mr. Gamble, from the judiciary committee, reported council bills 32 and 36 and recommended their passage.

Mr. Jolley, from the committee on insurance, banks and banking, reported and recommended the passage of council bills 51 and 52.

Mr. Day, from the committee on counties, reported house file 41 with amendments, and recommended it passage.

#### INTRODUCTION OF BILLS.

By Mr. Scobey—To amend section 2, chapter 25, of the session laws of 1879.

By Mr. President—To amend sections 33, 37 and 50 of chapter 59, of the session laws of 1879, entitled townships.

#### MESSAGE FROM THE HOUSE.

A message was received from the house announcing that council bill six, providing extra compensation to the judge of the first judicial district, had passed the house over the governor's veto by the necessary two-thirds vote, and that council bill eight, relating to the construction of a jail in Lincoln county, vetoed by the governor, had failed to receive the necessary two-thirds vote; also that the house had passed council bill fifteen, locating a normal school at Springfield, and house file five and requesting the concurrence of the council therein.

#### COUNCIL BILLS.

No. 56, to amend section 62, chapter 24, of the political code, entitled corporation of towns and cities, was read a second time and laid over for its third reading.

No. 59, to amend section 14, chapter 39, of the political code, had its second reading and was referred to the committee on judiciary.

#### THIRD READING.

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

No. 51, to amend section 1,098 of chapter 3, title 4, in part 4, division third of the civil code, entitled loan of money, and to repeal section 1,100 of the same chapter in certain counties. [This bill exempts the Black Hills counties from the operations of the usury laws.]

No. 52, repealing section 427 of the political code in certain counties.

No. 32, to repeal section 11, chapter 39, of the political code.

No. 35, to amend section 1804 of the civil code. The object of this bill is to give the seller of personal property a lien thereon, and authorizes the taking back of the property if the purchase money is not paid according to contract.

A considerable discussion sprung up on this bill and after nearly all the councilmen had expressed their views thereon, Mr. Gamble moved that the further consideration of the bill be postponed until to-morrow, which motion was lost.

On motion of Mr. Scobey the bill was recommitted to the judiciary committee.

No. 55, to amend the act providing a board of education for the city of Yankton, was on motion referred to the committee on towns and counties.

#### MESSAGE FROM THE GOVERNOR.

A message was received from the governor announcing the approval of the following council bills:

No. 4—To amend section 2 of chapter 23 of political code, entitled revenue.

No. 12—To amend section 7 of the justices' code.

No. 16—Extending the time in which taxes shall become delinquent in the county of Union for the year 1881.

#### HOUSE FILES.

The following house files were read a second time and referred as follows:

No. 30—To the committee on counties.

No. 31—To the committee on education.

No. 39 and 42—To the committee on agriculture.

No. 48—To the committee on education.

No. 58—To the committee on immigration.

House file No. 41 was read a third time and passed.

#### ASSIGNED TO COMMITTEES.

The president stated that he had assigned Mr. Wallace to the positions on the committees lately occupied by Mr. Smith.

#### ADJOURNMENT.

On motion of Mr. Fisher, at 1 p. m., the council adjourned.

#### House.

Thursday, Feb. 3.—The house convened at 10 o'clock a. m., and was opened with prayer by the chaplain.

Mr. Speaker in the chair and all of the members present.

The journal of the preceding day was read and approved.

#### ENROLLED AND ENGROSSED.

Mr. Kennedy, from the committee on enrollment, reported back house file seven correctly enrolled. Also house files 13 and 19 as containing errors which the committee asked permission to correct. The desired permission was given.

Mr. Cross, from the committee on engrossment, reported house file five correctly engrossed.

#### A REMONSTRANCE.

Mr. Dickey presented a remonstrance to the passage of house file sixty-two, for the creation of the county of Ordway.

#### BILLS SIGNED.

The speaker called attention to the signing of house file seventeen.

#### COMMITTEE REPORTS.

Mr. Boyles, from the committee on judiciary, reported back house file twenty-seven with recommendation that it pass. It regulates herding and driving stock.

Mr. Miller, from the committee on finance and revenue, reported back council bill twenty-one with amendments and recommended its passage. It authorizes county commissioners to levy a tax of not more than eight mills for county expenses.

#### NOTICES OF BILLS.

By Mr. Hale—In reference to the sale, purchase and disposition of live stock in Black Hills counties.

By Mr. Donaldson—to consolidate the town plats of Big Stone City, Inkpa City and Geneva and to legalize the same under the name of Big Stone City.

By Mr. Miller—To amend the act

changing the name of the county seat of Richland county.

By Mr. French—To amend section seven, chapter thirty-six of the political code, relating to peddlers' and auctioneers' license.

By Mr. French—To simplify the practice in courts of record and to prescribe a uniform summons in civil actions.

By Mr. Moore—To provide a license on stallions.

By Mr. Baynes—To repeal chapter fourteen of the laws of 1879.

By Mr. Baynes—For the vacation of a portion of Foster's addition to the village of Rockport.

#### INTRODUCTION OF BILLS.

By Mr. Kennedy—House file seventy-one—creating the county of Vermillion and establishing its boundaries. The proposition is take a portion of Miner county and a detached tier of townships belonging to no county and create from them the county of Vermillion.

By Mr. Thompson—House file seventy-two—to amend section 43, chapter twenty-one of the political code, authorizing counties to issue bonds to erect jails and court houses.

By Mr. Warner—House file seventy-three—to authorize school district number one of Hughes county to issue bonds to build a school house.

By Mr. Boyles—House file seventy-four—to amend section 1,101 of the civil code.

#### COUNCIL BILLS.

The following council bills had their first reading:

Number thirty-one—to provide bonds for the construction of a penitentiary.

Number thirty-nine—to make the plat of the town of Edwinton the legal plat of the city of Bismarek.

Number forty—to amend the public school law of Dakota.

Number forty-one—to amend the act establishing a school board for Sioux Falls.

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

Number thirty-four—to amend the act incorporating Elk Point, to the committee on incorporations.

Number thirty-eight—Amending section seven of chapter thirty-nine of the political code, to committee on judiciary.

The following council bills had their third reading and were put upon their final passage:

Number five—to amend section one of chapter nineteen of the political code, excusing members of fire companies from jury duty, was passed by unanimous vote.

Number fifteen—to locate and endow a territorial normal school, passed by unanimous vote.

Number seventeen—to amend the act authorizing the commissioners of Bon Homme county to fund the outstanding indebtedness of the county, was passed with an amendment fixing the rate of interest at eight per cent.

Number twenty-three—to amend section 1748 of the civil code, was passed. Messrs. Miller, Thompson and VanOsdel voting in the negative and all the rest in the affirmative. It relates to the time in which a mortgage on personal property stands as against the creditors of mortgagors.

#### HOUSE BILLS.

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

Number fifty-nine—to incorporate the city of Deadwood, to a special committee consisting of the Lawrence county delegation.

Number sixty—to amend section 166 of the code of criminal procedure, to the committee on judiciary.

Number sixty-two—creating the county of Ordway, to the committee on counties and townships.

Number sixty-five—to amend section ninety-four of chapter twenty-eight of the political code, providing for payment of taxes on personal property, to the committee on judiciary.

Number sixty-seven—to amend section 140 of chapter six of the probate code, relating to real estate mortgages, to the committee on judiciary.

The following house bills were put upon their third reading and final passage:

Number five, for the erection of a court house and jail in Lawrence county, was passed by a unanimous vote.

Number forty-six, to amend section sixty-eight of chapter twenty-one of the political code, relating to coroners' inquests, was passed by unanimous vote.

Number forty-nine, amending the law relating to short hand reporters, was passed by unanimous vote.

Number fifty-four—Relating to the right of insurance companies to hold property in Dakota, was passed by unanimous vote.

Number fifty-seven—A joint resolution providing for final adjournment on the 19th inst., was defeated by a vote of fourteen to ten.

#### THE GENERAL ORDER

being council bills twenty-one and twenty-seven and house bill forty-seven, the house, on motion of Mr. Wells, went into

#### COMMITTEE OF THE WHOLE

for the consideration thereof, Mr. Warner in the chair. After three-quarters of an hour of work,

#### THE COMMITTEE ROSE

and made its report as follows:

That the report of the standing committee on council bill twenty-one be adopted. The bill authorizes the commissioners of counties to levy a tax not exceeding eight mills on the dollar for county revenue and support of the poor and the standing committee report cut down the limit to six mills.

Upon council bill twenty-seven progress was reported and leave asked to sit again. The bill requires county treasurers to be in their offices six days in each week instead of three days in each week.

Upon house file forty-seven the report of the standing committee, that it pass, was recommended to be adopted by the committee of the whole. It legalizes certain acts of the commissioners of Lawrence county.

The report of the committee of the

whole was accepted and adopted.

#### COUNCIL MESSAGE.

A message was received from the council, announcing the passage by that body of house file thirty-five, to authorize the issue of bonds for the construction of an insane hospital, and house file forty, defining the boundaries of Morton county, with an amendment.

#### MESSAGE FROM THE GOVERNOR.

A message was received from the governor announcing his approval of house file two, providing for employment of pages; house file three, providing for a printing fund; house file twenty-two, authorizing the expenditure of money in the hands of the trustees of the hospital for the insane.

#### HOUSE BILL FORTY.

By special permission Mr. Wells called up house file forty, defining the boundaries of Morton county, and asked that the house concur in the council amendment thereto. The house concurred by unanimous vote.

#### BILLS SIGNED.

The speaker called attention of the house to the signing of council bills fourteen and two and house files thirteen and five.

#### CORRECTLY ENROLLED.

Mr. Kennedy, from the committee on enrollment reported house file thirteen, (providing for the construction of a court house and jail in Pembina county), and house file four (authorizing the commissioners of Pembina county to fund the indebtedness of the county) as correctly enrolled.

#### RECESS.

At twelve o'clock the house took a recess until two o'clock p. m.